

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

1. **Shri Ashok Basu, Chairperson,**
2. **Shri Bhanu Bhushan, Member**
3. **Shri A.H. Jung, Member**

**IA No.46/2006**

**in**

**Petition No.72/2005**

**In the matter of**

Approval of transmission charges for LILO of 400 kV S/C Singrauli-Kanpur transmission line-I, 400 kV sub-station at Allahabad and LILO of 400 kV S/C Singrauli-Kanpur transmission line-II including ICT-I and II at Allahabad with associated bays in Northern Region for the tariff period 2004-09 and for additional capitalization during 2001-04.

**And in the matter of**

Power Grid Corporation of India Ltd.

.... **Petitioner**

**Vs**

1. Himachal Pradesh State Electricity Board, Shimla
2. Punjab State Electricity Board, Patiala
3. Haryana Vidyut Prasaran Nigam Ltd., Panchkula
4. Power Development Department, Govt. of J&K, Jammu,
5. Uttar Pradesh Power Corporation Ltd., Lucknow
6. Delhi Transco Ltd., New Delhi
7. Chandigarh Administration, Chandigarh
8. Uttaranchal Power Corporation Ltd., Dehradun
9. Rajasthan Power Procurement Centre, Jaipur
10. Ajmer Vidyut Vitran Nigam Ltd., Ajmer
11. Jaipur Vidyut Vitran Nigam Ltd., Jaipur
12. Jodhpur Vidyut Vitran Nigam Ltd., Jodhpur
13. Northern Railway, Baroda House, New Delhi

.... **Respondents**

**And in the matter of**

Power Grid Corporation of India Ltd

..... **Applicant**

**The following were present:**

1. Shri M.G. Ramachandran, Advocate, PGCIL
2. Ms. Taruna Singh Baghel, PGCIL
3. Shri Anand K. Ganesan, PGCIL
4. Shri U.K. Tyagi, DGM, PGCIL
5. Shri C.Kannan, CM, PGCIL
6. Shri Umesh Chandra, PGCIL
7. Shri T.P.S Bawa, OSD, PSEB

**ORDER**  
**(DATE OF HEARING: 7.9.2006)**

The main petition was filed by the applicant for approval of transmission tariff for LILO of 400 kV S/C Singrauli-Kanpur Transmission Line-I, LILO of 400 kV S/C Singrauli-Kanpur Transmission Line – II and 400/220 kV sub-station at Allahabad including ICT-I and II in Northern Region for the period from 1.4.2004 to 31.3.2009 and for revision of transmission charges for the period ending 31.3.2004 approved by the Commission in its order dated 13.4.2005 in Petition No.58/2002 after taking into account the additional capital expenditure for the period ending 31.3.2004. The dates of commercial operation of the various elements for which approval for tariff was sought are as under:

Asset	Effective date of commercial operation
LILO of 400 kV S/C Singrauli-Kanpur transmission line-I at Allahabad	1.1.2003
LILO of 400 kV S/C Singrauli-Kanpur transmission line-II at Allahabad	1.1.2003
ICT-I at Allahabad	1.2.2003
ICT-II at Allahabad	1.1.2003

2. The Commission by its order dated 9.5.2006 had approved the transmission charges for the period 1.4.2004 to 31.3.2009. The Commission also approved additional capitalisation for the period ending 31.3.2004, as under:

**LILO of 400 kV S/C Singrauli-Kanpur Transmission Line – II**

(Rs. In lakh)

Expenditure up to 1.8.2001	2544.07
Additional Expenditure from 1.8.2001 to 31.3.2002	257.83
Additional Expenditure from 1.4.2002 to 31.3.2003	578.83
Additional Expenditure from 1.4.2003 to 31.3.2004	124.27
Total	<b>3504.45</b>

## ICT-II at Allahabad

(Rs. In lakh)

Expenditure up to 1.1.2003	1541.42
Additional Expenditure from 1.1.2003 to 31.3.2003	8.56
Balance anticipated expenditure	0.00
Total	<b>1549.98</b>

4. In the order dated 9.5.2006, the above additional capital expenditure was considered for determination of tariff for the period 1.4.2004 to 31.3.2009. However, by inadvertent omission, no benefit was given to the applicant for the tariff period ending 31.3.2004 on account of the additional capital expenditure approved by the Commission, though in other cases such benefit was given.

5. The application is made for approval of the impact of additional capital expenditure for the period 2001-04 as allowed in other similar cases. The applicant has relied upon the following observations made in other cases relating to approval of transmission charges for the period 1.4.2004 to 31.3.2009.

“In the petitions filed by NTPC for approval of revised fixed charges for additional capitalization for the period 1.4.2001 to 31.3.2004, the Commission has decided that additional capital expenditure be added to the gross block as on 1.4.2001 to arrive at the gross block as on 1.4.2004 for the purposes of fixation of tariff for the period 2004-05 to 2008-09. The Commission has further ordered that NTPC would be entitled to earn return on equity @ 16% on equity portion of additional capitalization approved and interest on loan at the rate as applicable during 2001-02 to 2003-04. The return on equity and interest on loan are payable on additional capitalization from 1<sup>st</sup> April of the financial year following the financial year to which additional expenditure relates”.

6. The application has been heard after notice to the respondents, none of whom has filed any reply to the application. Initially, the interlocutory application was listed for hearing on 29.8.2006 when Shri T.P.S Bawa appeared for Punjab

State Electricity Board. Hearing of the application was adjourned to 7.9.2006.

Again, none other than Shri Bawa appeared for the respondents.

7. Heard Shri M.G. Ramachandran, Advocate for the applicant and Shri T.P.S. Bawa, PSEB.

8. It is evident from para 5 above that the applicant was allowed benefit of return on equity and interest on loan on additional capital expenditure for the period 2001-04 based on a similar decision in the tariff petitions filed by NTPC. It is, however, to be noted that UPPCL had filed an appeal before the Appellate Tribunal for Electricity wherein UPPCL had called in question the return on equity and interest on loan allowed by the Commission to NTPC on additional capital expenditure pertaining to the period 1.4.2001 to 31.3.2004 in Petition No.139/2004, (Feroz Gandhi Unchhahar Thermal Power Station Stage– I) on the ground that NTPC could not be allowed such benefit since this was not covered in terms of Clause 1.10 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2001 (hereinafter called the “2001 Regulations”).

9. The Appellate Tribunal by its order dated 7.7.2006 in Appeal No.36/2006 has decided as under:

“17. As regard to the last point, there is force in the contention advanced by Mr. Pradeep Misra. CERC (terms and conditions of tariff) Regulations 2001 is applicable for the tariff period ending with 31.03.2004 Regulation 1.10. provided for revision of tariff during the tariff period Regulation 1.10 reads thus:

“1.10 Tariff revisions during the tariff period on account of capital expenditure within the approved project cost incurred during the tariff period may be entertained by the Commission only if such expenditure exceeds 20% of the approved cost. In all cases, where such expenditure is less than 20%, tariff revision shall be considered in the next tariff period”.

18. While placing heavy reliance on the said regulations Mr. Pradeep Misra pointed out that, there could be no revision of tariff during the tariff period whatever be the reason if the capital expenditure incurred is less than 20% of the approved project. We find there is force in this submission. The Regulation which is statutory in nature provides so and during the tariff period if the additional capitalization is less than 20% of approved cost there could be no increase in tariff what so ever. Mr. M.G. Ramachandran appearing for first respondent sought to explain the contents of para 37 of the order appealed against and printed out that it will be included in the next tariff period, which is being settled by CERC.

19. When the regulation bars revision of tariff during the tariff period ending with 31.03.2004, it follows that there could be no revision of the tariff during the tariff period whatever may be the reason or justification when the additional expenditure is less than 20% of the approved project cost. There is no controversy in this respect. In the circumstances, the direction issued by CERC as set out in para 37 calls for modification. In fixing the tariff for the tariff period commencing 01.04.2004, the element of interest and investment of return on equity requires to be examined by CERC and included for the purpose of determining the tariff as rightly highlighted by Mr. Ramachandran on behalf of the appellant but there is no warrant to issue such a direction now. In the circumstances, we order deletion of Para 37 of the order appealed against, while making it clear that it is well open to CERC to consider the element, namely additional capitalization return on equity, interest on borrowing, while determining the tariff for the next tariff period. The appeal is dismissed but with the above modification”.

10. For facility of reference, para 37 of the order dated 31.3.2005 in Petition No.139/2004 is reproduced below:

“37. As there is nothing in the notification dated 26.3.2001 to deny the petitioner the reasonable return to service the capital expenditure incurred by the petitioner and found to be justified by us, we direct that the petitioner shall earn return on equity @ 16% on the equity portion of the additional capitalization approved by us. Similarly, the petitioner shall also be entitled to the interest on loan as applicable during the relevant period. Return on equity and interest shall be worked out on the additional capitalization of Rs.4.521 crore approved by us from 1<sup>st</sup> April of the financial year following the financial year to which additional capital

expenditure relates up to 31.3.2004. The lump sum of the amount of return on equity and interest on loan so arrived at shall be payable by the respondents along with the tariff for the period 2004-09 to be approved by the Commission. The exact entitlement of the petitioner on this account shall be considered by the Commission while approving tariff for the period 2004-09”.

11. Learned Counsel for the applicant argued that the Appellate Tribunal had left it open to the Commission to allow return on equity, and interest on loan on the amount of additional capitalization pertaining to the period 1.4.2001 to 31.3.2004 while approving tariff for the next tariff period, which is 1.4.2004 to 31.3.2009. He submitted that the Commission has already allowed these two elements of tariff in a number of cases while approving tariff for the tariff period 1.4.2004 to 31.3.2009 in addition to tariff for this period. Accordingly, it was submitted by the learned counsel that impact of additional capital expenditure as prayed for in the interlocutory application is to be considered. Learned counsel urged that the decision of the Appellate Tribunal was based on the analysis of the provisions of Clause 1.10 of the 2001 regulations and the relief prayed for is covered under the second part of Clause 1.10.

12. Per contra, Shri Bawa argued that the applicant is not entitled to any benefit on account of the additional capitalization for the period 1.4.2001 to 31.3.2004 in view of the fact that the Appellate Tribunal had already directed deletion of the relevant para from the orders relating to NTPC which is the basis for the applicant's claim in the present application. He urged that in terms of the Appellate Tribunal's order the Commission can allow return on equity and interest on loan on the additional capitalization amount, for the period 1.4.2004 to 31.3.2009 only.

13. We have very carefully considered the submissions made on behalf of the parties in the light of the decision of the Appellate Tribunal in Appeal No.36/2006. Petition No.139/2004 was filed by NTPC for approval of the revised fixed charges based on additional capital expenditure for Feroz Gandhi Unchachar Super Thermal Power Station Stage-I incurred during the period 1.4.2001 to 31.3.2004. The Commission in its order dated 31.3.2005 had approved additional capital expenditure. As regards revision of fixed charges, the Commission directed that NTPC would be entitled to only two elements of tariff, that is, return on equity and interest on loan, for the tariff period 1.4.2001 to 31.3.2004 on the additional capital expenditure approved. But the benefit was to be given while approving tariff for the tariff period 1.4.2004 to 31.3.2009. In our understanding, the import of the Appellate Tribunal's order is that when additional capital expenditure is less than 20%, it was not necessary to make any observation in the order in a petition pertaining to the period 1.4.2001 to 31.3.2004. It is, however, to be noted that the appeal filed by UPPCL has been dismissed with some modification of the order dated 31.3.2005. Further, the Appellate Tribunal, in its conclusion has made it clear that "it is well open to CERC to consider the element namely additional capitalization return on equity, interest on borrowing, while determining the tariff for the next tariff period". Though it was urged by Shri Bawa that the liberty granted was in the context of approval of tariff for the period 1.4.2004 to 31.3.2009, we are not convinced by the argument. Were that so, it was not necessary for the Appellate Tribunal to refer to only two elements, namely; return on equity and interest on loan. The fixed charges component of tariff encompasses other elements, like depreciation, O&M and interest on working capital, etc. If the Appellate Tribunal intended that NTPC would not be entitled to

any benefit for the period 2001-04 on additional capitalization, there was no need for the Appellate Tribunal to observe that the elements of return on equity and interest on loan on additional capitalization could be considered while determining tariff for the next tariff period. In the next tariff period, entire tariff is payable and not just the two elements.

14. In keeping with the above, we allow the interlocutory application. The applicant shall be entitled to recover the following amounts from the respondents on account of additional capitalization approved by order dated 9.5.2006 for the period 1.4.2001 to.3.2004.

**LILO of Singrauli-Kanpur Transmission Line- II**

(Rs. In lakh)

		<b>2002-03</b>	<b>2003-04</b>	<b>Total</b>
Period		<b>0.25</b>	<b>1.00</b>	
<b>Additional Capitalisation</b>		<b>144.71</b>	<b>124.27</b>	<b>268.98</b>
<b>Financing of Additional Capitalisation</b>				
Notional Loan		71.97	61.80	133.78
Notional Equity		72.74	62.47	135.20
<b>Total</b>		<b>144.71</b>	<b>124.27</b>	<b>268.98</b>
<b>Effective Additional Capitalisation</b>				
Opening Loan Balance		0.00	71.97	
Addition of Loan		71.97	61.80	<b>133.78</b>
Repayment of Loan		0.00	4.99	<b>4.99</b>
Closing Loan Balance		71.97	128.78	
Effective Loan		0.00	71.97	
Weighted Average Rate of Interest on Loan		10.5931%	10.6485%	
Effective Equity		0.00	72.74	
Interest on Loan		0.00	7.66	<b>7.66</b>
Return on Equity	16%	0.00	11.64	<b>11.64</b>
<b>Impact of Additional Capitalisation</b>		<b>0.00</b>	<b>19.30</b>	<b>19.30</b>

**400/220 kV ICT-II along with its associated bays at Allahabad**

(Rs. In lakh)

		2002-03	2003-04	Total
Period		0.25	1.00	
<b>Additional Capitalisation</b>		<b>8.56</b>	<b>0.00</b>	<b>8.56</b>
<b>Financing of Additional Capitalisation</b>				
Notional Loan		8.56	0.00	8.56
Notional Equity		0.00	0.00	0.00
<b>Total</b>		<b>8.56</b>	<b>0.00</b>	<b>8.56</b>
<b>Effective Additional Capitalisation</b>				
Opening Loan Balance		0.00	8.56	
Addition of Loan		8.56	0.00	<b>8.56</b>
Repayment of Loan		0.00	0.61	<b>0.61</b>
Closing Loan Balance		8.56	7.95	
Effective Loan		0.00	8.56	
Weighted Average Rate of Interest on Loan		10.0233%	9.9639%	
Effective Equity		0.00	0.00	
Interest on Loan		0.00	0.85	<b>0.85</b>
Return on Equity	16%	0.00	0.00	<b>0.00</b>
<b>Impact of Additional Capitalisation</b>		<b>0.00</b>	<b>0.85</b>	<b>0.85</b>

14. With the above, IA No.46/2006 stands disposed of.

Sd/-  
**(A.H. JUNG)**  
**MEMBER**

Sd/-  
**(BHANU BHUSHAN)**  
**MEMBER**

Sd/-  
**(ASHOK BASU)**  
**CHAIRPERSON**

New Delhi dated the 19<sup>th</sup> September 2006