

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.142/2010**

**Coram:**

1. Dr. Pramod Deo, Chairperson
2. Shri S.Jayaraman, Member
3. Shri V.S.Verma, Member
4. Shri M.Deena Dayalan, Member

**DATE OF HEARING: 21.9.2010**

**DATE OF ORDER: 11.3.2011**

**In the matter of**

Approval of transmission tariff for 63 MVAR line Reactor on 400 kV Kolaghat-Rengali line at Rengali sub-station in Eastern Region for the period from 1.4.2009 to 31.3.2014.

**And in the matter of**

Power Grid Corporation of India Limited, Gurgaon **..Petitioner**  
Vs

1. Bihar State Electricity Board, Patna
2. West Bengal State Electricity Board, Kolkata
3. Grid Corporation of Orissa Ltd., Bhubaneswar
4. Damodar Valley Corporation, Kolkata
5. Power Department, Govt. of Sikkim, Gangtok
6. Jharkhand State Electricity Board, Ranchi **.... Respondents**

**The following were present:**

1. Shri U.K.Tyagi, PGCIL
2. Shri M.M. Mondal, PGCIL
3. Shri Rajiv Gupta, PGCIL
4. Shri S.Raju, PGCIL
5. Shri R.B.Sharma, Advocate, BSEB

**ORDER**

The petition has been filed for approval of tariff of 63 MVAR line Reactor on 400 kV Kolaghat-Rengali transmission line (hereinafter referred to as "the transmission asset") at Rengali sub-station in Eastern Region for the period from 1.4.2009 to 31.3.2014 in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009



(hereinafter referred to as "the 2009 regulations"). The petitioner has made the following additional prayers:-

- (a) To invoke the provision of Regulation 44 of the 2009 regulations for relaxation of regulations 15 (3) of the 2009 regulations so that grossing up the base rate shall be considering the revised rate of MAT as per the Finance Act, 2009 for the year 2009-10 and as per the Finance Act, 2010 for the year 2010-11 and subsequent years and allow consequential impact on tariff for 2009-14 period accordingly;
- (b) To approve reimbursement of petition filing fee and publication of notices in the newspaper as per the 2009 regulations;
- (c) Allow to adjust impact on interest on loan due to floating rate of interest applicable during 2009-14;
- (d) Allow to recover the service tax on transmission charges separately from the respondents, if the petitioner is subjected to such service tax; and
- (e) Allow reimbursement of licence fee separately from the respondents.

2. The transmission asset was declared under commercial operation w.e.f.1.6.2000. The annual transmission charges for the transmission asset for the period from 1.4.2004 to 31.3.2009 were decided by the Commission vide order dated 2.9.2005 in Petition No. 119/2004 on the gross block of ₹191.81 lakh as on 1.4.2009. The petitioner has not claimed any additional capital expenditure for the transmission asset during 2004-09.



3. The petitioner has claimed the transmission charges as under:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	10.13	10.13	10.13	10.13	4.95
Interest on Loan	0.00	0.00	0.00	0.00	0.00
Return on Equity	33.53	33.53	33.53	33.53	33.53
Interest on Working Capital	0.91	0.91	0.91	0.91	0.80
O & M Expenses	0.00	0.00	0.00	0.00	0.00
<b>Total</b>	<b>44.57</b>	<b>44.57</b>	<b>44.57</b>	<b>44.57</b>	<b>39.28</b>

4. The details submitted by the petitioner in support of its claim for interest on working capital are given hereunder:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Maintenance Spares	0.00	0.00	0.00	0.00	0.00
O & M expenses	0.00	0.00	0.00	0.00	0.00
Receivables	7.43	7.43	7.43	7.43	6.55
<b>Total</b>	<b>7.43</b>	<b>7.43</b>	<b>7.43</b>	<b>7.43</b>	<b>6.55</b>
Rate of Interest	12.25%	12.25%	12.25%	12.25%	12.25%
Interest	0.91	0.91	0.91	0.91	0.80

5. No comments or suggestions have been received from the general public in response to the notices published by the petitioner under section 64 of the Electricity Act, 2003.

6. Respondent No. 1, Bihar State Electricity Board (BSEB) in its reply affidavit dated 27.7.2010 has submitted the following:

(a) The provisions of Regulation 15(3) of the 2009 regulations in respect of ROE are very clear and unambiguous and accordingly be applied in its perspective and the request of the petitioner seeking the relaxation under Regulation 44 of the 2009 regulations is solely guided by the commercial consideration with the aim to get the

expenses on this account early than actually due in accordance with the 2009 regulations;

- (b) BSEB has further submitted that the date of commercial operation of the asset in question is 1.6.1999 and within the period to claim the tax holiday under Section 80 IA of the Income Tax Act, 1961. The petitioner may be asked to submit the entire information regarding tax holiday period to the respondents and the Commission to arrive at an actual tax rate applicable; and
- (c) BSEB has also opposed reimbursement of filing fees, publication expenditure and licence fees.

7. The petitioner in its rejoinder dated 8.9.2010 has submitted as under:

- (a) ROE has been calculated @17.481% based on the rate notified by the Commission under Regulation 15 (4) (i) of the 2009 regulations and said rate of 17.481% is based on the MAT rate of 11.33% being applicable for the year 2008-09. In regard to tax holiday, the petitioner has submitted that the PGCIL has filed income tax return up to financial year 2008-09 but has not been able to exercise the option of tax holiday as per Section 80 IA of the Income Tax Act, 1961, as there was no taxable profit as per Income Tax Act. In the absence of taxable profit, MAT is being paid as per the provisions of Section 115JB of the Income Tax Act, 1961. Income Tax return for the year 2009-10 is yet to be filed and claim of tariff will accordingly be as per the provisions of 2009 regulations;



(b) The petitioner has also submitted that the benefit of tax holiday under Section 80 IA of the Income Tax Act, 1961 would be eligible to be passed on only when actual reimbursement of income tax under post-tax system of ROE as was applicable for the period 2004-09, is allowed by the Commission. In regard to relaxation of Regulation 44 of the 2009 regulations, the petitioner has submitted that relaxation has been requested in order to maintain balance in recovery mechanism; and

(c) The filing fee, publication expenses and licence fee has not been represented in the O & M expenses and are extra cost on the petition which need to be reimbursed.

8. We have considered the objections of BSEB and reply of the petitioner. ROE, MAT and tax holiday have been dealt with in the order strictly in accordance with the provisions of the 2009 regulations. The issues relating to service tax and licence fee etc. have been addressed in relevant paras of this order.

#### **CAPITAL COST**

9. As per the last proviso to clause (2) of Regulation 7 of the 2009 regulations, "in case of the existing projects, capital cost admitted by the Commission prior to 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".



10. The capital cost of ₹ 191.81 lakh admitted vide order dated 2.9.2005 in Petition No. 119/2004 has been considered for the purpose of tariff.

### **DEBT- EQUITY RATIO**

11. Clause (2) of Regulation 12 of the 2009 regulations *inter alia* provides as under:

*"(2) In case of the generating station and the transmission system declared under commercial operation prior to 1.4.2009, debt-equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2009 shall be considered."*

12. The petitioner has claimed tariff based on debt-equity ratio of 0.00:100.00 as considered by the Commission in order dated 2.9.2005 *ibid*. The same debt-equity ratio has been considered for the purpose of tariff.

### **RETURN ON EQUITY**

13. Regulation 15 of the 2009 regulations provides that:-

*"15. (1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with regulation 12.*

*(2) Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per clause (3) of this regulation:*

*Provided that in case of projects commissioned on or after 1st April, 2009, an additional return of 0.5% shall be allowed if such projects are completed within the timeline specified in **Appendix-II**:*

*Provided further that the additional return of 0.5% shall not be admissible if the project is not completed within the timeline specified above for reasons whatsoever.*

*(3) The rate of return on equity shall be computed by grossing up the base rate with the normal tax rate for the year 2008-09 applicable to the concerned generating company or the transmission licensee, as the case may be:*

*Provided that return on equity with respect to the actual tax rate applicable to the generating company or the transmission licensee, as the case may be, in line with the provisions of the relevant Finance Acts of the respective year during the tariff period shall be trued up separately for each year of the tariff period along with the tariff petition filed for the next tariff period.*



*(4) Rate of return on equity shall be rounded off to three decimal points and be computed as per the formula given below:  
Rate of pre-tax return on equity = Base rate / (1-t)  
Where t is the applicable tax rate in accordance with clause (3) of this regulation."*

14. The petitioner has computed return on equity on pre-tax basis on 11.33% MAT in accordance with tax rate applicable for the year 2008-09 and claimed return on equity of ₹33.53 lakh each year during the tariff period @ 17.481% against the equity base of ₹191.81 lakh. This has been found to be in order. Accordingly, the petitioner shall be entitled to return on equity @ ₹33.53 lakh each year during the tariff period, as claimed.

15. In regard to MAT, the Commission vide its order dated 3.8.2010 in Petition No. 17/2010 has already taken a decision to amend the 2009 regulations. The relevant portion of the said order is extracted as under:

"We are of the view that this issue of 'grossing up the base rate with the normal tax rate for the year 2008-09' is generic in nature and therefore, it will be appropriate to make suitable provisions in the 2009 regulations to cater to any future changes in the tax rate. Accordingly, we direct the staff of the Commission to prepare and submit draft amendment to the 2009 regulations for allowing grossing up of base rate of return with the applicable tax rate as per the Finance Act for the relevant year and direct settlement of tax liability between the generating company/transmission licensee and the beneficiaries/long term transmission customers on year to year basis. Any under/over recovery on account of direct settlement of tax liability shall be subject to the final adjustment at the time of true up exercise."

16. In view of our above order, the prayer of the petitioner will be taken care of after amendment of the regulations.

### **INTEREST ON LOAN**

17. Regulation 16 of the 2009 regulations provides as under:-

"16. (1) The loans arrived at in the manner indicated in regulation 12 shall be considered as gross normative loan for calculation of interest on loan.



(2) The normative loan outstanding as on 1.4.2009 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2009 from the gross normative loan.

(3) The repayment for the year of the tariff period 2009-14 shall be deemed to be equal to the depreciation allowed for that year:

(4) Notwithstanding any moratorium period availed by the generating company or the transmission licensee, as the case may be the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the annual depreciation allowed,.

(5) The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio at the beginning of each year applicable to the project:

Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered:

Provided further that if the generating station or the transmission system, as the case may be, does not have actual loan, then the weighted average rate of interest of the generating company or the transmission licensee as a whole shall be considered.

(6) The interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.

(7) The generating company or the transmission licensee, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:1.

(8) The changes to the terms and conditions of the loans shall be reflected from the date of such re-financing.

(9) In case of dispute, any of the parties may make an application in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, as amended from time to time, including statutory re-enactment thereof for settlement of the dispute:

Provided that the beneficiary or the transmission customers shall not withhold any payment on account of the interest claimed by the generating company or the transmission licensee during the pendency of any dispute arising out of re-financing of loan."



18. There is no normative loan in the present petition, therefore, no interest on loan has been considered for the purpose of tariff.

### **DEPRECIATION**

19. Regulation 17 of the 2009 regulations provides for computation of depreciation in the following manner, namely:

*"17. (1) The value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission.*

*(2) The salvage value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the capital cost of the asset.*

*xxxx*

*(3) Land other than the land held under lease and the land for reservoir in case of hydro generating station shall not be a depreciable asset and its cost shall be excluded from the capital cost while computing depreciable value of the asset.*

*(4) Depreciation shall be calculated annually based on Straight Line Method and at rates specified in Appendix-III to these regulations for the assets of the generating station and transmission system:*

*Provided that, the remaining depreciable value as on 31st March of the year closing after a period of 12 years from date of commercial operation shall be spread over the balance useful life of the assets.*

*(5) In case of the existing projects, the balance depreciable value as on 1.4.2009 shall be worked out by deducting the cumulative depreciation as admitted by the Commission up to 31.3.2009 from the gross depreciable value of the assets.*

*(6) Depreciation shall be chargeable from the first year of commercial operation. In case of commercial operation of the asset for part of the year, depreciation shall be charged on pro rata basis."*

20. The transmission asset was declared under commercial operation on 1.6.2000 and accordingly it will complete 12 year on 1.6.2012 and thus depreciation during 2009-10 to 2012-13 has been calculated as per straight line method and rates specified in Appendix-III of the 2009 regulations. For the year 2013-14, remaining depreciable value has been spread over the



balance useful life of the transmission asset. For the period 1.4.2009 to 31.3.2014 the depreciation works out as under:

(₹ in lakh)							
Details of Depreciation		Up to 31.3.2009	2009-10	2010-11	2011-12	2012-13	2013-14
As per order dated 2.9.2005		191.81	191.81	191.81	191.81	191.81	191.81
Addition during 2009-14 due to projected Additional Capitalisation			0.00	0.00	0.00	0.00	0.00
Gross block as on 31.3.2009			191.81	191.81	191.81	191.81	191.81
Average gross block			191.81	191.81	191.81	191.81	191.81
Rate of depreciation			5.2800%	5.2800%	5.2800%	5.2800%	5.2800%
Depreciable Value	90%		172.63	172.63	172.63	172.63	172.63
Elapsed Life			8	9	10	11	12
Balance Useful life of the asset			17	16	15	14	13
Remaining Depreciable Value			104.89	94.76	84.63	74.51	64.38
<b>Depreciation</b>			<b>10.13</b>	<b>10.13</b>	<b>10.13</b>	<b>10.13</b>	<b>4.95</b>

### **OPERATION & MAINTENANCE EXPENSES**

21. The petitioner has not claimed O & M expenses in the present petition.

### **INTEREST ON WORKING CAPITAL**

22. The components of the working capital and the interest thereon are discussed hereunder:

(i) **Receivables:** As per Regulation 18(1)(c)(i) of the 2009 regulations, receivables will be equivalent to two months average billing calculated on target availability level. The petitioner has claimed the receivables on the basis 2 months' transmission charges claimed in the petition. In the tariff being allowed, receivables have been worked out on the basis 2 months' transmission charges.

(ii) **Maintenance spares:** Regulation 18(1)(c)(ii) of the 2009 regulations provides for maintenance spares @ 15% per annum of the O & M expenses from 1.4.2009. As the petitioner has not claimed O & M



expenses, therefore, maintenance spares have been worked out as nil for the calculation of interest on working capital.

(iii) **O & M expenses:** Regulation 18(1) (c) (iii) of the 2009 regulations provides for operation and maintenance expenses for one month as a component of working capital. As the petitioner has not claimed O & M expenses, therefore, O & M expenses have been worked out as nil for the calculation of interest on working capital.

(iv) **Rate of interest on working capital:** As per Regulation 18(3) of the 2009 regulations, rate of interest on working capital shall be on normative basis and 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 project or part thereof (as the case may be) is declared under commercial operation, whichever is later. The petitioner has claimed interest on working capital @ 12.25% based on SBI PLR as on 1.4.2009, which is in accordance with the 2009 regulations and has been allowed.

23. The necessary computations in support of interest on working capital are appended hereinbelow:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Maintenance Spares	0.00	0.00	0.00	0.00	0.00
O & M expenses	0.00	0.00	0.00	0.00	0.00
Receivables	7.43	7.43	7.43	7.43	6.55
Total	7.43	7.43	7.43	7.43	6.55
Rate of Interest	12.25%	12.25%	12.25%	12.25%	12.25%
<b>Interest</b>	<b>0.91</b>	<b>0.91</b>	<b>0.91</b>	<b>0.91</b>	<b>0.80</b>

### **TRANSMISSION CHARGES**

24. The transmission charges being allowed for the transmission asset are summarised below:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	10.13	10.13	10.13	10.13	4.95
Interest on Loan	0.00	0.00	0.00	0.00	0.00
Return on Equity	33.53	33.53	33.53	33.53	33.53
Interest on Working Capital	0.91	0.91	0.91	0.91	0.80
O & M Expenses	0.00	0.00	0.00	0.00	0.00
<b>Total</b>	<b>44.57</b>	<b>44.57</b>	<b>44.57</b>	<b>44.57</b>	<b>39.28</b>

### **Application fee and the publication expenses**

25. The petitioner has sought approval for the reimbursement of fee paid by it for filing the petition. In accordance with our decision in order dated 11.1.2010 in Petition No. 109/2009, the petitioner shall be entitled to recover the filing fee from the beneficiaries on *pro rata* basis. The petitioner shall also be entitled for reimbursement of publication expenses from the beneficiaries on *pro rata* basis.

### **Service Tax**

26. The petitioner has prayed to be allowed to bill and recover the service tax on transmission charges if the petitioner is subjected to service tax. The prayer of the petitioner is premature and is accordingly rejected.

### **Licence fee**

27. The petitioner has prayed for reimbursement of the licence fee as it is an extra cost on the petitioner. It is clarified that a view in the matter is yet to be taken by the Commission.



28. The transmission charges allowed shall be recovered on monthly basis in accordance with Regulation 23 and shall be shared by the respondents in accordance with Regulation 33 of the 2009 regulations.

29. This order disposes of Petition No.142/2010.

Sd/-

**(M. Deena Dayalan)**  
**Member**

Sd/-

**(V.S.Verma)**  
**Member**

Sd/-

**(S.Jayaraman)**  
**Member**

Sd/-

**(Dr. Pramod Deo)**  
**Chairperson**

