

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 80/2011

**Coram: Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member**

Date of Hearing: 26.4.2011

Date of Order: 30.5.2011

In the matter of:

Approval under Regulation 86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999, and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2009, for Tariff determination for strengthening of Farakka Malda transmission link and additional 315 MVA transformers at Malda in Eastern Region for the period from 1.4.2009 to 31.3.2014.

And

In the matter of:

PowerGrid Corporation of India Ltd., Gurgaon

...Petitioner

Vs

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

..... Respondents

The following was present:

Shri. U K Tyagi, PGCIL
Shri Rajeev Gupta, PGCIL
Shri. S S Raju, PGCIL
Shri B Vamsi, PGCIL
Shri R B Sharma, Advocate, BSEB

ORDER

This petition has been filed seeking approval of transmission tariff in respect of strengthening of Farakka Malda transmission link and additional 315 MVA transformers at Malda (both the assets collectively referred to



hereinafter as “the transmission assets”) in the Eastern Region for the period from 1.4.2009 to 31.3.2014, based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009, (hereinafter referred to as “the 2009 regulations”). The petitioner has also sought the following reliefs:

(a) Allow 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.

(b) Approve reimbursement, by the respondents, of the expenditure towards petition filling fee and publishing of notices in newspapers in terms of regulation 42 of the 2009 regulations and other expenditure (if any) in relating to filling of petition.

(c) Allow the petitioner to bill and recover Service Tax on transmission charges separately from the respondents if at any time exemption from Service Tax is withdrawn and transmission of power is notified as a taxable service.

(d) Allow the petitioner to bill and adjust impact of interest on loan due to change in Interest rate of floating rate of interest applicable during 2009-14, if any

(e) Allow the petitioner to bill and recover Licensee fee separately from the respondents

(f) Pass such other relief as Hon'ble Commission deems fit and appropriate under the circumstances of the case and in the interest of justice.

2. Investment approval for the transmission scheme was accorded by the Government of India vide Ministry of Power letter dated 13.1.2000 at an estimated cost of ₹ 945 lakh including IDC of ₹ 58 lakh.

3. Transmission charges for the period 2004-2009 were initially approved by the Commission vide its order dated 20.1.2006 in Petition No. 53/2005. Subsequently, the same were revised vide order dated 25.2.2011 in Petition No. 141/2010 consequent to de-capitalisation of assets during 2007-08.

4. The petitioner has claimed the following transmission charges:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	34.27	34.27	34.27	34.27	34.27
Interest on Loan	24.37	21.47	18.56	15.61	12.89
Return on equity	12.29	12.29	12.29	12.29	12.29
Interest on Working Capital	9.34	9.73	10.15	10.59	11.06
O & M Expenses	157.20	166.20	175.71	185.76	196.38
Total	237.47	243.96	250.98	258.52	266.89

5. The details submitted by the petitioner in support of its claim for interest on working capital are given overleaf.

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Maintenance Spares	23.58	24.93	26.36	27.86	29.46
O & M expenses	13.10	13.85	14.64	15.48	16.37
Receivables	39.58	40.66	41.83	43.09	44.48
Total	76.26	79.44	82.83	86.43	90.31
Interest	9.34	9.73	10.15	10.59	11.06
Rate of Interest	12.25%	12.25%	12.25%	12.25%	12.25%

6. Only Bihar State Electricity Board i.e. Respondent No. 1 has filed reply to the petition. BSEB in its reply has raised the following issues.

(a) The petitioner is entitled to claim tax holiday under section 80-IA of the Income Tax Act 1961 and the petitioner be directed to disclose information as to whether it intends to avail the above provision.

(b) While clause 18(3) of the 2009 regulations provides that the Prime Lending Rate of SBI as on 1.4.2009 shall be applied for computation of Interest on Working Capital the petitioner has stated the SBI Advance Rate (SBAR) of 12.25% as on 1.4.2009.

(c) Claim for reimbursement of filing fee and the expenses incurred on publication of notices, be rejected in line with the decision of the Commission in its order dated 11.9.2008 in petition No. 129/2005.

(d) Licensee fee and other levies duties, cess or any other statutory taxes, etc. being part of O&M expenses, prayer for their reimbursement be rejected as there is no provision for the same in the 2009 regulations.

(e) The Commission has already covered increase in employee cost on account of pay revision by rationalizing the O&M expenses by 50% increase in employee cost. Any further increase in employee cost must be taken care by improvement in productivity of the petitioner company.

7. As regards the submissions of the respondent regarding tax holiday, the Commission has addressed the issue in depth in its order dated 8.4.2011 in Petition No. 225/2010. The same decision will apply to this case as well. Similarly, the petitioner has clarified on a number of occasions that the State Bank of India Advance Rate is the same as the Prime Lending rate of SBI and accordingly, the same is being applied for calculation of Interest on Working capital.

8. Remaining submissions by the respondent are addressed in the respective paragraphs in this order.

9. Having heard the representatives of the parties and examined the material on record, we proceed to dispose of the petition.

CAPITAL COST

10. As per the proviso to clause (2) of Regulation 7 of the 2009 regulations, extracted hereunder for ease of reference, the capital cost admitted by the Commission for determination of tariff prior to 1.4.2009 shall form the basis for determination of tariff for the period 2009-14.

“Provided also that in case of the existing projects, the 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.”

11. The Commission vide its order dated 25.2.2011 in Petition No. 141/2010 has admitted the capital cost of ₹ 637.96 lakh in respect of the transmission assets. Accordingly, the same amount has been considered for computation of tariff for the period 2009-14.

ADDITIONAL CAPITAL EXPENDITURE

12. The petitioner has not projected any additional capital expenditure for the period 2009-14.

DEBT- EQUITY RATIO

13. Clause (2) of Regulation 12 of the 2009 regulations *inter alia* provides that,-

“(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.”

14. Based on the above, the following debt-equity ratio considered by the Commission as on 31.3.2009 in the order dated 25.2.2011 in Petition No. 141/2010 is applied for calculation of tariff in this order:

Admitted on 31.3.2009		
	Amount (₹ lakh)	%
Debt	567.66	88.98%
Equity	70.30	11.02%
Total	637.96	100.00%

RETURN ON EQUITY

15. 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.”

16. The petitioner has computed ROE on pre- tax basis on 11.33% MAT in accordance with the tax rate applicable for 2008-09 and has claimed return on equity @ 17.481%.

17. The petitioner has also prayed that it may be allowed to gross up the base rate of ROE as per the Finance Acts of the relevant years. This prayer has already been taken cognizance of in the Commission's order dated 3.8.2010 in Petition No. 17/2010 wherein a decision has been taken to address the issue raised by the petitioner. 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.”

18. Pending decision on revision of MAT rate, ROE has been computed as per Regulation 15 of the 2009 regulations, and pre-tax ROE of 17.481% as prayed for the petitioner.

19. Detailed calculation of the ROE in respect the transmission assets is as under:

(₹ in lakh)					
	2009-10	2010-11	2011-12	2012-13	2013-14
Opening Equity	70.30	70.30	70.30	70.30	70.30
Addition due to Additional Capitalisation	0.00	0.00	0.00	0.00	0.00
Closing Equity	70.30	70.30	70.30	70.30	70.30
Return on Equity (Base Rate)	15.50%	15.50%	15.50%	15.50%	15.50%
Tax rate for the year 2008-09 (MAT)	11.330%	11.330%	11.330%	11.330%	11.330%
Rate of Return on Equity (Pre Tax)	17.481%	17.481%	17.481%	17.481%	17.481%
Return on Equity (Pre Tax)	12.29	12.29	12.29	12.29	12.29

INTEREST ON LOAN

20. Regulation 16 of the 2009 regulations provides that,-

“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."

21. In these calculations, interest on loan has been worked out as detailed below:

(a) Details of net outstanding loan as on 31.3.2009, cumulative repayment up to 31.3.2009, repayment schedule for the loans, rate of interest etc. have been taken from the order dated 25.2.2011 in Petition No: 141/2010 for working out weighted average rate of interest.

(b) Tariff has been worked out considering normative loan and normative repayments. Depreciation allowed has been taken as normative repayment for the tariff period 2009-14.

(c) Weighted average rate of interest on actual loan worked out as above has been applied on the notional average loan during the year to arrive at the interest on loan.

(d) For loans with floating interest rates, rates of interest as on 01-04-2009 have been considered

22. Detailed calculation of the weighted average rate of interest in respect of the transmission assets has been annexed to this order as Annexure. Details of the calculation of Interest on Loan are as under:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Gross Normative Loan	567.66	567.66	567.66	567.66	567.66
Cumulative Repayment upto Previous Year	239.58	273.85	308.12	342.39	376.67
Net Loan-Opening	328.08	293.81	259.54	225.27	191.00
Addition due to Additional Capitalisation	0.00	0.00	0.00	0.00	0.00
Repayment during the year	34.27	34.27	34.27	34.27	34.27
Net Loan-Closing	293.81	259.54	225.27	191.00	156.73
Average Loan	310.95	276.68	242.41	208.13	173.86
Weighted Average Rate of Interest on Loan	7.8378%	7.7589%	7.6570%	7.5018%	7.4167%
Interest	24.37	21.47	18.56	15.61	12.89

DEPRECIATION

23. 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.

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(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.”

24. Depreciation has been worked out on the admitted capital expenditure as on 1.4.2009

25. For the period 1.4.2009 to 31.3.2014 the depreciation worked out are as under:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Rate of Depreciation	5.3720%	5.3720%	5.3720%	5.3720%	5.3720%
Depreciable Value	574.16	574.16	574.16	574.16	574.16
Elapsed Life (Beginning of the year)	6	7	8	9	10
Weighted Balance Useful life of the combine assets	19	18	17	16	15
Remaining Depreciable Value	334.58	300.31	266.04	231.77	197.50
Depreciation	34.27	34.27	34.27	34.27	34.27

OPERATION & MAINTENANCE EXPENSES

26. Clause (g) of Regulation 19 the 2009 regulations prescribes the norms for operation and maintenance expenses based on the type of sub-station and line. The petitioner has claimed O&M charges based on the above norms and the same has therefore been allowed.

27. Accordingly, O&M Charges amounting to ₹ 157.20 lakh, ₹ 166.20 lakh, ₹ 175.71 lakh, ₹ 185.76 lakh, and ₹ 196.38 lakh has been allowed for the years 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 lakh respectively.

28. Further, the petitioner has submitted that it would approach the Commission for suitable revision in the norms for O&M expenditure in case the impact of wage hike w.e.f 1.1.2007 is more than 50%. This has been objected to by BSEB. It is clarified that, if any, such application is made, the same shall be dealt with in accordance with law.

INTEREST ON WORKING CAPITAL

29. As per the 2009 regulations 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 of 2 months' transmission charges claimed in the petition. In the tariff being allowed, receivables have been worked out on the basis of 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. The value of maintenance spares has accordingly been worked out.

(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. The petitioner has claimed O&M expenses for 1 month of the respective year as claimed in the petition. This has been considered in the 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 interest on working capital is payable on normative basis notwithstanding that the transmission licensee has not taken working capital loan from any outside agency. 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.

30. 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	23.58	24.93	26.36	27.86	29.46
O & M expenses	13.10	13.85	14.64	15.48	16.37
Receivables	39.58	40.66	41.83	43.09	44.48
Total	76.26	79.44	82.83	86.43	90.30
Rate of Interest	12.25%	12.25%	12.25%	12.25%	12.25%
Interest	9.34	9.73	10.15	10.59	11.06

TRANSMISSION CHARGES

31. The transmission charges being allowed for the transmission lines are summarized below:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	34.27	34.27	34.27	34.27	34.27
Interest on Loan	24.37	21.47	18.56	15.61	12.89
Return on equity	12.29	12.29	12.29	12.29	12.29
Interest on Working Capital	9.34	9.73	10.15	10.59	11.06
O & M Expenses	157.20	166.20	175.71	185.76	196.38
Total	237.47	243.96	250.98	258.52	266.90

FILING FEES AND PUBLICATION EXPENSES

32. 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.

33. Accordingly, expenses incurred by the petitioner on application filing fees and publication of notices in connection with the present petition shall be directly recovered from the beneficiaries on pro rata basis.

SERVICE TAX

34. The petitioner has made a specific prayer to be allowed to bill and recover the Service tax on Transmission charges separately from the respondents if the exemption granted to it is withdrawn and transmission is made a taxable service. The prayer is premature at this stage.

LICENCE FEES

35. As regards the petitioner's prayer for reimbursement of license fee, it is clarified that the issue is engaging the attention of the Commission separately.

A decision as and when taken will apply to this case also.

36. The transmission charges allowed in this order 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.

37. This order disposes of Petition No. 80/2011.

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

**Sd/-
S.Jayaraman
Member**

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

Annexure**(₹ In lakh)**

CALCULATION OF WEIGHTED AVERAGE RATE OF INTEREST ON LOAN						
	Details of Loan	2009-10	2010-11	2011-12	2012-13	2013-14
1	Bond- IX					
	Gross loan opening	98.00	98.00	98.00	98.00	98.00
	Cumulative Repayment upto DOCO/previous year	58.80	68.60	78.40	88.20	98.00
	Net Loan-Opening	39.20	29.40	19.60	9.80	0.00
	Additions during the year	0.00	0.00	0.00	0.00	0.00
	Repayment during the year	9.80	9.80	9.80	9.80	0.00
	Net Loan-Closing	29.40	19.60	9.80	0.00	0.00
	Average Loan	34.30	24.50	14.70	4.90	0.00
	Rate of Interest	12.25%	12.25%	12.25%	12.25%	12.25%
	Interest	4.20	3.00	1.80	0.60	0.00
	Rep Schedule	10 Annual instalments from 22.08.2003				
2	Bond- X					
	Gross loan opening	69.00	69.00	69.00	69.00	69.00
	Cumulative Repayment upto DOCO/previous year	28.75	34.50	40.25	46.00	51.75
	Net Loan-Opening	40.25	34.50	28.75	23.00	17.25
	Additions during the year	0.00	0.00	0.00	0.00	0.00
	Repayment during the year	5.75	5.75	5.75	5.75	5.75
	Net Loan-Closing	34.50	28.75	23.00	17.25	11.50
	Average Loan	37.38	31.63	25.88	20.13	14.38
	Rate of Interest	10.90%	10.90%	10.90%	10.90%	10.90%
	Interest	4.07	3.45	2.82	2.19	1.57
	Rep Schedule	12 annual instalments from 21-06-2004				
3	ADB- I					
	Gross loan opening	489.84	489.84	489.84	489.84	489.84
	Cumulative Repayment upto DOCO/previous year	205.11	241.78	282.21	326.79	375.93
	Net Loan-Opening	284.73	248.06	207.63	163.05	113.91
	Additions during the year	0.00	0.00	0.00	0.00	0.00
	Repayment during the year	36.67	40.43	44.57	49.14	54.18
	Net Loan-Closing	248.06	207.63	163.05	113.91	59.73
	Average Loan	266.39	227.84	185.34	138.48	86.82
	Rate of Interest	6.84%	6.84%	6.84%	6.84%	6.84%
	Interest	18.22	15.58	12.68	9.47	5.94
	Rep Schedule	HY Instalments as per ADB-I Amortisation Schedule				
	Total Loan					
	Gross loan opening	656.84	656.84	656.84	656.84	656.84
	Cumulative Repayment upto DOCO/previous year	292.66	344.88	400.86	460.99	525.68
	Net Loan-Opening	364.18	311.96	255.98	195.85	131.16



Additions during the year	0.00	0.00	0.00	0.00	0.00
Repayment during the year	52.22	55.98	60.12	64.69	59.93
Net Loan-Closing	311.96	255.98	195.85	131.16	71.23
Average Loan	338.07	283.97	225.91	163.51	101.20
Rate of Interest	7.8378%	7.7589%	7.6570%	7.5018%	7.4167%
Interest	26.50	22.03	17.30	12.27	7.51

