CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 148/GT/2011

Coram:
Shri V. S.Verma, Member
Shri M. Deena Dayalan, Member

Date of hearing: 8.8.2013
Date of Order: 18.2.2014

In the matter of

Approval of tariff in respect of Mejia Thermal Power Station Extension, Unit Nos. 5 & 6 (2 x 250 MW) with additional capital expenditure for the period from 24.9.2008 to 31.3.2009.

AND

IN THE MATTER OF

Damodar Valley Corporation,
DVC Towers, VIP Road
Kolkata-700054 **…Petitioner**

Vs

1. West Bengal State Electricity Distribution Company Ltd,
Bidyut Bhawan (8th Floor), Block-DJ, Sector-II
Salt Lake, Kolkata-700091

2. Jharkhand State Electricity Board
Engineering Bhawan, Heavy Engineering Corporation
Dhurwa, Ranchi-834004

3. Madhya Pradesh Power Trading Company Ltd
Shakthi Bhavan, Vidyut Nagar,
Jabalpur-482008 **...Respondents**

Parties Present

For Petitioner: Shri M.G. Ramachandran, Advocate, DVC
Shri Pulak Bhattacharya, DVC

For Respondents: Shri R.B. Sharma, Advocate, JSEB

ORDER

The petitioner, DVC had filed this petition for approval of tariff of Mejia TPS Extension, Unit Nos. 5 & 6 (2 x 250 MW) (hereinafter referred to as "the generating station") for the period 24.9.2008 to 31.3.2009 after considering the impact of the additional capital expenditure, based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter referred to as "the 2004 Tariff Regulations")

Background

2. The generating station with a capacity of 500 MW comprises of two units of 250 MW each and the date of commercial operation of Unit-5 is 29.2.2008 and Unit-6 is 24.9.2008. The Commission by its order dated 30.4.2008 in Petition No. 53/2008 had approved single part provisional tariff of `2.90/kWh for Unit-5 of the generating station. Subsequently, the Commission *vide* its order dated 23.12.2009 in Petition No.155/2008 approved the tariff in respect of Unit-5 for the period from 29.2.2008 to 23.9.2008 and for Units 5 & 6 for the period from 24.9.2008 to 31.3.2009 The capital cost approved in the said order dated 23.12.2009 is as under:

(` in lakh)

		24.9.2008
Capital cost claimed		215204.90
Less: Notional IDC		11960.11
Capital cost after removal of notional IDC (as certified by Chartered Accountant)		203244.78
Less: Liabilities included in above capital cost		10549.34
Actual capital expenditure (including IDC)		192695.44
Less: IDC claimed		21723.76
Actual capital expenditure excluding IDC		**170971.68**
Allocation of capital cost to Unit Nos.5 & 6	**29.2.2008**	**24.9.2008**
Proportion considered	50%	100%
Actual capital expenditure excluding IDC	85485.84	170971.68
Add: Actual IDC as admissible	17711.04	21684.25
Admitted Capital cost upto the date of commercial operation for the purpose of tariff	**103196.88**	**192655.93**

3. The *pro rata* annual fixed charges approved by the order dated 23.12.2009 are as under:

(` in lakh)

	2007-08	**2008-09**	
	29.2.2008 to 31.3.2008	**1.4.2008 to 23.9.2008**	**24.9.2008 to 31.3.2009**
Depreciation	699	3854	7726
Interest on Loan	653	3505	6900
Return on Equity	379	2090	4190
Advance against Depreciation	0	0	0
Interest on Working Capital	111	611	1374
O&M Expenses	256	1467	3151
Interest on Capital (as per part IV of DVC Act)	0	0	0
Interest on Sinking Fund (as per part IV of DVC Act)	112	965	1037
Total	**2210**	**12492**	**24378**

4. Aggrieved, the petitioner filed Appeal No.40/2011 before the Appellate Tribunal for Electricity ("the Tribunal") challenging the Commission's order dated 23.12.2009. In the said appeal, the petitioner had raised the following issues for consideration of the Tribunal.

(i) *Notional interest during construction;*

(ii) *Un-discharged liabilities duly incurred as on the date of the commercial operation but pending payment.*

(iii) *Interest on Capital contribution admissible as per Section 38 of the Damodar Valley Corporation Act, 1958.*

(iv) *O & M Expenses relating to payment made by virtue of the revision of pay to the DVC personnel as a result of the implementation of the Sixth Pay Commission Recommendations.*

(v) *Contribution to the Sinking Fund as per provisions of Section 40 of the DVC Act, 1948.*

(vi) *Rate of Interest on working capital.*

5. However, during the proceedings before the Tribunal, the petitioner did not press for issues (v) and (vi) above. The Tribunal after considering the submissions of the parties rejected the prayer of the petitioner in respect of the issues (i) and (iii) above by its judgment dated 1.5.2012.

6. As regards the issue at clause (ii) in para 4 above namely, '*Un-discharged liabilities duly incurred as on the date of the commercial operation but pending payment',* the Tribunal in its judgment dated 1.5.2012 recorded the undertaking given by the Commission to allow the un-discharged liabilities deducted from the capital cost and disposed of the prayer of the petitioner as under:

> "*28. In view of categorical undertaking made by the Central Commission to implement the judgment of this Tribunal in Appeal no. 151& 152 of 2009 dated 10.12.2007 and in Appeal nos. 133, 135, 136 and 148 of 2008 dated 16.3.2009 in respect of the generating stations of the Appellant i.e. Mejia unit 5 & 6 and would allow un-discharged liabilities deducted from the capital cost, subject to the final outcome of the Civil Appeals filed by the Central Commission before the Supreme Court against the orders of this Tribunal in the said Appeals, the issue is decided in favour of the Appellant"*

7. As regards issue at clause (iv) in para 4 above, namely, '*O & M Expenses relating to payment made by virtue of the revision of pay to the DVC personnel as a result of the implementation of the Sixth Pay Commission recommendations,'* the Tribunal took note of the submission of the Commission that Petition No.148/GT/2011 (the present petition) was pending

for consideration and disposed of the prayer of the petitioner by its judgment dated 1.5.2012 as under:

> *"40……..It is further submitted that in terms of the liberty granted by the Commission in its order dated 23.12.2009 in Petition No.155 of 2008, the Appellant has also filed Petition No.148/GT/2011 before the Commission on 21.6.2011 in respect of this generating station, claiming amongst others the impact of additional O&M expenses due to pay revision during the period from 24.9.2008 to 31.3.2009. Both Petition No. 272/2010 and <u>Petition No. 148/GT/2011</u> are presently under consideration by the Commission.*
>
> *41. In view of the submission made by the Central Commission that the issue is already under consideration before it, we do not intend to interfere with the process. However, we give liberty to the Appellant to approach this Tribunal, if required, at appropriate stage."*

8. Against the judgment of the Tribunal dated 1.5.2012, the petitioner filed Review Petition (R.P. No. 7/2012) before the Tribunal on the issue of notional IDC and the Tribunal by its judgment dated 3.10.2012 dismissed the same.

9. In compliance with the observations contained in the judgment of the Tribunal dated 1.5.2012, the Commission by its order dated 20.11.2012 in Petition No.155/2008 revised the annual fixed charges for the generating station for the period 2007-09 after inclusion of un-discharged liabilities in the capital cost subject to the final outcome of the Civil Appeals filed by the Commission before the Hon'ble Supreme Court. Based on this, the revised capital cost approved *vide* order dated 20.11.2012 is as under:

(` in lakh)

		24.9.2008
Capital cost claimed		215204.90
Less: Notional IDC		11960.11
Capital cost after removal of notional IDC (as certified by chartered Accountant)		203244.78
Less: IDC claimed		21723.76
Actual expenditure, excluding IDC (inclusive of liabilities)		**181521.02**
Allocation of above determined capital cost to Unit Nos. 5 & 6	**29.2.2008**	**24.9.2008**
Proportion considered	50%	100%
Actual capital expenditure excluding IDC	90760.51	181521.02
Add: Actual IDC admissible	17711.04	21684.25
Admitted Capital cost upto date of commercial operation for the purpose of tariff	**108471.55**	**203205.27**

10. Accordingly, the annual fixed charges approved for the period from 29.2.2008 to 31.3.2009 by order dated 20.11.2012 are summarized as under:

(` in lakh)

	2007-08	2008-09	
	29.2.2008 to 31.3.2008	1.4.2008 to 23.9.2008	24.9.2008 to 31.3.2009
Depreciation	8400.60	8400.60	15737.27
Interest on loan	7854.69	7639.94	14057.59
Return on Equity	4555.81	4555.81	8534.62
Advance against Depreciation	0.00	0.00	0.00
Interest on Working Capital	1296.87	1294.32	2708.55
O&M Expenses	2925.00	3042.50	6085.00
Interest on Capital (as per part IV of DVC Act)	0.00	0.00	0.00
Interest on Sinking Fund (as per part IV of DVC Act)	1284.47	2001.83	2001.83
Total	**26317.44**	**26934.99**	**49124.85**

11. Meanwhile, the petitioner filed the instant petition on 21.11.2011 for determination of tariff of the generating station after considering the impact of additional capitalization for the period from 24.9.2008 to 31.3.2009, with the following specific prayers:

> *"(i) Decide the present application of the petitioner without prejudice to the rights and contentions of the parties pending before the Hon'ble Appellate Tribunal.*
>
> *(ii) Determine the tariff for the period 24.09.2008 to 31.03.2009 after considering additional capital expenditure and other claims.*
>
> *(iii) Pass such order or orders as the Hon'ble commission may deem fit in the facts of the case"*

12. The annual fixed charges for the period 24.9.2008 to 31.3.2009 as claimed by the petitioner are as under:

(Rs. in lakhs)

	2008-09 (24.9.2008 to 31.3.2009)
Depreciation	8685.06
Interest on Loan	7787.96
Return on Equity	4710.07
Advance against depreciation	0.00
Interest on Working Capital	1865.52
O&M Expenses	3865.44
Interest on Capital	6448.32
Interest & Contribution to Sinking fund	10538.12
Total	**43900.48**

13. The respondents JSEB and MPPTCL have filed replies to the petition.

14. During the hearing on 8.8.2013, the representative of the petitioner submitted that the additional capital expenditure claimed for the period 1.10.2008 to 31.3.2009 under Regulation 18(2)(i) should be read as Regulation 18(1)(i) and submitted that revised forms have been attached vide affidavit dated 18.10.2011.

Capital Cost

15. Regulation 17 of the 2004 Tariff Regulations relating to the capital cost provide as under:

> *"17. **Capital Cost:** Subject to prudence check by the Commission, the actual expenditure incurred on completion of the project shall form the basis for determination of final tariff. The final tariff shall be determined based on the admitted capital expenditure actually incurred up to the date of commercial operation of the generating station and shall include capitalised initial spares subject to following ceiling norms as a percentage of the original project cost as on the cut off date:*
>
> *(i) Coal-based/lignite-fired generating stations - 2.5%*
>
> *(ii) Gas Turbine/Combined Cycle generating stations - 4.0%*
>
> *Provided that where the power purchase agreement entered into between the generating company and the beneficiaries provides a ceiling of actual expenditure, the capital expenditure shall not exceed such ceiling for determination of tariff;*

16. As stated, the Commission vide its order dated 23.12.2009 in Petition No.155/2008 had approved the capital cost of `192655.93 lakh as on 24.9.2008. Subsequently, the capital cost was revised to `203205.27 by order dated 20.11.2012 after compliance with the observations of the Tribunal in its judgment dated 1.5.2012 in Appeal No.40/2011. Accordingly, the capital cost of `203205.27 lakh has been considered as the opening capital cost as on 24.9.2008.

<u>Additional Capital expenditure for 2008-09 (1.10.2008 to 31.3.2009)</u>

17. Regulation 18 of the 2004 regulations provides for considering the additional capital expenditure for tariff as under:

> *"18. (1) The following capital expenditure within the original scope of work actually incurred after the date of commercial operation and up to the cut-off date may be admitted by the Commission, subject to prudence check:*
>
> *(i) Deferred liabilities;*
> *(ii) Works deferred for execution;*
> *(iii) Procurement of initial capital spares in the original scope of work, subject to ceiling specified in regulation 17;*
> *(iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court; and*
> *(v) On account of change in law.*
>
> *Provided that original scope of work along with estimates of expenditure shall be submitted along with the application for provisional tariff.*

Provided further that a list of the deferred liabilities and works deferred for execution shall be submitted along with the application for final tariff after the date of commercial operation of the generating station.

(2) Subject to the provisions of clause (3) of this regulation, the capital expenditure of the following nature actually incurred after cutoff date may be admitted by the commission, subject to prudence check:

(i) Deferred liabilities relating to works/services within the original scope of work;

(ii) Liabilities to meet award of arbitration or for compliance of the order or decree of a court;
(iii) On account of change in law;

(iv) Any additional works/services which have become necessary for efficient and successful operation of the generating station, but not included in the original project cost; and

(v) Deferred works relating to ash pond or ash handling system in the original scope of work.

(3) Any expenditure on minor items/assets like normal tools and tackles, personal computers, furniture, air-conditioners, voltage stabilizers, refrigerators, fans, coolers, TV, washing machine, heat-convectors, carpets, mattresses etc. brought after the cutoff date shall not be considered for additional capitalization for determination of tariff with effect from 1.4.2004.

(4) Impact of additional capitalization in tariff revision may be considered by the Commission twice in a tariff period, including revision of tariff after the cut off date.

Note 1
Any expenditure admitted on account of committed liabilities within original scope of work and the expenditure deferred on techno-economic grounds but falling within the original scope of work shall be serviced in the normative debt equity ratio specified in regulation 20.

Note 2
Any expenditure on replacement of old assets shall be considered after writing off the gross value of the original assets from the original project cost, except such items as are listed in clause (3) of this regulation."

Note 3
Any expenditure admitted by the Commission for determination of tariff on account of new works not in the original scope of work shall be serviced in the normative debt-equity ratio specified in regulation 20.

Note 4
Any expenditure admitted by the Commission for determination of tariff on renovation and modernization and life extension shall be serviced on normative debt-equity ratio specified in regulation 20 after writing off the original amount of the replaced assets from the original capital cost."

18. The petitioner has claimed expenditure of `2741.39 lakh out of which an expenditure of `2387.70 lakh has been claimed towards Power house building, Residential building, LT/HT Cables & Cabling system, roads, cooling tower, ESP rectifiers, boiler & accessories, piping (TG, LP and CW piping), Station C&I, DG set, DC battery, control & relay panel, pre-treatment plant, DM plant, fire protection, chimney, 6.6 kV switch gear LT bus duct, Segregated Phase (SP) bus

duct and other assets, etc., as deferred liabilities within the original scope of works, under the Regulation 18(1)(i) of 2004, Regulations.

19. The COD of the generating station is 24.9.2008 and hence in terms of the 2004 Tariff Regulations, the cut-off-date of the generating station is 31.3.2010. It is observed from the statement of additional capitalization enclosed at Annexure-I of the petition that the deferred liabilities is in respect of works related to the original scope of work and form part of the approved project cost. In view of this, the additional capital expenditure of `2387.70 lakh claimed by the petitioner as 'deferred liabilities' under Regulation 18(1)(i) of the 2004 Tariff Regulations, has been allowed.

Initial Spares

20. The petitioner has also claimed expenditure for `363.69 lakh towards procurement of initial spares under Regulation 18(1)(i) of 2004 Regulations. It is noticed that the petitioner had been allowed expenditure of `2463.76 lakh towards procurement of initial spares in order dated 23.12.2009 in Petition No.155/2008. The amount of initial spares allowed including the present claim of `363.39 lakh towards initial spares works out to `2827.45 lakh (`363.39 + `2463.76 lakh) which is within the permissible limit of 2.5% of the capital cost as on cut-off date, as specified under Regulation 17(i) of the 2004 Tariff Regulations. Accordingly, expenditure of `363.69 lakh for initial spares has been allowed under Regulation 18(1)(iii) of the 2004 Tariff Regulations.

21. Based on the above discussions, the additional capital expenditure allowed during 2008-09 is summarized as under:

(` in lakh)

	2008-09
Deferred liabilities considered under the Regulation 18(1)(i)	2377.70
Initial spares considered under the Regulation 18(1)(iii)	363.69
Total additional capital expenditure allowed	**2741.39**

Capital Cost for 2008-09

22. Accordingly, the capital cost considered for the purpose of tariff for period from 24.9.2008 to 31.3.2009 is as under:

(` in lakh)

	2008-09
Opening Capital Cost as on 24.9.2008	203205.27
Additional Capital Expenditure from 24.9.2008 to 31.3.2009	2741.39
Closing Capital Cost as on 31.3.2009	**205946.66**
Average Capital Cost	**204575.97**

Debt-Equity Ratio

23. Regulation 20 of the 2004 Tariff Regulations provides that:

(1) In case of the existing generating stations, debt equity ratio considered by the Commission for the period ending 31.3.2004 shall be considered for determination of tariff with effect from 1.4.2004:

Provided that in cases where the tariff for the period ending 31.3.2004 has not been determined by the Commission, debt-equity ratio shall be as may be decided by the Commission:

Provided further that in case of the existing generating stations where additional capitalisation has been completed on or after 1.4.2004 and admitted by the Commission under Regulation 18, equity in the additional capitalization to be considered shall be

(a) 30% of the additional capital expenditure admitted by the Commission; or
(b) equity approved by the competent authority in the financial package, for additional capitalization; or
(c) actual equity employed,
whichever is the least:

Provided further that in case of additional capital expenditure admitted under the second proviso, the Commission may consider equity of more than 30% if the generating company is able to satisfy the Commission that deployment of such equity of more than 30% was in the interest of general public.

(2) In case of the generating stations for which investment approval was accorded prior to 1.4.2004 and which are likely to be declared under commercial operation during the period 1.4.2004 to 31.3.2009, debt and equity in the ratio of 70:30 shall be considered:
Provided that where equity actually employed to finance the project is less than 30%, the actual debt and equity shall be considered for determination of tariff:

Provided further that the Commission may in appropriate cases consider equity higher than 30% for determination of tariff, where the generating company is able to establish to the satisfaction of the Commission that deployment of equity higher than 30% was in the interest of general public.

(3) In case of the generating stations for which investment approval is accorded on or after 1.4.2004, debt and equity in the ratio of 70:30 shall be considered for determination of tariff:

Provided that where equity actually employed is more than 30%, equity in excess of 30% shall be treated as notional loan:
Provided further that where deployment of equity is less than 30%, the actual debt and equity shall be considered for determination of tariff.

(4) The debt and equity amount arrived at in accordance with above clause (1), (2) or (3), as the case may be, shall be used for calculation of interest on loan, return on equity, advance against depreciation and foreign exchange rate variation."

24. Accordingly, based on above provisions of the regulation, out of the total capital cost of `203205.27 lakh as on COD, an amount of `142243.69 lakh and `60961.58 lakh have been considered as normative gross loan and normative equity. Further, the additional capital expenditure allowed above has been allocated in the debt equity ratio of 70:30 during the respective year. Moreover, the funding adopted is in line with judgment of the Tribunal dated 23.11.2007 in Appeal No. 273/2006.

Return on Equity

25. Regulation 21(iii) of the 2004 Tariff Regulations, provides that Return on equity shall be computed on the equity base determined in accordance with regulation 20 @14% per annum. Accordingly, Return on Equity has been worked out @14% per annum on the normative equity after accounting for additional capital expenditure:

(` in lakh)

	2008-09 (24.9.2008 to 31.3.2009)
Notional Equity- Opening	60961.58
Addition of Equity due to Additional Capital Expenditure	822.42
Normative Equity-Closing	61784.00
Average Normative Equity	**61372.79**
Return on Equity (*annualised*)	**8592.19**

Interest on loan

26. Regulation 21 (i) of the 2004 Tariff Regulations provides that*:*

(a) Interest on loan capital shall be computed loan-wise on the loans arrived at in the manner indicated in Regulation 20;

(b) The loan outstanding as on 1.4.2004 shall be worked out as the gross loan in accordance with Regulation 20 minus cumulative repayment as admitted by the Commission or any other authority having power to do so, up to 31.3.2004. The repayment for the period 2004-09 shall be worked out on a normative basis;

(c) The generating company shall make every effort to re-finance the loan as long as it results in net benefit to the beneficiaries. The costs associated with such re-financing shall be borne by the beneficiaries;

(d) The changes to the loan terms and conditions shall be reflected from the date of such re-financing and benefit passed on to the beneficiaries;

(e) In case of dispute, any of the parties may approach the Commission with proper application. However, the beneficiaries shall not withhold any payment ordered by the Commission to the generating company during pendency of any dispute relating to re-financing of loan;
(f) In case any moratorium period is availed of by the generating company, depreciation provided for in the tariff during the years of moratorium shall be treated as repayment during those years and interest on loan capital shall be calculated accordingly;

(g) The generating company shall not make any profit on account of re-financing of loan and interest on loan;

(h) The generating company may, at its discretion, swap loans having floating rate of interest with loans having fixed rate of interest, or vice-versa, at its own cost and gains or losses as a result of such swapping shall accrue to the generating company:

Provided that the beneficiaries shall be liable to pay interest for the loans initially contracted, whether on floating or fixed rate of interest.“

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

(i) The gross normative loan and cumulative repayment as on 24.9.2008 works out to ` 142243.69 lakh and `.4785.18 lakh respectively as per order dated 20.11.2012 in Petition No.155/2008. The same has been considered as gross normative loan and cumulative repayment at the beginning of the period.

(ii) Accordingly, the net normative opening loan as on 24.9.2008 works out to `137458.51 lakh.

(iii) Addition to normative loan to the tune of 70% of admissible additional capital expenditure has been considered.

(iv) Depreciation allowed has been considered as normative repayment of loan during the period 24.9.2008 to 31.3.2009, based on Commission's order dated 6.8.2009 in Petition No. 66/2005 and confirmed by the Tribunal in its judgment dated 10.5.2010 in Appeal No. 146/2009.

(v) The weighted average rate of interest considered in order dated 20.11.2012 in Petition No.155/2008 has been considered

28. Interest on loan has been computed as under:

(` in lakh)

	2008-09 (24.9.2008 to 31.3.2009)
Gross opening loan	142243.69
Cumulative repayment of loan up to previous year	4785.15
Net Loan Opening	137458.51
Addition due to Additional capitalisation	1918.97
Less : Repayment of Loan	8203.85
Net Loan Closing	131173.63
Average Loan	134316.07
Weighted Average Rate of Interest on Loan	10.5392%
Interest on Loan (annualised)	**14155.81**

Depreciation

29. Regulation 21(a) of the 2004 Tariff Regulations provides that:

For the purpose of tariff, depreciation shall be computed in the following manner, namely:

(i) The value base for the purpose of depreciation shall be the historical cost of the asset;

(ii) Depreciation shall be calculated annually, based on straight line method over the useful life of the asset and at the rates prescribed in Appendix II to these regulations. The residual life of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of

the historical capital cost of the asset. Land is not a depreciable asset and its cost shall be excluded from the capital cost while computing 90% of the historical cost of the asset. The historical capital cost of the asset shall include additional capitalisation on account of Foreign Exchange Rate Variation up to 31.3.2004 already allowed by the Central Government / Commission.

(iii) On repayment of entire loan, the remaining depreciable value shall be spread over the balance useful life of the asset.

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

30. The cumulative depreciation as on 24.9.2008 as per order dated 20.11.2012 in Petition no.155/2008 works out to `4785.18 lakh and the same has been considered for computation of depreciation Similarly, the value of freehold land considered in the said order as on 24.9.2008 is `38.33 lakh and the same has been considered for arriving the depreciable value. The rate of depreciation has been arrived by considering the weighted average of depreciation computed on the gross value of asset certified by Chartered Accountant as on 31.9.2008, at the rates approved by C&AG and the same works out to be 7.7445%.This is also as per order dated 20.11.2012 in Petition No.155/2008. The necessary calculations are as under

(` in lakh)

	2008-09 (24.9.2008 to 31.3.2009)
Opening capital cost	203205.27
Closing capital cost	205946.66
Average capital cost	204575.97
Depreciable value @ 90%	184083.87
Balance depreciable value	179298.69
Depreciation	**8203.85**
Depreciation (annualized)	**15843.42**
Cumulative depreciation at the end	12989.03

Advance Against Depreciation

31. The petitioner has not claimed Advance Against Depreciation. Therefore the petitioner's entitlement to Advance Against Depreciation is "nil'.

O&M Expenses

32. In Petition No. 155/2008, the petitioner had claimed the following O&M expenses:

(` in lakh)

	Unit-5	Unit-6	Unit 5 & 6
	29.2.208 to 31.3.2008	1.4.2008 to 23.9.2008	24.9.2008 to 31.3.2009
Total O&M Expenses for the year	2925	3043	6085
Effect of Pay Revision	690	690	1380
Total O&M claimed (*proportionate to actual days*)	316	1800	3865

33. In line with the decision of the Commission in order dated 5.2.2009 in Petition No.162/2008 (filed by NLC) the prayer of the petitioner for additional O&M expenses due to pay revision was not taken up for consideration by the Commission in order dated 23.12.2009 in Petition No. 155/2008. However, liberty was granted to the petitioner to approach the Commission for relief in this regard at the appropriate stage in accordance with law. Accordingly, O&M expenses were allowed based on norms in order dated 23.12.2009 in Petition No. 155/2008 and also in order dated 20.11.2012, wherein tariff was revised based on the judgments of the Tribunal dated 1.5.2012 and 3.10.2012 in Appeal No. 40/2011 and R.P. No. 7/2012 respectively.

34. The petitioner, in terms of the liberty granted by the Commission in order dated 23.12.2009 filed Petition No. 272/2010 (*approval of deferred elements of tariff for generating stations (excluding Mejia 5 &6) and transmission system of DVC for the period 2006-09,*) had prayed amongst others, for revision of O&M expenses on account of pay revision of its employees pursuant to the implementation of the recommendations of the sixth pay commission and the consequent impact on the pension and gratuity contribution as a result of pay revision. Similar prayer was made by the petitioner in the instant petition.

35. During the pendency of the above said petitions, the petitioner in Appeal No. 40/2011 before the Tribunal prayed for revision of O&M expenses by virtue of the revision of pay to the DVC personnel as a result of the implementation of the Sixth Pay Commission recommendations. After taking note that the submissions of the Commission that the issue of pay revision in O&M expenses was pending for consideration in Petition No. 272/2010 and in the instant petition, the Tribunal, did not consider the said relief in its judgment dated 1.5.2012.

36. Thereafter, the Commission by order dated 8.5.2013 disposed of Petition No.272/2010 allowing the prayer of the petitioner for revision of O&M expenses on account of the pay revision observing as under:

> "*136. Similar prayers for revision of O&M expenses for the period 2004-09 due to pay revision were also made before the Commission by some of the other central sector generating stations/transmission licensee namely, NLC, NHPC and PGCIL by filing separate applications. The Commission, in line with the decision contained in order dated 12.10.2012 in Petition No. 35/MP/2011 etc and on prudence check, allowed the revision of O&M expenses in relaxation of the provisions of the 2004 Tariff Regulations. In line with the decision of the Commission in order dated 12.10.2012 as above, the prayer of the petitioner to consider the actual increase in employee cost on account of salary & wages has been considered and has been limited to 50% of the salary and wages (Basic+DA) of the employees of the petitioner as on 1.1.2006. It is to be noted that in case of NTPC, the arrears on account of the said pay revision was ordered to be paid by the beneficiaries in twelve monthly installments during 2013-14 keeping in view that no tariff petitions of NTPC for the period 2004-09 were pending as on the date of the said order. However, in the instant case, since additional capital expenditure in respect of the generating stations and inter-state transmission system of the petitioner for 2006-09 are being determined in this petition, we direct that the impact of arrear payments (on account of employee cost) based on the pay revision as allowed above, is payable by the beneficiaries, in addition to the normative O&M expenses allowed in this order as per the 2004 Tariff Regulations. However, keeping in view of the distance of time, we order that interest shall not be charged on the said arrear amount, which will benefit the consumers.*"

37. In the above background, and in line with the decision of the Commission to allow the impact of arrears due to pay revision separately, in addition to the normative O&M expenses, in order dated 8.5.2013 and in various orders in respect of other central sector generating stations/transmission licensee, we allow the prayer of the petitioner to consider the actual increase in employee cost on account of salary & wages, limited to the extent of 50% of the salary and wages (Basic+DA) of the employees of the petitioner as on 29.2.2008 (Unit-5) and 24.9.2008 (Unit-6) of the generating station, in addition to the normative O&M expenses. However, keeping in view the elapsed time, we order that interest shall not be charged on the said arrear amount, which will benefit the consumers. However, there is no change in the normative O&M expenses for the period 2008-09 as approved by orders dated 23.12.2009 and 20.11.2012 in Petition No.155/2008 and the same is allowed for the purpose of tariff, as shown under:

(` in lakh)

	2008-09 (24.9.2008 to 31.3.2009)
O&M Expenses (*annualized*)	6085

Contribution to Sinking Fund

38. Since, only the additional capital expenditure for the period from 24.9.2008 to 31.3.2009 as claimed by the petitioner, has been considered in this petition, the Sinking fund contribution allowed in order dated 20.11.2012 in Petition No.155/2008 has been considered. Accordingly, an amount of `2001.83 lakh has been considered towards contribution to sinking fund.

Interest on Capital (As per Part IV of DVC Act)

39. Interest on Government capital is not allowable as per 2004 Tariff Regulations. Further, the Tribunal vide its judgment dated 10.05.2010 in Appeal No. 146/2009 had upheld the findings of the Commission in its order dated 6.8.2009 in Petition No. 66/2005 that Interest on capital is not to be allowed separately if the capital deployed gets fully serviced either through return on equity or interest on loan. Accordingly, interest on capital has not been considered for computation of tariff.

Interest on Working Capital

40. There is no change in the fuel components in working capital and accordingly, cost of coal for two months and the Cost of secondary fuel oil for 2 months as approved in order dated 20.11.2012 in Petition No.155/2008 has been considered.

Maintenance Spares

41. Maintenance spares as allowed in orders dated 23.2.2009 and 20.11.2012 in Petition No.155/2008 has been considered, as there is no change in the normative O&M expenses allowed in orders dated 23.12.2009 and 20.112012.

Receivables

42. Receivable component of working capital has been worked out on the basis of two months of fixed and variable charges as shown below:

(` in lakh)

	2008-09 (24.9.2008 to 31.3.2009
Variable Charges -2 months	5871.13
Fixed Charges - 2 months	7898.41
Total (annualized)	**13769.54**

O&M Expenses (one month)

43. O&M expenses for one month as allowed in order dated 20.11.2012 in Petition No.155/2008 in terms of Regulation 21(1)(v) of the 2004 Tariff Regulations has been considered.

Rate of interest

44. Regulation 21(1)(v)(b)of the 2004 Tariff Regulations provides as under:

> *"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 1.4.2004 or on 1st April of the year in which the generating station or a unit thereof is declared under commercial operation, whichever is later. Interest on working capital shall be payable on normative basis notwithstanding that the generating company has not taken working capital loan from any outside agency.*

45. Accordingly SBI PLR of 12.25% has been considered on all the above components of working capital for the purpose of calculating Interest on working capital as under:

(` in lakh)

	2008-09 (24.9.2008 to 31.3.2009
Cost of coal – 2 months	5253.02
Cost of secondary fuel oil – 2 months	618.11
O&M expenses – 1 month	507.08
Maintenance Spares	2007.42
Receivables – 2 months	13769.54
Total working capital	**22155.17**
Rate of interest	12.25%
Interest on working capital (annualized)	**2714.01**

46. Based on the above deliberations, the annual fixed charges for the period from 24.9.2008 to 31.3.2009 are approved as under:

(` in lakh)

	2008-09 (24.9.2008 to 31.3.2009
Depreciation	15843.42
Interest on Loan	14155.81
Return on Equity	8592.19
Advance against Depreciation	0.00
Interest on Working Capital	2714.01
O&M Expenses	6085.00
Contribution to Sinking fund	2001.83
Total	**49392.26**

Note: *(i) All figures are on annualized basis.(ii) All the figures under each head have been rounded. (ii) The figure in total column in each year is also rounded. Because of rounding of each figure the total may not be arithmetic sum of individual items in columns.*

47. The annual fixed charges determined by this order are subject to the final outcome of the Civil Appeals filed by the Commission before the Hon'ble Supreme Court.

48. The petitioner shall claim the difference in tariff determined by order dated 20.11.2012 and the tariff determined by this order, from the beneficiaries in three equal monthly installments.

49. The observations contained in the judgment of the Tribunal dated 1.5.2012 in Appeal No. 40/2011 stands implemented by this order. Petition No.148/GT/2011 is disposed of accordingly.

Sd/-	*Sd/-*
[M. Deena Dayalan]	**[V.S. Verma]**
Member	**Member**