

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 265/2010

**Coram: Shri Gireesh B Pradhan, Chairperson
Shri M.Deena Dayalan, Member
Shri A.K.Singhal, Member**

Date of Order: 9.6.2014

IN THE MATTER OF

Revision of tariff of Omkareshwar Hydroelectric Project (8 x 65 MW) for the period from 20.8.2007 to 31.3.2009 in terms of the judgment of the Appellate Tribunal for Electricity in dated 7.3.2014 in Appeal No.30/2013.

And in the matter of

Narmada Hydroelectric Development Corporation Limited, Bhopal**Petitioner**

Vs

1. Madhya Pradesh State Electricity Board, Jabalpur
2. Narmada Valley Development Department, Bhopal **Respondents**

ORDER

Petition No.265/2010 was filed by the petitioner, NHDC Ltd, for approval of generation tariff for Omkareshwar Hydroelectric Project (8 x 65 MW) (hereinafter referred to as “the generating station”) for the period from 20.8.2007 to 31.3.2009, based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004

(hereinafter referred to as “the 2004 Tariff Regulations”) and the Commission by its order dated 16.1.2012 determined the annual fixed charges of the generating station for the said period.

2. Aggrieved by the said order, the petitioner filed Review Application No. 5/2012 before the Commission seeking review of the order dated 16.1.2012 on the following issues:

(a) Error in calculation of Depreciation;

(b) Non consideration of un-discharged liability during the period between 1.4.2008 and 31.3.2009 in the capital cost;

(c) Error in the computation of Advance Against Depreciation;

(d) Error in the computation of Weighted Average Rate of Interest on loan capital for the period 2008-09 and;

(e) Error in computation of Maintenance Spares for Working Capital for the year 2008-09.

3. During the pendency of the said review application, the Commission by its order dated 14.3.2012 *suo motu* corrected the errors in respect of the issues (a) to (c) above and revised the tariff of the generating station as under:

	<i>(Rs in lakh)</i>								
	20.8.07 to 24.8.07 (1machine)	25.8.07 to 10.9.07 (2machine)	11.9.07 to 25.9.07 (3machine)	26.9.07 to 18.10.07 (4machine)	19.10.07 to 29.10.07 (5machine)	30.10.07 to 9.11.07 (6machine)	10.11.07 to 14.11.07 (7machine)	15.11.07 to 31.3.08 (8machine)	2008-09
Depreciation	5.20	38.05	53.72	117.09	74.32	94.37	52.79	1737.83	4644.46
Interest on Loan	11.16	81.65	115.27	251.23	159.47	202.47	113.25	3705.70	12865.76
Return on Equity	9.56	69.98	98.80	215.34	136.69	173.55	97.08	3195.97	8541.44
Advance against Depreciation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1903.19
Interest on Working Capital	0.93	6.82	9.63	20.98	13.32	16.91	9.46	310.79	931.23
O&M Expenses	3.42	24.99	35.29	76.91	48.82	61.98	34.67	1140.36	3070.05
Total	30.28	221.49	312.71	681.56	432.61	549.28	307.24	10090.64	31956.13

4. Accordingly, the review petition was admitted by the Commission on the issues (d) and (e) namely, (i) Error in the computation of Weighted Average Rate of Interest on loan capital for the period 2008-09 and (ii) Error in computation of Maintenance Spares for Working Capital for the year 2008-09. Thereafter, the Commission after hearing the parties, by its order dated 5.9.2012 allowed the prayer of the petitioner on the issue relating to the error in the computation of maintenance spares for working capital for the year 2008-09. However, the review as regards the error in the computation of Weighted Average Rate of Interest on loan capital for the period 2008-09 was disallowed by the said order. The findings of the Commission in its order dated 5.9.2012 on this issue is as under:

"6..... The submission of the petitioner is not acceptable. The Commission in all its orders determining the tariff of central generating stations for the period 2004-09, has consistently adopted the weighted average rate of interest on loan computed on the basis of average of interest on loans, taking into account the simple average gross loans (i.e opening+ closing)/2 in accordance with Form-13 of the 2004 Tariff Regulations. We are of the view that the methodology adopted consistently to all other tariff orders of the central generating stations for calculation of interest on loan, in terms of Form -13 under the 2004 Tariff Regulations, as stated, should be applicable in the instant case also. Moreover, the methodology considered in Commission's order dated 19.4.2011 in Petition No. 207/2010, being a one off case, there is no reason to adopt the same in the present case. In view of this, the prayer of the petitioner is rejected and accordingly, review on this count fails."

5. Against the observations of the Commission in the said order, the petitioner filed Appeal No. 30/2013 before the Appellate Tribunal for Electricity (the Tribunal) and the Tribunal by its judgment dated 7.3.2014 while allowing the appeal and held as under:

"44. It has been explained by the Appellant that in the present case there is no swapping of loans at the discretion of the Appellant. The Long Term Loan Agreement with the consortium of Bank who had financed the construction of Omkareshwar Hydroelectric Project of the Appellant provided that the parties were free to exercise put/call option after a period of three years from the date of

first disbursement by the respective banks. These banks have opted for the call upon option after the lapse of three years and, therefore, the Appellant was forced to resort to re-financing of the loan at a higher interest rate from Power Finance Corporation. Thus, the increase in rate of interest was not on account of self initiated action of the Appellant but was warranted consequent to the banks resorting to the call option as per the terms of the loan agreement. The Central Commission has considered the increase in interest rate from 7% to 11.89% but has calculated the simple average of interest rates of 7% and 11.89% instead of working out the weighted average.

45. In view of above, the Central Commission is directed to re-compute the weighted average rate of interest taking into account the duration of loan with respective interest rate and re-determine the interest on loan to be allowed in the tariff of the Appellant's Power Station. Accordingly, this issue is decided in favour of the Appellant"

6. Accordingly, the Commission was directed to pass consequential orders re-determining the weighted average interest on loan and consequently the interest on loan and annual fixed charges for the year 2008-09, within three months from the date of communication of the said judgment.

7. In terms of the directions contained in the judgment of the Tribunal dated 7.3.2014, the weighted average rate of interest on loan has been re-computed and the interest on loan and annual fixed charges of the generating station for the year 2008-09 has been revised as stated in the subsequent paragraphs.

Interest on loan

8. Against the claim of the petitioner for weighted average rate of interest of 10.714%, the rate of interest on loan has been re-computed as 10.699% as the inclusion of Finance Charges for working out the weighted average rate of interest on loan has not been

considered since neither any documentary evidence nor any pleadings in support of the same had been furnished by the petitioner. Accordingly, interest on loan for 2008-09 has been re-calculated as under:

	(` in lakh)
	2008-09
Gross Opening Loan	141401.66
Cumulative Repayment up to Previous Period	1737.83
Net Loan-Opening	139663.83
Repayment during the period	6983.19
Add: Additional Capitalization /drawl	1911.34
Net Loan-Closing	134591.98
Average Loan	137127.90
Weighted Average Rate of Interest on Loan	10.699%
Interest	14670.82

Annual Fixed Charges

9. Based on the re-computation of interest on loan for 2008-09, the tariff of the generating station for 2008-09 as determined by order dated 14.3.2012 stands revised as under:

	(` in lakh)
	2008-09
Depreciation	4644.46
Interest on Loan	14670.82
Return on Equity	8541.44
Advance against Depreciation	1903.19
Interest on Working Capital	974.09
O & M Expenses	3070.05
Total	33804.04

10. The petitioner shall claim the difference in respect of the tariff determined by order dated 14.3.2012 and the tariff revised by this order from the beneficiaries in three equal monthly instalments.

11. Accordingly, the directions contained in the judgment of the Tribunal dated 7.3.2014 in Appeal No.30/2013 stands implemented in terms of the above.

12. The judgment of the Tribunal has been rendered in the facts of the case mentioned therein and the same has been implemented by this order. With due regard to the judgment of the Tribunal, the Commission considers it appropriate to observe that in the present case, the financial institution has called back the loan since the petitioner has agreed to such a condition in the loan agreement. While financing the projects, long term agreements are normally not entered into which confer liberty on the lender to call back the loan as it adversely affects project execution and viability. Keeping in view the consumer interest and the need for regulatory certainty, the Commission is of the view that the petitioner and other project developers should ensure that such condition (i.e. liberty to the lender to call back the loan) is avoided while entering into loan agreements with financial institutions, in future.

Sd/-
(A.K.Singhal)
Member

Sd/-
(M. Deena Dayalan)
Member

Sd/-
(Gireesh B. Pradhan)
Chairperson