Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 103 of 2014

Dated:29th May, 2015

Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

In the Matter of:

THDC India Limited
Pragatipuram, Bypass Road,
Rishikesh – 249 201 (Uttarakhand) … Appellant(s)

Versus

1) **Central Electricity Regulatory Commission**
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi – 110001

2) **Punjab State Power Corporation Ltd.,**
The Mall, Patiala – 147 001

3) **Haryana Power Utilities**
(DHBVNL & UHBVNL)
Shakti Bhawan, Sector-6,
Panchkula – 134 109 (Haryana)

4) **Uttar Pradesh Power Corporation Ltd.**
Shakti Bhavan, 14, Ashok Marg,
Lucknow – 226 001 (Uttar Pradesh)

5) **Delhi Transco Ltd.**
Shakthi Sadan, Kotla Road,
New Delhi – 110 002

6) BSES-Rajdhani Power Ltd.
BSES Bhawan, Nehru Place,
New Delhi – 110 019

7) BSES-Yamuna Power Ltd.
Shakti Kiran Building,
Karkardooma, Delhi – 110 072

8) Tata Power Delhi Distribution Ltd.
Hudson Lines, Kingsway Camp,
Delhi – 110 009

9) Engineering Department
Chandigarh Administration,
1st Floor, UT Secretariat, Sector 9D,
Chandigarh – 160 009

10) Uttarakhand Power Corporation Ltd.
Urja Bhawan, Kanwali Road,
Dehradun – 248 001 (Uttarakhand)

11) Himachal Pradesh State Electricity Board
Vidyut Bhavan, Kumar House,
Shimla – 171 004 (Himachal Pradesh)

12) Jaipur Vidyut Vitaran Nigam Ltd.,
Vidyut Bhavan, Janpath,
Jyoti Nagar, Jaipur – 302 005 (Rajasthan)

13) Jodhpur Vidyut Vitraran Nigam Ltd.,
New Power House,
Industrial Area, Jodhpur – 342 003

14) Ajmer Vidyut Vitaran Nigam Ltd.,
Vidyut Bhavan,
Janpath,Jyoti Nagar,
Jaipur – 302 005 (Rajasthan)

15) Power Development Department
Government of J&K,
Civil Secretariat – 180 001 (J&K) … Respondent(s)

Counsel for the Appellant(s) : Mr. M.G.Ramachandran,
Ms. Anushree Bardhan
Ms. Poorva Saigal, Ms. Ranjitha Ramachandran, Ms.Swagatika Sahoo,
Mr. Arvind Kumar Dubey
Mr. S.N.Siddiqui and Mr.Rajeev Jain (Reps.)

Counsel for the Respondent(s): Mr. R.S.Dhingra, Mr. R.B.Sharma,
Mr. Pradeep Misra, Mr. Suraj Singh
Mr. Alok Shankar, Mr. Manoj Kumar Sharma, Mr. Vaibhav Choudhary
Mr. Alok Shankar

J U D G M E N T

PER HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

1. The present appeal has been filed by the appellant under Section 111 of the Electricity Act 2003 before this Tribunal against the order dated 16.04.2013 passed by Central Electricity Regulatory Commission (hereinafter called the Central Commission) in Petition No. 250 of 2010 whereby the Central Commission has passed an order with regard to the approval of generation tariff in respect of Tehri Hydro Electric Project Stage-I (1000 MW) for the period from 22.09.2006 to 31.03.2009.

2. The Appellant herein THDC India Ltd. is a Company incorporated under the Companies Act, 1956 with its registered office at Bagirathi Bhawan, Bhagirathipuram, Tehri, Garhwal, Uttarakhand. The appellant is a joint venture company of Government of India and the Government of Uttar Pradesh. The Government of India holds 75% of the equity shares in the appellant company, the balance 25% of the equity shares is held by Government of Uttar Pradesh. Further the Appellant is, therefore, a generating Company owned and controlled by Government of India within the meaning of section 79(1)(a) of the Electricity Act 2003, read with Section 2 (31) of the Electricity Act, 2003.

3. The Respondent No.1 is the Central Electricity Regulatory Commission and the respondent No.2 is Punjab State Power Corporation Ltd. Other Respondents are the Distribution Licensees or State Utilities.

4. Facts of the case:

4.1 The Appellant has constructed the Hydro Power Project Scheme in Tehri, Garhwal in the State of Uttarakhand which project is being completed in phases. The Tehri project had been initially accorded investment clearance in June, 1972 for implementation by Government of Uttar Pradesh. The construction of the project was commenced by the State Government of Uttar Pradesh in 1978. The project was later transferred to the appellant in the year 1989. The

expenditure incurred by Uttar Pradesh Government till the date of transfer to the appellant was adjusted as equity contribution from Government of Uttar Pradesh. The appellant has entered in Power Purchase Agreement (PPA) with respondent Nos. 2 to 15 for sale and purchase of power generated from the Tehri Hydro Power Project Stage-I (1000 MW).

4.2 The four Units of Tehri Hydro Power Project, Stage-I (4x50 MW) were put under commercial operation with effect from 22.09.2006 (Unit-IV), 09.11.2006 (Unit-III), 33.02.2007 (Unit-II) and 09.07.2007 (Unit-I) respectively.

4.3 The appellant had filed petition No. 63 of 2006 on 21.07.2006 for fixation of provisional tariff for the above Tehri Hydro Power Project, Stage-I as per the provisions of the Electricity Act, 2003 applicable for the period from commencement of commercial operation of each of the Units till 31.03.2009.

4.4 The Central Commission vide its order dated 28.12.2006 had approved the following provisional tariff as an interim measure based on the capital expenditure incurred by the appellant up to 31.12.2005:

Period	**Tariff Rate**
22.09.2006 to 31.12.2006	Rs.3.50 / kWh on single part basis
01.01.2007 to 31.03.2007	(i) Energy charge : @ Rs.2.50 / kWh on scheduled energy. (ii) Capacity Charge : Rs.18,000 /

	MW / Day.

The above provisional tariff was extended up to 30.06.2007 vide the Central Commission's order dated 23.03.2007 and was further extended up to 31.12.2007 and 31.03.2008 vide CERC's orders dated 13.07.2007 and 19.12.2007 respectively. Further, the Central Commission vide its order dated 28.03.2008 directed that a provisional tariff for generating station approved vide order dated 28.12.2006 shall continue till further orders, subject to adjustment after determination of final tariff.

4.5 The Appellant on 09.09.2010 filed a petition No. 250 of 2010 before the Central Commission for fixation of the final tariff for Tehri Hydro Electric Power Project, Stage-I (1000 MW) for the period 2006 to 2009 considering the expenditure incurred up to the date of commercial operation of the generating station and additional capitalization up to 31.03.2009.

4.6 On 16.04.2013, the Central Commission decided the petition No. 250 of 2010 and pronounced the impugned order. The relevant extract of the order is as under:

*"**Capital cost***

23. It is observed that the capital expenditure claimed by the Petitioner as at para 10 above does not depict the capital expenditure till the CODs of the respective units of the generating station. Beginning from the capital expenditure as

on 8.7.2007, the petitioner has claimed the same expenditure as on the CODs of the respective units under the major heads like infrastructure works, Major civil works including hydro mechanical equipment and Overheads. The expenditure under these major heads is more than 50% of the total cost claimed as on the COD of the generating station. As such, the unit wise break-up of the capital cost with reasonable apportionment of common facilities, has not been made available by the petitioner. However, the unit wise break-up for other major expenditure under the head 'Plant and Equipment' has been submitted by the petitioner.

....

Debt Equity Ratio

32. Regulation 36 of the 2004 Tariff Regulations provides as under:

..

37. It is noticed that '1166.17 crore had been deployed as equity in the project upto 1996-97, which constitutes around 20% of the project cost. Subsequently, equity of '1389.68 crore had been deployed from the year 1997-98 till 2007-08. Only from the year 1997-98, debt has been deployed in the project and '3959.24 crore was deployed from 1997-98 till 2007-08. Deployment of debt and equity show that till the year 2001-02, more equity was deployed as compared to debt, which had been slowly brought down with the exception for the year 2004-05. Had the project been funded strictly in accordance with the debt equity ratio of 70:30 from the beginning, it would have resulted in accumulation of substantial amount of IDC which would have further inflated the capital cost. Therefore, initial deployment of equity of the project till 1996-97 has resulted in lower IDC which is in the interest of the beneficiaries/consumers. ***In the above background, we allow the debt equity ratio of 62.78:37.22 as claimed by the petitioner in deviation of the 70:30 debt equity norm keeping in view the interest of the beneficiaries.*** *This is in*

line with the methodology adopted by the Commission in respect of some of its orders pertaining to the hydro generating stations of NHPC.

38. As regards the rates for apportionment of the additional capital expenditure between debt and equity, Note 1 and Note 3 under Regulation 34 of the 2004 Tariff Regulations provides as under:-

....

39. It may be seen that any expenditure incurred on account of liabilities within the original scope of work and any expenditure incurred on account of new works not in the original scope of work shall be serviced in the normative debt equity ratio as specified in Regulation 36. Since equity more than the 30% has been allowed in respect of original cost, the entire amount of additional capitalisation has been treated as loan, as this would lead to an overall debt equity ratio closer to the debt equity ratio of 70:30 during the period 2004-09 and onwards.

Design Energy (DE)

58. The petitioner has submitted the detailed calculations for arriving at the modified design energy which have not been challenged by any of the beneficiaries. As such, the modified design energies as indicated in the table under para 56 are being allowed with the stipulation that secondary energy benefits shall be recoverable by the petitioner only beyond the design energy level of 2797 MU approved by the CEA."

4.7 Aggrieved by this the appellant filed a review petition No. 7/RP/2013 before the Central Commission seeking for a review on the following aspects:

i) Debt equity ratio and additional capitalization in 70:30 debt equity ratio

ii) Capital cost of the shared assets

iii) Secondary energy benefits and

iv) Condonation of time over run of three months

4.8 The Central Commission vide Review Order dated 7.1.2014 in the Review Petition No. 7/RP/2013 in petition No. 250 of 2010 allowed the review petition condoning delay of three months. The relevant portion is as follows:

> "*in consideration of the fact that the delay from the date of commissioning (19.03.2007) to the date of commercial operation (09.07.2007) of Unit-I is for reasons beyond the control of the petitioner, we allow the prayer of the petitioner to condone the time over run of 23 months and allow IDC up to the said dated."*

4.9 The other three prayers were not considered by the Central Commission in the said order.

4.10) Aggrieved by this, the appellant filed this appeal before this Tribunal vide appeal No. 103 of 2014 airing following grounds:

a) Servicing the entire amount of Additional Capitalisation as loan, instead of part loan and part equity as claimed by the Appellant, on the ground that this would bring the debt equity ratio closer to 70:30 since equity more than 30% has already been allowed with respect to the original cost.

b) Restricting the value of the Shared Assets only to one fourth for each unit and at the same time not allowing the corresponding IDC and IEDC for the deferred capitalisation on the remaining value of the Shared assets. The value of the shared assets have been duly capitalised on the commissioning of the first unit (Unit IV) in the books of account.

c) Disallowance of the secondary energy benefits on the ground that the same will be allowed only beyond the CEA approved design energy of 2797 MUs., based on the height of the reservoir as EL 830 Meters and not considering the estimated energy of 2430.30 MU for the year 2007-08 corresponding to allowed reservoir filling upto EL 815 m and 2720.86 MU for the year 2008-09 corresponding to allowed reservoir filling up to EL 820 m.

5. We have heard Mr. M G Ramachandran, Advocate, on behalf of the Appellant, Mr.K.S.Dhingra, learned Counsel for CERC (R-1), Mr.R.B.Sharma, learned Counsel appearing on behalf of R-6 and Mr. Pradeep Mishra learned Counsel appearing on behalf of R-4, R-12 and R-15.

6. On going through the submissions made by the learned Counsel for the Appellant and learned Counsel for the Respondents, the following questions would arise for our consideration:

(a) **Issue No.1**: Whether the Central Commission erred in considering the entire additional capitalization as a loan instead of part loan and part equity as claimed by the Appellant?

(b) Issue No.2: Whether the Central Commission erred in considering the value of the shared assets only to 1/4th for each unit for capitalization and not considering the total value of the shared assets as prayed by the Appellant on the commissioning of the first unit (i.e Unit No.4) ?

(c) Issue No.3: Whether the Central Commission has erred in not allowing IDC on the deferred amount of capital cost and shared assets not capitalized with the commissioning of the first unit (Unit-IV)?

(d) Issue No.4: Whether the Central Commission erred in disallowance of the secondary energy benefits on the reduced design energy on the ground that the same will be allowed beyond the approved designed energy of 2797 MU as fixed by CEA on the FRL level of 830 Mtrs.

7. Let us discuss each of the issue keeping in view the rival contentions of the Petitioner and the Respondents.

Issue No.1:

8. The following submissions have been made by the Appellant THDC India Limited with reference to the **first Issue** regarding **considering the entire additional capitalization as loan in stead of part loan and part equity as claimed by it:**

(a) The Central Commission has erred in proceeding on the basis that the entire amount of additional capitalization would be treated as loan until higher debt equity ratio allowed by the Central Commission is adjusted to reach the level of debt equity ratio of 70:30.

(b) The Central Commission ought not have extended the decision to hold the funding of the additional capital expenditure (whether it is before the cut off date or after the cut off date) through debt on account of higher equity allowed to the new works.

(c) The new Works funded through the additional finances required by the Company (the Appellant) and thus, it is not possible for the Appellant to fund the new works entirely through debt. Thus, the Central Commission ought to have allowed all such new works other than those forming part of the original scope of work where additional capitalization funded by part debt and part equity in the rate of 70:30.

(d) The Appellant has stated that in the Order dated 16.4.2013, the Central Commission had appreciated the need for allowing higher equity in the case of the Appellant on the basis of actual deployment of equity (as the Appellant has not been able to secure the loan funding from lenders to the extent of 70%) and that the higher equity is in the overall interest of the beneficiaries of the generating station.

(e) The Appellant submitted that in the facts and circumstances of the case, the additional capitalization should have been allowed in the proportion of 70:30 particularly considering the difficulties in raising the debt for the new work.

(f) The appellant prayed this Tribunal for consideration of additional capitalization amount proportionate between debt and equity.

8.1 Per contra, the following submissions have been made by the learned Counsel appearing for the Central Commission (R-1):

(a) That the Appellant's claim for apportionment of additional capital expenditure between debt and equity was to be considered in accordance with Clause (2) of the Regulation 36 of the 2004 Tariff Regulations. The relevant portion is extracted below:

"(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".

From the above extracted provisions of the 2004 Tariff Regulations it becomes clear that:

(i) The normative debt-equity ratio specified was 70:30.

(ii) The Central Commission could allow equity higher than 30% in case it was established to the satisfaction of the Central Commission that deployment of higher equity was in the interest of the general public.

(b) On examination, Central Commission found that initially the Appellant financed the project by deployment of equity in excess of loan but at subsequent stages brought down the equity from time to time and hence higher equity is considered.

(c) Accordingly, the Central Commission has allowed debt equity in the ratio of 62:78:37:22 in exercise of powers under second proviso to Clause (2) of Regulation 36 of the 2004 Tariff Regulations up to cut of date of 31.03.2009. Subsequently the Commission considered the debt equity ratio of 60.70:39.30 as on the date of commercial operation of the generating station instead of cut of date as considered in the impugned order.

(d) Further that the Commission allowed the Appellant's claim for additional capitalization in toto and thereafter examined the question of apportionment of additional capital expenditure between the debt and equity.

(e) Further, that in the case of Generating Stations equity of 30% has been allowed as on the date of commercial operation, the entire amount of additional capital expenditure accrued has been treated as loan in order to bring overall debt equity ratio closer to the normative debt equity ratio of 70:30. The above practice has been consistently followed by the Central Commission in all projects, generation as well as transmission during the tariff period between 2004-09.

8.2 The following submissions were made by R-6, BSES Rajdhani Power Limited:

(a) The Appellant has alleged that the entire amount of additional capitalization has been considered as loan by the

Commission on the ground that this would bring the debt equity ratio closer to 70:30. The contention of the Appellant is solely guided by the commercial interest as he is not able to establish any contravention of the Regulatory provisions of the Tariff Regulations, 2004 whereas the Commission in the Impugned Order has clearly stated that the additional capital expenditure has been allowed under Regulation 34(1)(ii) of the Tariff Regulations, 2004 based on the justification submitted by the Appellant and the prudence check. The position has been explained by the Commission in pare 38 & 39 of the Impugned Order which is reproduced below:

"38. As regards the rates for apportionment of the additional capital expenditure between debt and equity Note 1 and Note 3 under Regulation 34 of the 2004 Tariff Regulations provides as under:

Note 1

Any expenditure admitted on account of committed liabilities within the 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 dept equity ratio specified in Regulation 36.

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 36.

39. It may be seen that any expenditure incurred on account of liabilities within the original scope of work and any expenditure incurred on account of new works not in the original scope of work shall be serviced in the normative debt equity ratio as specified in Regulation 36. Since equity more than the 30% has been allowed in respect of original cost, the entire amount of additional capitalization has been treated as loan, as this would lead to an overall debt equity ratio closer to the debt equity ratio of 70:30 during the period 2004-09 and onwards".

It may, therefore, be seen that the Commission has moved strictly in accordance with the provisions of the Tariff Regulations, 2004. The Commission in its order dated 7.1.2014 in Review Petition No.7 of 2013 in Petition No.250 of 2010 while reviewing the Impugned Order further clarified that the issue has been dealt in line with the methodology adopted in respect of tariff orders pertaining to some of the hydro generating stations of NHPC for the period 2004-09. Thus, the Commission has gone strictly in accordance with the provisions of the Tariff Regulations, 2004 on this issue and the contention of the Appellant has no substance.

8.3 The following submissions have been made by the Respondent R-4, 12 and 14:

The Commission has already approved higher equity as on COD to the Appellant, hence as per the methodology adopted by the Commission in other NHPC cases, it has directed that

entire capitalization would be taken as a loan so that Debt Equity Ratio be closer to 70:30 as provided under the Regulations.

9. **<u>Our discussions and Conclusion on Issue No.1:</u>**

9.1 Proviso 2 of Sub Regulation 36 deals with Debt and equity ratio and the relevant portion is reproduced below:

> *"Regulation 36 of the 2004 Tariff Regulations provides as under:*
>
> *(1) In case of the existing project debt-equity ratio considered by the Commission for the period ending 3.3.2004 shall be considered for determination of tariff with effect from 1.4.2004.*
>
> *Provided that in cases where the tariff for the period ending 31.03.2004 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 capitalization has been completed on or after 1.4.2004 and admitted by the Commission under regulation 34, 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 les 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."

9.2 From the above, it spells that in case of the generating station 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 as per proviso 2 of the Sub Regulation 36.

Further, in the instant case, the investment approval was accorded in June 1972 (prior to 1.4.2004). The construction of the project started during 1978 by the State Government of UP and later 1989 the project was transferred to the appellant and the date of commercial operation of the units are between 2006 and 2007 and hence the debt equity ratio of 70:30 shall be considered.

9.3 The Central Commission in the impugned order dated 16.04.2013, the debt and equity ratio considered 62.78:37-22, the relevant portion is reproduced below:

"Deployment of debt and equity show that till the year 2001-02, more equity was deployed as compared to debt, which had

been slowly brought down with the exception for the year 2004-05. Had the project been funded strictly in accordance with the debt equity ratio of 70:30 from the beginning, it would have resulted in accumulation of substantial amount of IDC which would have further inflated the capital cost. Therefore, initial deployment of equity of the project till 1996-97 has resulted in lower IDC which is in the interest of the beneficiaries/consumers. In the above background, we allow the debt equity ratio of 62.78:37.22 as claimed by the petitioner in deviation of the 70:30 debt equity norms keeping in view the interest of the beneficiaries. This is in line with the methodology adopted by the Commission in respect of some of its orders pertaining to the hydro generating stations of NHPC."

9.4 Subsequently, in the Review Order dated 7.1.2014, passed by the Commission in the Review Petition No. 7/RP/2013 in Petition No. 250/2010 the Commission has rectified its order dated 16.4.2013, considered debt and equity ratio as per the date of Commercial operation (9.7.2007) as 60.70:39.30 instead of cut off date 31.3.2009 considered in the impugned order dated 16.04.2013. The relevant portion is reproduced below:

"*We have considered the submissions of the parties. We have decided in this order that the debt equity ratio of 60.70:39.30 as on COD would be applicable for apportioning the capital cost between debt and equity as on the COD. It follows as a natural corollary that any expenditure incurred after COD shall be considered as additional capital expenditure.*"

9.5 The Commission has considered the appellants claim for additional capitalization in toto. Further, the Central Commission has allowed equity on the date of commercial operation.

9.6 Further, as regards rates for apportionment of the additional capital expenditure between debt and equity, Regulation 34 of 2004 Tariff Regulation provides as under:

> **"Note 1**
>
> *Any expenditure admitted on account of committed liabilities within the original scope of work and the expenditure deferred on techno-economic ground but falling within the original scope of work shall be serviced in the normative debt-equity ratio specified in regulation 36.*
>
> **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 36.*

It may be seen that any expenditure incurred on account of liabilities within the original scope of work and any expenditure incurred on account of new works not in the original scope of work shall be serviced in the normative debt equity ratio as specified in Regulation 36. Since equity more than the 30% had been allowed in respect of original cost, the entire amount of additional capitalization has been treated as loan, as this would lead to an overall debt equity ratio closer to the debt equity ratio of 70:30 during the period 2004-09 and onwards.

9.7 The benefit of higher equity is passed on to the appellant in the initial stage of the project and as per Regulation 36(2), the debt and equity ratio has to be brought down to 70:30. The treatment of entire amount of additional capital expenditure accrued has been treated as loan to bring over all debt equity ratio closer to the normative debt equity ratio of 70:30. The interest on debt and return on equity are considered while working out the tariff of the generation/distribution. Hence higher the equity, the return on equity (14%) will be higher and the gap between the Revenue and expenditure will increase and thereby consumers will be burdened with higher tariff.

In the instant case, the weighted average rate of interest is about 9% and the R.O.E. is 14%. Further as per CERC Regulation 36(2), the debt equity ratio has to be maintained in the ratio of 70:30. Hence to bring down the debt: equity from 60.70:39.30, the Central Commission decided to apportion the total additional capitalization in the debt to safe guard the interest of the consumer. The action of the Central Commission is correct and hence the decision of the Central Commission is liable to be confirmed.

9.8 Accordingly, **issue No.1 is decided against the Appellant**.

10. **Issue No.2:** The **Second Issue** is **whether the Central Commission erred in considering the value of the shared assets only to 1/4th for each unit for capitalization and not considering**

the total value of the shared assets as prayed by the Appellant on the commissioning of the first unit (i.e. Unit No.4)?

<u>Issue No.III:</u> Whether the Central Commission has erred in not allowing IDC on the deferred amount of capital cost and shared assets not capitalized with the commissioning of the first unit (Unit-IV)?

Since Issue No.2 and 3 are interrelated, hence these two issues are being taken together.

10.1 The following submissions have been made by the Appellant THDC India Limited with regard to these issues:

(a) that the full cost of shared assets such as dam, spillway etc on the date of commissioning of the first unit was not taken into consideration by the Central Commission while fixing the tariff. Further this expenditure has to be incurred by the Appellant before the commissioning of the first unit (Unit IV) and cannot defer any such cost.

(b) that the detailed justifications in the tariff Petitions for considering the total capital cost of the shared/common areas including the dam, spillways and power house in the circumstances relating to the hydro generating stations but the same has not been considered by the Commission. Instead,

the Commission divided the common expenditure equally for all the four units of the Generating Station.

(c) that the Appellant had to service his loan and equity based on the capital expenditure actually incurred by the Appellant and not in a position to postpone the servicing of the above debit and equity for the period relating to the capital expenditure of the above assets till first unit was declared under COD. The Central Commission has not considered the justification given.

(d) that the IDC has also not been given for the deferment of the servicing of the capital cost of shared assets. The claim of the Commission that the appellant did not file the calculation for revised IDC and IEDC during the tariff proceedings as the Appellant was proceeding for the relief of considering the cost of shared assets from the COD of unit 4 itself. The IDC and IEDC claim ought to have been considered and allowed as a natural consequence to the decision of the Central Commission apportioning the value of the assets equally.

(e) that the Central Commission is therefore, not correct in disallowing the capitalization of the cost of the common facilities along with the first unit (Unit No. IV) itself declared under commercial operation (On 22.9.2006) and further, in disallowing the revision of IDC and IEDC when capitalization of the shared assets was equally divided amongst the four units by the

Central Commission on the purported ground that the details were not made available/submitted by the Appellant. The Central Commission should have considered that all the necessary information for determining the IDC and IEDC were available in the pleadings filed by the Appellant before the Central Commission, namely, the capital value of the assets, the date of commissioning of the respective units, the rate of interest applied during the construction period, RCE approved capital cost etc.,

(f) In view of the above, it was only a mathematical calculation which was to be undertaken by the Central Commission.

10.2 Per Contra, the following submissions have been made by the learned Counsel appearing on behalf of the Central Commission on this issue:

(a) In accordance with Clause (2) of Regulation 4 of the 2004 Tariff Regulations, for the purpose of tariff, the capital cost of the project is to be broken up into stages and by distinct units forming part of the project. Clause (2) further provides that where the stage wise, unit wise breakup of the capital cost is not available, the common facilities are to be apportioned on the basis of the installed capacity of the units and the relevant portion of the Regulation

(b) that Clause (2) of Regulations 4 of the 2004 Tariff Regulations supports the Commission's stand which is extracted as under to support his arguments:

> *"For the purpose of tariff, the capital cost of the project shall be broken into stages and by distinct units forming part of the project. Where the stage wise, unit wise, line wise or sub station wise break up of the capital cost of the project is not available and in case of ongoing projects, the common facilities shall be apportioned on the basis of the installed capacity for the units and lines or sub stations. In relation to multipurpose hydro electric projects, with irrigation, flood control and power components, the capital cost chargeable to the power component of the project only shall be considered for determination of tariff."*

(c) that as per Regulation, the action of the Commission in sharing of the common assets is legal. The Appellant claimed tariff without apportioning the capital cost of the common assets among four units as required under Clause (2) of Regulation 4 of the 2004 Tariff Regulations and claimed the capital cost of common assets along with the capital cost of Unit IV, commissioned on 22.9.2006. Thus, the claim of the appellant was clearly de hors clause (2) of Regulation of the 2004 Regulations and could not be allowed.

(d) that the Appellant could not be allowed upward revision of IDC and IEDC based on the Affidavit dated 17.9.2013 for the reasons that-

(i) No such claim was raised in the tariff petition or even in the Review Petition.

(ii) Through the subsequent affidavit dated 17.9.2013, the

Appellant filed the lumpsum impact of IDC and IEDC of Rs.10409 lakh after conclusion of the hearing on 27.8.2013, but that too without any supporting details or calculations.

(e) That the upward revision of IDC and IEDC was not within the contemplation of the Appellant till the stage of hearing of Review Petition as there was no submission to that effect in the Review Petition or at the hearing. The lump sum impact of IDC was filed through a subsequent affidavit dated 17.9.2013, but without supporting calculations.

(f) That on consideration of the submissions of the appellant and the respondents on the delayed commissioning of the units of the generating station, the Central Commission restricted capitalization of IDC and IEDC up to 30.3.2007 and apportioned the capitalized IDC and IEDC among four units of the generating station.

(g) Similar methodology has been followed by the Central Commission in respect of other hydro power projects such as Indira Sagar and Omkareshwar HPS.

(h) For the first time in the present appeal the appellant has formally raised the issue of upward revision of IDC and IEDC stating that the revised IDC and IEDC claim was consequential to the value of the shared assets being considered in the deferred manner.

(i) The present claim on account of upward revision of IDC and IEDC is at variance with the impact claimed in the affidavit dated 17.9.2013. It is established law that a claim made for the first time in appeal cannot be considered.

10.3 The following submissions have been made by the learned Counsel appearing on behalf of R-6, BSES Rajdhani Power Limited:

(a) The Appellant has raised an issue that the Commission has not considered the assets like dam, spillways etc. and restricted the value of the shared assets only to one fourth of each unit and at the same time not allowing the corresponding IDC and IEDC for the deferred capitalization on the remaining value of the shared assets. The Appellant did not submit the capital expenditure till the date of commercial operations (CODs) of the respective units of the generating station. This position has been explained by the Commission in Para 23 of the Impugned Order which is reproduced below:

"Capital Cost

> *23. It is observed that the capital expenditure claimed by the petitioner as at para 10 above, does not depict the capital expenditure till the CODs of the respective units of the generating station. Beginning from the capital expenditure as on 8.7.2007, the petitioner has claimed the same expenditure as on the CODs of the respective units under the major heads like infrastructure works, Major civil works including hydro mechanical equipment and Overheads. The expenditure under these major heads is more than 50% of the total cost claimed as on the COD of the generating station. As such, the unit wise break-up of the capital cost with reasonable apportionment of common facilities, has not been made available by the petitioner. However, the unit wise break-up for other major expenditure under the head 'Plant and Equipment' has been submitted by the petitioner".*

As the appellant did not submit the capital expenditure till the CODs of the respective units of the generating station for the determination of the tariff unit wise breakup of the capital cost with reasonable apportionment of the common facilities has been undertaken by the Commission in accordance with the Regulation 4(2) of the Tariff Regulations, 2004 which is reproduced below:

> *"4(2) For the purpose of tariff, the capital cost of the project shall be broken up into stages and by district units forming part of the project. Where the stage-wise, unit-wise, line-wise or sub-station-wise breakup of the capital cost of the project is not available and in case of ongoing projects, the common facilities shall be apportioned on the basis of the installed capacity of the units and lines or sub-stations. In relation to multipurpose hydro electric*

projects, with irrigation, flood control and power components, the capital cost chargeable to the power component of the project only shall be considered for determination of tariff."

It may, therefore, be seen that the Commission has moved strictly in accordance with the provisions of the Tariff Regulations, 2004.

The Appellant in the Appeal has raised the issue that the Commission has restricted the value of the shared assets only to one fourth for each unit and at the same time <u>not allowing the corresponding IDC and IEDC for deferred capitalization on the remaining value of the shared assets</u>. On this issue, it is submitted that the Appellant has claimed a total IDC of Rs.1,18,605 lakh in its Petition No. 250/2010 filed on 27.08.2010 before the Commission. As the Commission allowed the time over run of 20 months against the actual time over run of 23 months, the IDC was restricted to Rs.1,12,699 lakh and allowed in the impugned order. The Appellant had also filed a Review Petition No. 7/RP/2013 in Petition No. 250/2010 wherein 3 months time over run which has been disallowed in the impugned order was also allowed and based on the directions in the review order, the tariff of the generating station for the period from 22.9.2006 to 31.3.2009 has been revised by a separate order.

Thus, the entire IDC as claimed by the Appellant in the petition before the Commission has been allowed and hence the Appellant has no grievance on this issue.

10.4 The following submissions have been made by Respondent 4 and 12 to 14:

Regarding sharing of assets, the Commission has rightly apportioned the same equally in respect of four units. The Appellant has not given any details, hence the Commission has rightly rejected the said claim.

11. Our Discussion and Conclusion on Issue Nos. II & III

11.1 In accordance with Clause (2) of Regulation 4 of 2004 Regulations for the purpose of tariff, the capital cost of the project is to be broken up into the stages and by distinct units forming the project. The relevant Clause of the Regulation is quoted below:

> *"For the purpose of tariff, the capital cost of the project shall be broken into stages and by distinct units forming part of the project. Where the stage wise, unit wise, line wise or sub station wise break up of the capital cost of the project is not available and in case of ongoing projects, the common facilities shall be apportioned on the basis of the installed capacity for the units and lines or sub stations. In relation to multipurpose hydro electric projects, with irrigation, flood control and power components, the capital cost chargeable to the power component of the project only shall be considered for determination of tariff.*

11.2 The contention of the Appellant that the generation of 1st unit (unit IV) can be started only after completion of the common work such as dam, spillway, power house and switch yard etc and hence this common cost has to be taken into consideration while approving the tariff of first unit (Unit IV). The Commission did not consider the total common cost after the 1st unit (unit IV) along with the capital cost instead the Central Commission apportioned equally among the four units. The action of the Central Commission is reasonable because the total common cost is taken into consideration for only one unit (Unit IV) then the generation cost of the power produced by the respective unit will be more and thereby the consumers will be burdened with higher power purchase cost and it will lead to higher tariff. Hence as per Regulation 4 of the Regulations, 2004, the common cost to be apportioned equally among the four units. The action of the Central Commission in this regard is justifiable.

11.3 Hence, the claim of the Appellant regarding capitalization of cost of common assets from 22.09.2006 could not be allowed as it was *de hors* clause-2 of Regulation 4 of 2004 Regulations.

11.4 Hence, the action of the Commission as per the above Regulation apportioning the common cost among the four units is correct and liable to be confirmed.

11.5 Further, the upward revision of IDC and IEDC was not allowed by the Central Commission and it was contended that the unit wise brake-up

of the capital cost with reasonable apportionment of common facilities has not been made available by the Appellant till the date of commercial operation of the respective units of the Generating Stations.

11.6 Hence, the Central Commission has apportioned the common cost among the four units and then allowed the IDC and IEDC claimed by the Appellant while approving the tariff order. Further, the Appellant has not submitted cogent reasons for allowing IDC and IEDC charges. Hence, we find no force in the contentions of the Appellant on this issue.

11.7 In view of the above submissions, this Tribunal is disallowing the prayer of the Appellant on these two issues i.e. Issue No.2 and Issue No.3 and the order of the Central Commission is up-held. Consequently, both these issues are decided against the Appellant.

12. Issue-4:

The **fourth and last Issue** is **whether the Central Commission erred in disallowance of the secondary energy benefits on the ground that the same will be allowed beyond the approved designed energy of 2797 MU as fixed by CEA on the FRL level of 830 Mtrs?**

12.1 **The following submissions have been made by the Appellant THDC India Limited with reference to the Fourth Issue:**

(a) The Central Commission has disallowed the secondary energy benefits on the ground that the same will be allowed only beyond the CEA approved design energy of 2797 MUs. The restricted level of reservoir filling had been as per the direction given by the State Government on account of delay on the part of the Sate Government in completing the process of rehabilitation, and thus the same is not at all attributable to the Appellant.

(b) Due to the delay on the part of the State Government, the reservoir operation was available only to EL 815 meters (for 2006-07 and 2007-08) and EL 820 meters (for 2008-09) as against EL 830 meters considered for fixation of design energy. In view of the above since the Reservoir level was EL 815 meters/EL 820 meters, the Central Commission ought to have considered the Annual Energy corresponding to EL 815 meters/EL 820 meters and not EL 830 meters for the purpose of secondary energy benefits during the period 2006-09.

(c) In regard to the above the Appellant crave reference to the principles laid down by this Hon’ble Tribunal in the order

dated 27th April, 2011 in Appeal No. 72 of 2010 in the matter of Maharashtra State Power Generation Co. Ltd. vs. Maharashtra Electricity Regulatory Commission & Ors.:-

"*7.4. The delay in execution of a generating project could occur due to following reasons:*

i) due to factors entirely attributable to the generating company, e.g., imprudence in selecting the contractors/suppliers and in executing contractual agreements including terms and conditions of the contracts, delay in award of contracts, delay in providing inputs like making land available to the contractors, delay in payments to contractors/suppliers as per the terms of contract, mismanagement of finances, slackness in project management like improper co-ordination between the various contractors, etc.

ii) due to factors beyond the control of the generating company e.g. delay caused due to force majeure like natural calamity or any other reasons which clearly establish, beyond any doubt, that there has been no imprudence on the part of the generating company in executing the project.

iii) situation not covered by (i) & (ii) above.

In our opinion in the first case the entire cost due to time over run has to be borne by the generating company. However, the Liquidated Damages (LDs) and insurance proceeds on account of delay, if any, received by the generating company could be retained by the generating company. In the second case the generating company could be given benefit of the additional cost incurred due to time over-run.

However, the consumers should get full benefit of the LDs recovered from the contractors/suppliers of the generating company and the insurance proceeds, if any, to reduce the capital cost. In the third case the additional cost due to time overrun including the LDs and insurance proceeds could be shared between the generating company and the consumer. It would also be prudent to consider the delay with respect to some benchmarks rather than depending on the provisions of the contract between the generating company and its contractors/suppliers. If the time schedule is taken as per the terms of the contract, this may result in imprudent time schedule not in accordance with good industry practices.

7.5 in our opinion, the above principles will be in consonance with the provisions of Section 61(d) of the Act, safeguarding the consumers ' interest and at the same time, ensuring recovery of cost of electricity in a reasonable manner."

(d) The appellant stated that the Central Commission is therefore wrong to decide the full design energy corresponding to reservoir level EL 830 meters for the purpose of Secondary Energy benefits during the period 2006-09 even though at the relevant time periods (2006-09) the operation (reservoir level) was available only to EL 815 meters/EL 820 meters.

13. Per Contra, the following submissions have been made by the learned Counsel appearing on behalf of the Central Commission on this issue:

13.1 Design Energy of the Generating Station was originally approved by the CEA as 2797 Million Units (MUs) corresponding to Full Reservoir Level (EL 830.00 M). The appellant was entitled to claim secondary energy charge for generation beyond the Design Energy.

13.2 During the years 2006-07 (22.9.2006 to 31.3.2007), 2007-08 and 2008-09 modified Design Energy of the generating station was worked out by the appellant as under:

Year	Design Energy
2006-07	818.76 MUs
2007-08	2430.30 MUs
2008-09	2720.86 MU

13.3 that the appellant sought approval of the modified Design Energy and explained the reasons for lower Design Energy as under:

(a) Since the generating station was not in full operation during the year 2006-07, it would not be appropriate to compute the Design Energy for the year on the basis of hydrology of 90% dependable year i.e. 2004-05.

(b) During 2007-08 and 2008-09 the reservoir was filled upto EL 815.00 M and EL 820.00 M respectively as the State Government of Uttarakhand did not allow reservoir filling to EL 830.00 M as contemplated to achieve approved when Design Energy of 2797 MUs.

13.4 that the appellant submitted the detailed calculations for arriving at the modified Design Energy and on consideration of the material placed on record by the appellant, the Central Commission allowed modified Design Energy as claimed by the appellant. The Central Commission, however, directed that secondary energy benefits would be available to the appellant only beyond the Design Energy level of 2797 MUs approved by CEA.

13.5 <u>The Central Commission noted that relaxation in Design Energy enabled the appellant to claim energy charge/Annual Fixed Charge with the relaxed Design Energy level</u>. However, the Appellant could not be allowed secondary energy charge based on such relaxed Design Energy level. The operative part of the Central Commission's order on this issue is extracted hereunder:

> "*25. We have considered the submissions of the contesting parties. In line with the tariff regulations, the petitioner is entitled to Secondary Energy Charges for generation in excess of the design energy. The Commission has relaxed the design energies corresponding to level of reservoir filling i.e. 815 m and 820 m approved by the State Government to enable the petitioner to recover energy charges/AFC. However, considering the fact that higher inflows than normal may allow generation of higher energy as compared to modified design energies, the secondary energy benefits/incentives were allowed only beyond the CEA approved design energy of 2797 MUs to provide relief to the beneficiaries who are already at disadvantageous position in terms of lower generation due to restricted level of reservoir filling.*"

13.6 Allowing secondary energy charge for the generation beyond the relaxed Design Energy level would work to great disadvantage of the

beneficiaries who in the first instance have been deprived of their complete entitlement of energy despite payment of full Annual Fixed Charges on the basis relaxed Design Energy level, and would further become liable to pay secondary energy charge / incentives etc.

14. The following submissions have been made by the learned Counsel appearing on behalf of R-6, BSES Rajdhani Power Limited:

14.1 The Appellant has also raised claim related to the design energy of the generating station as the level of reservoir being less than EL 830 Meters (815 meters) in 2006-07 and 2007-08 and 820 meters in 2008-09. The request of the Appellant has been conceded by the Commission with the stipulation that the secondary energy benefits shall be recoverable only beyond the design energy level of 2797 MU approved by the CEA. The reliance on one set of hydrology data and consequent determination of the design energy for the purposes of planning and investment approval and when the hydro power station is commissioned, the Appellant places another set of hydrology data and designed energy. By doing so, it is evident that the Appellant is trying to serve its own commercial interest by gaining more on secondary energy benefits at the cost of the electricity consumer. The Commission has taken a very balanced and equitable decision in allowing the modified design energy with the stipulation that the secondary energy benefits shall be recoverable only beyond the design energy level of 2797 MU approved by the CEA.

15. The following submissions have been made by Respondent 4 and 12 to 14:

15.1 The Appellant has been given benefit of next generation for the recovery of fixed assets in three years of the tariff period. Hence, in order to save the interest of the beneficiaries, the Commission has directed that the Appellant will be entitled only for the benefit of secondary energy/incentive if the generation is over and above the design energy. Thus, the order passed by the Commission was in the interest of all and no grievance can be raised by the Appellant.

Our Discussion and Conclusion on Issue No.4

16. The relevant definitions incorporated in the Terms and Conditions of Tariff Regulations 2004 is reproduced below:

> ***"Infirm Power"*** *means electricity generated prior to commercial operation of the unit of a generating station;*
>
> ***"Design Energy"*** *means the quantum of energy which could be generated in a 90% dependable year with 95% installed capacity of the generating station;*
>
> ***"Saleable Primary Energy"*** *means the quantum of primary energy available for sale (ex-bus) after allowing for 12% free energy to the home state;*
>
> ***"Secondary Energy"*** *means the quantum of energy generated in excess of the design energy on per year basis at the generating station;*
>
> ***"Saleable Secondary Energy"*** *means the quantum of secondary energy available for sale (ex-bus) after allowing for 12% free energy to the home state;*

"Primary and Secondary Energy Charges"

(1) Primary energy charge shall be worked out on the basis of paise per kWh rate on ex-bus energy scheduled to be sent out from the hydro electric power generating station after adjusting for free power delivered to the home state.

(2) Rate of primary energy for all hydro electric power generating stations, except for pumped storage generating stations, shall be equal to average of the lowest variable charges of the central sector thermal power generating station of the concerned region for all months of the previous year. The primary energy charge shall be computed based on the primary energy rate and saleable scheduled primary energy of the station:

Provided that in case the primary energy charge recoverable by applying the above primary energy rate exceeds the Annual fixed charges of a generating station, the primary energy rate for such generating station shall be calculated by the following formula:

$$\text{Primary energy rate} = \frac{\text{Annual Fixed Charge}}{\text{Saleable design energy}}$$

(3) Primary Energy Charge = Saleable Scheduled Primary Energy x Primary Energy Rate.

Secondary Energy Rate shall be equal to the primary Energy Rate.

Secondary Energy Charge = Saleable scheduled Secondary Energy x Secondary Energy Rate.

The above definitions clearly explain how to calculate the primary and secondary energy charges for the hydro electric generating stations.

17. The Central Electricity Authority (CEA for short) arrived at the design energy of 2797 MU units based on available hydro data for Full Reservoir level of 830 mtrs. and considering the 90% of the hydro report pertains to the year 2004-05.

18. However, the full reservoir level (EL 830 mtrs.) could not be filled due to delay in completion of rehabilitation and resettlement of project affected families and hence the appellant submitted revised design energy levels to the Central Commission for approval.

19. The revised design energy for the FYs 2006-07, 2007-08 and 2008-09 is worked out based on the reservoir filling level of 815 mtrs and 820 mtrs. respectively. Accordingly, the following design energies were approved by the Central Commission based on the hydro data.

2006-07	-	818.76 MU	For the Year 2004-05
2007-08	-	2430.30 MU	(90% availability year)
2008-09	-	2720.86 MU	

The modified design energies as indicated, have not been challenged by any of the beneficiaries.

20. The contention of the appellant is that the Government of Uttarakhand could not be able to complete the R&R activities even though the appellant is bound to bear the expenditure and hence the reservoir could not be filled up to the level of 830 mtrs.

It is the responsibility of the appellant to plan it accordingly, since the construction of the project was started in the year 1978 and the project was later transferred to the appellant in the year 1989. The Appellant was having enough time to plan for the activities such as construction of dam, R&R activities etc. The appellant is blaming the Government of Uttarakhand that they have not completed R&R work and hence the dam was not filled up to the height of 830 mtrs. is not justifiable.

21. Further, the contention of the appellant is that the restricted level of reservoir filling was not attributable to appellant as it was on account of the direction by State Government considering the delay on the part of the State Government in finalization of R&R work, though the appellant had paid the amount for rehabilitation to the State Government who was to disburse the amount and ensure physical removal for rehabilitation.

We find that the appellant's contention is baseless because the appellant has to plan all the R&R works and other connected works of the project before completion of the dam work and due to improper planning, the generating station could not be able to generate up to the design energy of 2797 MU due to short filling of reservoir level up to 830 mtrs.

22. Though the appellant was not paid secondary energy charges but the Commission has approved the revised design energies and allowed to pay primary energy charges and annual fixed charges / capacity charges and thereby appellant is not at much loss even though the appellant was not allowed secondary energy charges based on such relaxed design energy level.

23. Allowing secondary energy charge for the generation beyond the relaxed energy level could work to the great disadvantage of the beneficiaries who in the first instance have been deprived of their complete entitlement of energy despite payment of full annual fixed charges on the basis of relaxed design energy level and would further become liable to pay secondary charges / incentives etc.

24. In view of the above, we confirm the action of the Central Commission in disallowing the secondary energy charges and disallow the Appellant's prayer on this issue.

25. This issue is accordingly decided against the Appellant.

26. Since all the issues have been decided against the Appellant, the Appeal merits dismissal.

27. **Summary:**

27.1 The Appellant was aggrieved on the following issues:

(a) Additional capitalization in apportioning totally on debt,

(b) Apportioning of common cost of the project equally among the four units

(c) Disallowing of secondary energy charges on the revised design energy.

28. *First Issue* :

The Central Commission had initially approved the debt equity ratio of 60.90:39.30 as the appellant has received more equity from the Government in the initial period of the project construction.

As per Clause 36(2) of Tariff Regulations 2004, "*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*". The Commission, already approved higher equity ratio and to bring down debt equity ratio nearer to 70:30, the total additional capitalization which was approved in toto by the Central

Commission was totally apportioned towards debt to safe guard the interest of the consumers as the return on equity allowed (14%) is more than the weighted average rate of interest of 9%. Hence, we confirm the action of the Central Commission on this issue. Similar procedure was adopted in case of other Central Hydro Generating Stations also.

29. <u>Second and Third Issue</u>:

As per Clause-2 of Regulation 4 of the 2004 Tariff Regulation, where the unit-wise cost is not available, the common cost can be apportioned equally among the four units as per the installed capacity. Further, if the common cost such as cost of dam, power house, spill way etc is taken into consideration for the 1st unit (Unit IV), then the cost of power generated by that unit will be more and thereby the consumers have to bear higher power purchase cost. Hence, wherever the unit wise cost is not available as per Regulation 4 of 2004 Tariff Regulations, the common cost is apportioned equally among the four units.

Further, for upward revision of IDC and IEDC, the Appellant fails to submit the details and hence the Commission has accordingly considered the IDC and IEDC as submitted by the Appellant at the time of filing of Tariff Petition.

Hence, the action taken by the Central Commission is confirmed on these two issues.

Fourth Issue:

30. The issue pertains to disallowance of secondary energy charges as per the revised approved design energy levels. The Appellant claims that as per the direction of State Government, considering the delay in finalization of R&R works, though the appellant had paid the amount for rehabilitation to the State Government, the Government failed to complete the R&R works. In this respect, we feel that the appellant has not pursued with the Government and not taken proper plan to complete the R&R works.

The reservoir cannot be filled up to the full reservoir level of 830 mtrs and thereby loss of generation and accordingly power purchase cost of generation per unit has been increased. Due to this, the beneficiaries of the project have suffered. Further, the appellant is being paid capacity charges / fixed charges and energy charges as per the revised approved design energy. Hence, the appellant is not at loss except the incentive on the secondary energy charges.

O R D E R

31. The instant Appeal being Appeal No.103 of 2014 is hereby dismissed and the Impugned Order dated 16.4.2013 passed by the Central Commission is hereby affirmed.

32. There shall be no order as to costs.

33. Pronounced in the open court on this **29th day of May, 2015**.

(T Munikrishnaiah) **Technical Member**	**(Justice Surendra Kumar)** **Judicial Member**

Dated, the 29th May, 2015.

REPORTABLE / ~~NON-REPORTABLE~~