

**BEFORE THE CENTRAL ELECTRICITY REGULATORY COMMISSION,
SCOPE COMPLEX, LODHI ROAD, NEW DELHI**

PETITION NO. 66/2005

IN THE MATTER OF :

Approval of Tariff in respect of Damodar Valley Corporation for the period from 1.4.2004 to 31.3.2009.

AND

IN THE MATTER OF

Damodar Valley Corporation

.....**Petitioner**

Versus

1. Department of Energy, Govt. of West Bengal, Kolkata.
2. Department of Energy, Govt. of Jharkhand, Ranchi.
3. West Bengal State Electricity Board, Kolkata.
4. Jharkhand State Electricity Board, Ranchi.
5. Ministry of Power, New Delhi.

.....**Respondents**

**SUBMISSION OF DAMODAR VALLEY CORPORATION, PETITIONER ON THE
ORDER DATED 05.05.2006 OF ONE-MEMBER BENCH, CENTRAL
ELECTRICITY REGULATORY COMMISSION, NEW DELHI**

MOST RESPECTFULLY SHOWETH:

Preliminary Submissions:

1. The petitioner submits that the One Member Commission was appointed to submit a report on factual aspects on the activities of the petitioner to enable the full bench of the Commission to consider the legal and other aspects of the claims of the Petitioner. These include aspects such as (a) the debt equity ratio; (b) the expenses of the petitioners to be taken into account;

The One member commission has however proceeded to determine the legal and other aspects also. The petitioner respectfully submits that the Commission may hear the

matters in issue uninfluenced by the decision of the One Member Commission on such aspects

2. The Damodar Valley Act (hereinafter called the DVC Act) is a Special Act enacted by the Parliament in regard to Damodar Valley Area and the said Act deals with various aspects including electricity in the Damodar Area. The Electricity Act, 2003 does not repeal the provisions of the DVC Act. The DVC Act continue to apply even after coming into force of the Electricity Act subject to the following provisions contained in section 14 proviso which read as under:

“Provided also that the Damodar Valley Corporation, established under Sub-section (1) of Section 3 of the Damodar Valley Corporation Act, 1948 (14 of 1948), shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation”.

The above does not mean that DVC Act can be completely ignored while deciding the tariffs for DVC under the Electricity Act, 2003. One of the well-settled principles is that the statute must be construed harmoniously. The attempt should be to avoid inconsistency and repugnancy. The rule of construction is well-settled that in such events the interpretation should be done in a manner that effect should be given to both statutes and this is the solemn principle of harmonious construction. Reference in this connection may be made to the decisions of the Hon’ble Supreme Court in the following cases.

- (a) AIR 1958 SC 255 at Page 268
- (b) AIR 1992 SC 1789 at Page 1794
- (c) AIR 1997 SC 1006 at Page 1009

3. DVC’s statutory functions are summarized in the following list:-

- (i) Irrigation
- (ii) Water Supply
- (iii) Electrical Energy
- (iv) Flood Control
- (v) Navigation
- (vi) Afforestation
- (vii) Soil Erosion
- (viii) Use of Lands
- (ix) Resettlement of Displaced Population
- (x) Sanitation and Public Health measures and
- (xi) Economic and Social Welfare of the People.

4. The tariff settings for DVC need to take into account the above special features of the DVC. The Statutory body constituted under the Electricity Act, 2003 ought not to ignore the above aspects and set tariff as if DVC is a commercial entity and involved only in the generation transmission and distribution of electricity.

5. Damodar Valley Corporation is a self-financing Corporate Body where the primary sources of fund for Capital Expenditure are Owner Governments' Net-worth Fund including free Reserves and Market Borrowings. In absence of any Contribution forthcoming from the Owner Governments since the year 1969-70, DVC has been ploughing back consistently the Revenue Surplus earned from Sale of Power as Capital of the Owner Governments and utilizing the same Fund towards the following purposes :-
- a. Capacity Addition in Thermal and Hydel Projects and Capital Extension & Improvement thereof.
 - b. Other statutory functions viz. Education, Health, Flood Control, Irrigation, Self-Employment Project, Rural Electrification Projects etc. which are otherwise the functions of both the States viz. Jharkhand and West Bengal.

The expenditure towards Flood Control and Irrigation both Revenue and Capital are partly incurred directly by the Govt. of West Bengal and partly off-set against share of Revenue Surplus accruing to Govt. of West Bengal.

In the circumstances excluding the specific amount borrowed for Capital expenditures all other capital expenditures incurred is out of owners capital and not borrowed capital

6. DVC, of late, as its "New Initiatives" has constituted "Damodar Valley Mission" for Soil Conservation & Afforestation and "DVC Foundation" for collaborative approach **(Annexure-I)** to augment some of the State Functions which are mandated by the DVC Act. The above statutory functions are limited within the command area of DVC including villages within 10 KM radius of the DVC command area thereof to ensure overall development of the people in the Valley whose sacrifice and co-operation are indispensable for the promotion of the Thermal Plants, Hydel Plants and Multi-purpose Dams constructed in the command area of DVC. Simultaneously, DVC has planned to retire some of the vintage Thermal Units of DVC which have become unviable in terms of the Tariff Norms of Hon'ble CERC. At Bokaro Thermal 'A', Central Electricity Authority (CEA) has already approved retirement of three Units of 57.5 MW each (derated to 45 MW each) in addition to the 4th Unit of 75 MW (derated to 40 MW) which is already scrapped with the approval of CEA. It has been simultaneously decided to set up on the same site, one Unit of 500 MW, which is in process.

DVC in discussion with the Govt. of Jharkhand has initiated construction of a Multi-purpose Dam at Balpahari which is a major step towards unified development of the water resources in the States of Jharkhand and West Bengal for Irrigation and Industrial purpose as well as to cater to the additional need for water by the new Power Plants being set up in the Valley. A copy of the Record Notes of Discussion amongst Secretaries of various Departments of Govt. of Jharkhand and DVC is enclosed **(Annexure-II)**.

7. The basic need for Capacity Addition arises out of the following needs :-

- i) National Plan Priorities,
- ii) Replacement of old vintage Units of DVC,
- iii) Continuing Annual Growth in domestic demand of the consumers and
- iv) To meet the Operational Efficiency Norms.

Capacity Addition is also indispensable for retention of the existing resource-level of DVC and sustenance of its viability.

8. Capacity Addition Plan

Out of the Xth Plan Projects, DVC has already commissioned one Unit of 210 MW at Mejia Unit No.4 in February, 2005 at a cost of Rs.726 Crores. Two more Thermal Extension Units of 250 MW at each Station are also under construction at Mejia and Chandrapura at a total Project Cost of Rs.4079 cr. (approx.). While the two Thermal Extension Units of 250 MW each at Mejia are scheduled to be oil synchronized within March, 2007, the other two Thermal Extension Units of 250 MW each at Chandrapura Thermal Power Station are scheduled to be synchronized within August, 2007. The total 10th Plan Capacity Addition for five Units works out to 1210 MW involving investment of Rs.4800 cr. In addition, DVC has already initiated major Capital Repair Programme for Extension & Improvement of the old Units of DVC viz. Bokaro 'B' - 630 MW (3X210 MW), Chandrapura Thermal Power Station - 390 MW (3X130 MW) and Durgapur Thermal Power Station - 350 MW (Unit No.3 - 140 MW, Unit No.4 - 210 MW) which involves a further investment of about Rs.655 Crores. Since shut down of these Thermal Units are not possible in one go for the interest of the consumers, the major repair works have been phased out so that all these old Units are renovated within 2007-08. Simultaneously augmentation of the existing old T&D Network of DVC is also in progress involving further investment of about Rs.600 Crores.

During the XIth Plan period, the Corporation has planned Capacity Addition of 4500 MW directly and 1500 MW through Joint Venture already operationalised with a total investment commitment of Rs.18610 cr. (approx.). A copy of the Board Resolution No.7461 (Item No.6) of the 569th Meeting of the Corporation held on 09.06.2006 is enclosed for kind reference of the Hon'ble Commission (**Annexure-III**). Efforts on Land Acquisition, MOEF Clearance, Water Clearance etc. are already in progress in respect of the Extension and the Green Field Projects on which a substantial amount has already been invested. A copy of the Project-wise Status Note submitted to the Ministry of Power, Govt. of India in the last Quarterly Performance Review Meeting is also enclosed (**Annexure-IV**) for kind reference of the Hon'ble Commission.

A Financial Plan has also been firmed up by the Corporation to ensure adequate fund comfort for the 11th Plan Projects. A copy of the Financial Plan is enclosed in **Annexure-V** for kind reference of the Hon'ble Commission. The Financial Plan has been firmed up

considering that the existing Tariff fixed in September, 2000 will continue at least till the year 2007-08.

PRAYER TO THE HON'BLE COMMISSION

In the light of the above aspects the submissions of the petitioner on specific issues arising out of the order of the One Member Commission are as under:

❖ Submission I

Allowing existing tariff to continue at least till 2007-08

Clarifications from MOP, GOI regarding the Appropriate Commission for DVC came after a gap of almost two years from the date of enactment of the Electricity Act 2003. As per the direction of MOP, GOI dated 02.06.05, DVC has been placed under jurisdiction/control of three Regulatory Commissions viz. CERC – for Generation and Interstate Transmission, WBERC and JSERC – for Distribution and Intrastate Transmission. As directed, DVC has submitted Tariff petition before CERC on 10.06.2005 for tariff approval for the period from 01.04.04 to 31.03.09 after a gap of almost one year two months.

In the previous dispensation DVC was authorized to fix tariff by itself. The Board of DVC consists of representatives from the Central Government and the two participating governments of Jharkhand and West Bengal. DVC had functioned under the above dispensation for the past many years. DVC had also considered the various activities mentioned in para 3 above in a composite manner. DVC did not at any time and rather could never function as an independent electricity utility. The numbers of functions of DVC are governmental functions and cannot by any stretch of imagination be called as commercial activity.

DVC is now required to carry out its activities related to electricity as if it is an independent activity. In the circumstances, without prejudice to other contentions, a transition period to enable DVC to get into the new dispensation is inevitable. The Hon'ble Commission had recognized such transition for Central Sector Utilities such as NTPC Limited, NHPC, Powergrid Corporation Limited for the period till 31st March 2004. The Hon'ble Commission though started exercising jurisdiction over the above Central Public sector utilities effective 1998, the norms as earlier applied by the Central Government was continued to be applied. This was done even though the above companies were commercial entities and were not carrying any social and other activities as in the case of DVC

So long the prime object of DVC as a power utility was to meet the power demand of its command area, as per the DVC Act, with unilateral Tariff fixation authority on more or less cost plus basis. In June 2005 as per the decision of MOP, GOI the normative procedure of CERC for determination of tariff has been stipulated on DVC & that too

with retrospective effect from 01.04.2004. DVC requires an overall Extension & Improvement of the old Plants. Imposition of variable charges on retrospective effect based on the performance norms of CERC since 01.04.2004 will lead to huge loss to DVC against the amount already spent on fuel. DVC should therefore be allowed to continue with the existing tariff for a reasonable period to readjust itself with the tariff norms before enforcement of generation and interstate transmission tariff as may be determined by the Hon'ble Commission. . If otherwise DVC will suffer irreparable loss and prejudice and the same would be against public interest.

The following is therefore prayed before Hon'ble Commission:

- (a) Enforcement of Tariff Award with prospective effect only which was also considered in case of other power utilities in the past by the Hon'ble Commission vide Hon'ble CERC's order dated 21st December,2000 **(Annexure - VI)**.
- (b) Acceptance of DVC's prayer for continuation of the existing Tariff till the year 2007-08 to ensure that the Internal Resources **already committed for the 10th & 11th Plan Projects based on the existing Tariff of DVC** are available for timely commissioning of the on-going Xth & XIth Plan Projects.

❖ Submission II

Debt Equity Principles

The Hon'ble One-Member Bench in its Order dated 05.05.2006 has recommended the actual Capital Structure existing as on March, 2004 as the basis for arriving at the Equity Capital in the Project Cost. The Hon'ble One-Member Bench has also decided to adopt the Approach for the calculation of Tariff under which Equity will not be diminished and will earn return till the end of the life of the Asset. The Hon'ble One-Member Bench has therefore kindly allowed the actual GFA and actual Capital Structure as on 31.03.2004 as the basis for arriving at the Equity Capital. This is also in consonance with the CERC Notification dated 21.12.2000 where it was decided to avoid determining Tariff retrospectively **(Annexure-VI)**. In other words, the Gross Fixed Asset value as on 31.03.2004 has been given due cognizance by the Hon'ble Bench as the Opening COD in respect of the old Projects of DVC taken together and commissioned prior to the year 2000. But while reporting on the actual Capital Structure of DVC as on 31.03.2004, the Commission has not considered Free-Reserves which is essentially a component of Capital Structure and Net-worth Fund of the Owner Governments viz. Central Govt., West Bengal Govt. and Erstwhile Bihar Govt. The Hon'ble Bench has also assumed Depreciation Reserve as a source of fund for Extension & Improvement. In this connection, kind notice of the Hon'ble Commission is drawn to the provisions of Section 30, 31 and 35 of the DVC Act which have clearly identified only two sources of funding the entire Capital required for completion of any Project undertaken by the Corporation viz. Owner's Governments' Capital Fund (Net-worth) and Market Borrowings. Extension

& Improvement is also a Capital Expenditure Scheme as mandated by the Act to be funded from the Owner's Net-worth Fund. Owner's Fund is equivalent to Net-worth, definition of which includes both Capital Investment as well as Free-Reserves and Surplus. A reference may kindly be had to the Schedule IX of the Annual Report of the Corporation for the year 2003-04 where the liabilities of the Participating Governments include the Capital Expenditure incurred on Extension & Improvement Schemes as well.

Depreciation Reserve as a source of fund for Extension & Improvement Scheme as considered by the Hon'ble Bench is, therefore, ultra-vires to the statutory provisions in terms of the DVC Act 1948 which is also not in any way inconsistent with the Electricity Act, 2003 and the Tariff Policy, 2006. This is so because the entire Capital Expenditure whether for new Projects or Extension & Improvement are mandated to be funded by the Participating Governments and only to the extent of any deficit as provided in Section 31 of the DVC Act, Corporation is authorized to raise loan from the Market. In effect, therefore, **Depreciation Reserve has a special characteristic in DVC which is at par with the free-reserves being over and above Sinking Fund Reserve which in case of DVC is statutorily maintained for Loan Repayment in term of the C&AG's approval in consonance with the provisions of the Act. In a departure from the Tariff Policy and Norms, the Hon'ble Bench has also not rightly considered Depreciation Reserves as a source of repayment of loan in due cognizance of the special nature of the Financial Structure of DVC in terms of the Accounting Methods as mandated by the Section 40 of the DVC Act where the Comptroller & Auditor General of India (C&AG) has approved creation of Sinking Fund for the purpose of repayment of loan as distinct from the Depreciation Reserves (Annexure-VII).** The Gross Fixed Assets which is considered by the Hon'ble Bench as deemed COD in respect of the old and live Projects of DVC as on 31.03.2004, has, therefore, been funded mainly by Owner's Net-worth Fund including Reserves with the balance funded from the outstanding loan as on 31.03.2004. The position has been shown in **Annexure-VIII.** **The Sinking Fund is created by way of appropriation of Profit along with compounded interest thereon on annual basis in a manner that will ensure availability of the full amount of loan obligation on the date of maturities as per Accounting Method approved by C&AG in terms of the DVC Act.** On the date of the loan repayment, the equivalent amount of loan repayment on maturity is transferred from Sinking Fund to free Reserves (General Reserve) and Cash released in the process is utilized for repayment of the loan with simultaneous decrease in both Cash Balance and Loan Balance on both sides of the Balance-sheet. To put in a different way, till the loan is discharged, the loan fund backs up the Gross Fixed Assets and **the corresponding Sinking Fund provision remains invested in the business with internal rate of return as per Accounting Method approved by C&AG in terms of the DVC Act.** As soon as the loan is repaid, the Sinking Fund created for discharge of the particular loan is freed and transferred to General Reserves whereupon the latter forms part of the Capital Structure towards funding the Gross Fixed Assets. **The Hon'ble Bench has already taken into cognizance the actual Capital Structure as existing as on 31.03.2004 as the basis for determination of Return on Capital and has not rightly and appropriately opened up the Capital Structures of the past forty years. Annexure-VIII** shows the sources of funding of the Gross Fixed Assets in terms of the aforesaid provisions of the DVC Act 1948 as approved by the Board of the Corporation as well as

consistently certified by the Comptroller & Auditor General of India since the year 1966-67 when DVC switched over from Government Accounting to Mercantile Accounting System.

It need not be emphasised that for the purpose of Debt Equity ratio, General Reserve forms part of the Net-worth i.e. Owner's Fund as per Global Accounting and Statutory provisions. In the event both General Reserves and Depreciation Reserves are free and to the extent these are invested in Gross Fixed Assets, the same has an Opportunity Cost and is, therefore, entitled to same rate of remuneration/return on Capital as it is otherwise available to Capital Account of the Owners. In other words, only to the extent the portion of Reserves is not invested in Gross Fixed Assets and is deployed in some other productive investments it yields return separately. Under the above justifications the portion of Reserves as remains invested in Gross Fixed Assets (Reference – **Annexure-VIII**) is also entitled to a Rate of Return @ 14% Post-Tax. On similar ground, Sinking Fund Reserve which is a Special Reserve ear-marked for repayment of loan on the scheduled date of maturity is transferred to General Reserve on the repayment of loan and, therefore, replaces loan in investment of the Gross Fixed Assets. **Till the time Sinking Fund Reserve remains in the dedicated fund pending loan repayment, the fund earns an internal rate of interest @ 7% p.a. as per Accounting Method mandated by C&AG, pursuant to the DVC Act, 1948.** It is only after transfer of fund from Sinking Fund Reserve to General Reserve for an amount equivalent to loan repayment amount on the date of maturity, it is entitled to a Return at par with Capital Account of the Owner Governments being invested in the Gross Fixed Assets as on 31.03.2004 as Internal Resources. **The eligibility of Internal Resources to earn Return on Equity is also provided for in terms of the CERC Regulation vide Notification No.L-7/25(ii)/2001-CERC dated 26th March, 2001 (Annexure-IX).**

As distinct from the above special nature of the Capital Structure of Damodar Valley Corporation, the Hon'ble One-Member Bench has considered Depreciation Reserves as a source of fund invested in continuance of Life Extension & Improvement (E&I) of the old vintage Units of DVC over the past years. In effect, the Hon'ble Bench has considered Depreciation Reserve as deemed free Reserves. **Even going by the above assumption of the Hon'ble One-Member Bench, Internal Resources as was deemed to be freely available to the Corporation from Depreciation Reserve was invested in the Gross Fixed Assets which includes Capital Expenditure on Extension & Improvement during the past years. Disallowance of both Interest/Return on Depreciation Reserves also goes against the principles of equity and justice on the ground that the same fund has an Opportunity Cost of investing in equivalent amount of Securities/Deposits instead of funding GFA.** The Hon'ble Bench has deducted an element of Depreciation Reserves of Rs 1761 Crores for the year 2003-04 from the GFA – Rs 3544.Crores on the same date and the balance of Rs 1783 Crores has been considered for the purpose of Debt Equity (Capital – Rs 1105 Crores.+ Debt – Rs 678 Crores). The Issue is, however, whether it is correct to knock off Depreciation Reserve in part or in full from the GFA Balance as on 01.04.2004 while arriving at the Debt Equity Structure of the Corporation on that date. By doing so the Hon'ble Bench has, in effect, resorted to the Net Fixed Assets (NFA) Approach, which will otherwise

result to dilution of Net-worth Fund of the Owner's Governments as soon as Cumulative Depreciation Reserves exceeds 70% limit. **This treatment is contradictory to the recommendations of the Commission as referred** in the Opening Statement in Para 38, where the Hon'ble Bench has stated that the Commission has decided to adopt the Approach for the purpose of calculation of Tariff under which the Equity will not be diminished and will earn return till the end of the life of the Asset. On one hand by recommending GFA Approach and on the other hand by exclusion of Depreciation Reserves for the purpose of applying Debt Equity Structure, the Hon'ble Bench has in effect proposed a unique method which neither strictly follows the principles of GFA Approach nor the principles of NFA Approach. **Further, in terms of the recommendation of the Hon'ble Bench, even funding Capital Assets for Extension & Improvement from General Reserves is also essentially eligible for notional return on Equity as per the normative Debt Equity Structure. Instead, the Hon'ble Bench has restricted the Return on Equity only to Capital Account balance and has ignored the component of Free-Reserves which is deployed for funding of the Capital Assets of the Corporation as on 31.3.2004 for the purpose of Return on Equity. In terms of the CERC Regulation dated 26.3.2001 and as earlier allowed to NTPC and others, application of Normative Debt Equity Structure will ensure a sustained Return on Equity on the equity component of the Gross Fixed Assets, except in circumstances where the actual Equity falls below the normative Equity** which is not so in the case of DVC as on 31.3.2004 on the ground that Free-Reserves is also essentially a part of the Owner's Net-worth Fund as per the Global Accounting Principles, Methods and Practices. The omission of Free-Reserves from the Capital Structure by the Hon'ble Bench is, therefore, in violation of all time Global Accounting Standards and Principles and also the CERC Regulation dated 26.3.2001 read with various Orders passed by the Hon'ble Commission pursuant to the same Regulation in favour of the other Petitioners in the past.

The Hon'ble Bench has considered Debt Equity ratio of 70:30 in line with the Regulation 2004 as amended on 03.09.2004 for computation of Tariff for the Tariff Period 2004-09, in respect of its old Capital Assets commissioned prior to the year 2000 i.e. before the CERC Regulation came into existence. The Debt Equity ratio of 70:30 as already explained in the foregoing paragraph requires correction after taking into consideration the component of Free-Reserves which has gone into the funding of the Capital Asset of DVC commissioned prior to the year 2000. Any deviation from the actual composite Debt Equity ratio on Capital Cost as frozen on the cut off date of 31.3.2004 in respect of the old Assets of DVC will also attract opening up of the past years' Tariffs of DVC and revision of the same with retrospective effect since beginning based on the Notional Debt Equity Structure of 70:30 as recommended by the Hon'ble Bench. In the process, the excess of return under the notionally recommended Structure for all the past years over lower return actually recovered through in DVC's past Tariff in those years will now merit recovery from the consumers with compounded interest thereon. This will not be in the interest of the consumers of DVC and will pose higher burden to them on account of past years' Tariff arrears.

In this connection, kind notice of the Hon'ble Commission is drawn to the CERC's Order No L-7/25(5)/2003 – CERC dated 15.5.2006 with respect to the amendment of terms and conditions of Tariff applicability during 1.4.2004 to 31.3.2009. In the same Order, the Hon'ble Commission has already decided not to adopt Debt Equity ratio for the prior period, in the cases of Generating Stations whose Tariff has not been determined by the Hon'ble Commission for the period ending 31.3.2004.

Going by both the principles as actually applicable to DVC due to its special nature by dint of statutory provisions under the DVC Act 1948 and also as presumably considered by the Hon'ble Bench, it goes strongly to establish that loan repayment has been made from free Reserves through Sinking Fund creation which is part of the Owners' Net-worth Fund entitled to earn Return on Opportunity Cost basis. The component of GFA of Rs 2864.57 Crs. has, therefore, been funded from the following sources as on 31.03.2004:-

- (a) Capital Account of the Owner Governments – Rs. 1105.40.crs.
- (b) Reserves - Rs. 1759.17 crs.

It is also in consonance with the principles already considered in the CERC Order No L-7/25(5)/2003 – CERC dated 15.5.2006 wherein it is provided that the Commission may in appropriate cases consider Equity higher than 30% for the purpose of determination of Tariff where the Generating Company/Licensee is able to establish to the satisfaction of the Commission that deployment of Equity of more than 30% was in the interest of general public. **The financial structure of DVC with Owner's Fund as the primary source of Equity has been mandated in the DVC Act, 1948 due to the fact that DVC's Multifarious functions are carried out wholly and largely in public interest. Market borrowing exposure therefore has been mandated as a residual source of Capital so that such large Corporation serving greater cause of public interest is not exposed to uncertain financial risks of winding up due to Bankruptcy at any point of time..**

It is, therefore, prayed before the Hon'ble Commission to allow on actual basis (1)Both Capital and Reserves – Rs 2864.57 crs. (Capital- Rs1105.40 crs. + Reserves- Rs 1759.17 crs.) as equity component of the Gross Fixed Assets of Rs 3543.65.crs. as on 01.04.2004 as per the provisions of the DVC Act read with the Corporation Resolutions from time to time at the beginning of the application of the Electricity Act, 2003 for the purpose of arriving at the appropriate Capital Structure.

On the above basis, the Return on Equity component of COD as on 01.04.2004 at the rate of 14% p.a. Post-Tax works out to Rs 401.04 crs.

The rationale of the above prayer is submitted for kind consideration in the following paragraphs:-

- (i).Damodar Valley Corporation (DVC) has been a statutory body constituted under the Damodar Valley Corporation Act, 1948 (hereinafter `the DVC Act').

- (ii) In terms of the provisions of the DVC Act, the promoter, the owner and the beneficiary are the three participating Governments, namely, the Central Government, the Provincial Governments of West Bengal and Jharkhand (Bihar before reorganization).
- (iii).The status of DVC, the capital contributed by its promoters, participating Governments, the ratio of promoters contribution viz-a-viz loan capital, the status of retained earnings etc are to be decided taking into account the special provisions and the peculiar aspects contained in the DVC Act.

(iv).Section 14 – 4th proviso of the Electricity Act, 2003 reads as under:

“Provided also that the Damodar Valley Corporation, established under subsection (1) of section 3 of the Damodar Valley Corporation Act, 1948 (14 of 1948), shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation”

- (v) It may be noted that the DVC Act has not been repealed by the provisions of the Electricity Act, 2003. The above proviso states that the DVC Act shall continue to apply in so far they are not inconsistent with the provisions of the Electricity Act, 2003.
- (vi) One of the well settled principles is that the statute must be construed harmoniously. The attempt should be to avoid inconsistency and repugnancy. The provisions of one Act should not be read in a manner to make the provisions of another Act redundant. The rule of construction is well settled that when they are in an enactment, the two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both and this is the solemn principle of harmonious construction. Reference in this connection may be made to the decisions of the Hon’ble Supreme Court in the following cases.
- (a) AIR 1958 SC 255 at Page 268
 - (b) AIR 1992 SC 1789 at Page 1794
 - (c) AIR 1997 SC 1006 at Page 1009
- (vii) There is nothing in the Electricity Act, 2003 which provides that the Debt Equity Ratio or the capital structure of an Utility should be determined in a particular manner. The Electricity Act, 2003 also does not make any provision as to what would constitute a share capital or the owners capital and what would be construed as non-owners capital. The Electricity Act, 2003 also does not make any provision in regard to the exclusion of any particular capital. In other words, there is nothing in the Electricity Act,

2003 which deals with the manner in which the Debt Equity Ratio or the shareholding pattern etc will be considered.

- (viii) The Electricity Act, 2003 provides for the regulatory function in the appropriate Commission in regard to matters relating to tariff. This is contained in Sections 61, 62 and 79 of the Electricity Act, 2003 in so far as the Central Commission is concerned. Section 178 of the Electricity Act, 2003 enables the Central Commission to make regulations. In the circumstances the Central Commission can make regulations dealing with the manner in which the Debt Equity Ratio would be considered or what would be taken into account as to the share capital or the owners' capital.
- (ix) In the absence of any specific provision in the Electricity Act, 2003, the special provisions contained in the DVC Act dealing with capital structure etc need to be adopted particularly, in regard to the period prior to the coming into force of the Electricity Act, 2003. These cannot be done only for the period which are added or brought into after the coming force of the Electricity Act, 2003 and its application to DVC prior to the Electricity Act and its application to DVC. In this connection, it is relevant to mention that the DVC was not subjected to regulatory jurisdiction of the Central Commission under the Electricity Regulatory Commissions Act, 1998.
- (x) In view of the above, whatever was the resultant share capital or the owners capital or the owners contribution as per the provisions of the DVC Act, should be taken as the appropriate capital structure at the beginning of the application of the Electricity Act, 2003. The Hon'ble Central Commission had also accepted the above principle in the case of NTPC and other CPSUs where it had adopted the capital structure notified by the Government of India.
- (xi) In the circumstances the accounts of the DVC as on 31.3.2004 should be considered in the light of the DVC Act to determine what was the owners contribution as on that date to decide on the Debt Equity Ratio.
- (xii) The relevant provisions of the DVC Act in regard to the above are Sections 20, 30, 31, 32, 33, 35, 37, 38, 39, 40 and 45. The relevant extracts are contained in **Appendix 'A'**.
- (xiii) In accordance with the DVC Act, the participating Governments, namely, the Central Government, the Governments of West Bengal and the Government of Jharkhand (previously Bihar) have to provide capital to meet the expenditure of DVC in the following manner:
 - (a) Each of the participating Governments are required to provide the entire capital required by the DVC for completion of any project undertaken by DVC (Section 30).

- (b) Each Government to provide its share of capital on the dates specified by the DVC (Section 31).
 - (c) All receipts of the DVC (including capital provided by the participating Governments) are required to be maintained in a fund of the DVC (Section 29).
 - (d) DVC shall have the power to spend such sum as it thinks fit on objects other than irrigation, power and flood control as a common expenditure out of its funds before allocating funds for the three principal objects, namely, irrigation, power and flood control (Section 32).
 - (e) After meeting the expenditure on other objects as provided in Section 32, the expenditure in a project is allocated between irrigation, power and flood control based on the expenditure attributable to the specific object including a proportionate share of overhead and general charges. (Section 33).
 - (f) In regard to power related activities the total amount of capital allocated shall be shared equally between the three participating Governments (Section 35).
 - (g) The net profit arising out of power (after making provisions for depreciation and for reserve) shall be credited to the participating Governments in proportion of their respective share in the capital related to power. The net deficit, if any, in respect of power shall be met by the participating Governments in the same proportion (Section 37).
 - (h) Before deriving at the net profit, the interest on the amount of capital provided by each participating Governments at the rate fixed by the Central Government shall be credited to the participating Governments as expenditure of DVC.
 - (i) Again before deriving at the net profit, the provisions for depreciation and for reserve and other funds shall be made at such rate as may be specified by the Auditor General of India.
- (xiv) In accordance with the above, DVC should be deemed to have been vested in the capital cost of the various power sector projects and the same should be taken in account for the purposes of capital cost as on 31.3.2004 including for the purposes of determination of tariff.
- (xv) As per the audited accounts of DVC for the year ending 31.3.2004, the fixed assets in operation of DVC relating to power object is Rs 3543.65 crores as

appearing in the balance sheet attached to the Annual Performance Report of 2003-04 – Page 73. This would mean that DVC has financed for the power related assets Rs 3543.65 crores.

In this connection, kind attention of the Hon'ble Commission is drawn to the fact that similar deviation was made in case of NTPC while granting Debt Equity ratio of 50:50 to them in the past years, in consonance with the GOI letter dated 24.09.1997 (Annexure-X).

While there may be little relevance of drawing conclusion from the deviation made in case of NTPC allowing them Debt Equity ratio of 50:50 based on the circumstances of their own case, the Issue is that DVC has also prayed before the Hon'ble Commission for deviation from its norms allowing DVC's Return @ 14% p.a. Post-Tax on the actual Owner's Fund and Internal Resources invested in the Gross Fixed Assets as on 31.03.2004.

❖ **Submission III**

Interest on Capital

The provisions of Section 38 of the DVC Act is quoted below :

QUOTE

The Corporation shall pay interest on the amount of the capital provided by each Participating Government at such rate as may, from time to time, be fixed by the Central Government and such interest shall be deemed to part of the expenditure of the Corporation.

UNQUOTE

In addition to the interest on capital of the Owner Governments, Section 37 (1) of the Act stipulates disposal of profits to the Owner Governments, provision of which are quoted below :-

QUOTE

Subject to the provision of sub-section (2) of Section 40, the net profit, if any, attributable to each of the three main objects, namely, irrigation, power and flood control, shall be credited to the participating Governments in proportion to their respective shares in the total capital cost attributed to that object.

UNQUOTE

The aforesaid provisions reflect the unique nature of capital of the Owner Governments in DVC attracting both interest as well a share of profit on the same capital investment.

The Act also provides that provision for depreciation reserve and other funds shall be made by the Corporation at such rates and on such terms as may be specified by the Comptroller & Auditor General of India in consultation with the Central Government. In terms of the same statutory provision, 55% of the profit from power after contribution to the sinking fund is transferred to general reserve and balance 45% is credited to the Owner Government's Account equally. In this connection, it is worth mentioning that the same capital investment amount of the Owner Governments is a perpetual non-refundable loan on one hand and perpetual equity on the other hand and the DVC Act has also no provision of capital reduction. On this platform, the remuneration on capital is partly as interest and partly as return on equity. In strict connotation, both the interest on capital as well as 45% of the profit as explained above are payable to the Owner Governments.

In the above background of the DVC Act and DVC's unique nature of capital as distinct from the companies governed under the Companies Act, 1956, the tariff of DVC merit consideration of interest as payable on capital of the Owner Governments.

Absence of similar statutory mandate on payment of interest/dividend in the case of Companies allows more flexibility to their Dividend pay-out policy and decisions. The Hon'ble Bench while applying same rate of return of 14% p.a. post tax to DVC at par with the companies who has more flexibility in management of profit will put to risk the sustenance of the ways and means of the Corporation in the long run. The situation is further aggravated by disallowance of interest on capital of the Owner Governments as statutorily mandated in terms of the DVC Act. **The financial handicap of DVC in future growth particularly in absence of provision for equity share capital as available in the case of companies under the Companies Act, 1956 deprive DVC from a level playing ground in unfolding its internal resilience, future growth potentials and competitive advantages.**

On the above background, it is prayed before the Hon'ble Commission to allow interest on capital as payable in terms of the Section 38 of the DVC Act, 1948 in addition to 14% post tax return on the same capital investment of the Owner Governments, in terms of the DVC Act, 1948.

❖ **Submission IV**

Interest on Loan

The Hon'ble Bench has recommended computation of the Normative Loan as on March, 2004 by applying the Normative Debt Equity Structure of 70:30 to the Capital Cost as on 31.3.2004 with weighted average rate of interest of the Loan for DVC as a whole.

On the same grounds as explained in the foregoing paragraphs under the Head "Debt Equity Principles", in submission of consideration of Normative Debt Equity Structure of 70:30 will require revision of all the past years' Tariff of DVC since beginning and re-computation of notional interest on 70% Debt component with weighted average rate of interest as ruling on the Loans existing during the respective past years with reference to

the year-wise average GFA balances. This will result in recovery of differential interest annually compounded till the end of 2003-04 from the consumers which will be undoubtedly a huge burden for these consumers by way of arrear Tariff.

The past Orders of the Hon'ble CERC also justify the allowance of Interest on the entire notional Debt component after knocking off notional Equity component from the GFA on the cut off date. This is more so when the Hon'ble Bench in Para 40 of the Order already recommended normative Loan as on March, 2004 and normative Interest thereon by applying the normative Debt Equity Structure to the total Capital Cost with weighted average rate of interest of the Loan for DVC as a whole.

From the petition details as available from the Hon'ble Commission, it appears that the allowance for interest on Loan has been limited to actuals instead of notional computation by applying weighted average rate of interest on 70% of the Gross Fixed Assets balance as on 31.3.2004, which works out to Rs 277.57.crs as against Rs 72.95.crs considered by the Hon'ble Commission.

In the above context, DVC, therefore, prays before the Hon'ble Commission to allow the Debt Equity Structure on actual basis as existing on the cut off date of 31.3.2004, considering Equity which is equivalent to Fund of the Owners and Reserve invested in the Capital Assets of the Corporation as Internal Resources.

❖ **Submission V**

Accumulated Past Liabilities towards Pension Fund, Gratuity Fund & Leave Liability

At the outset DVC submits that the expenses in relation to employees including terminal benefits contributions and outgoings are necessary expenses to be incurred by DVC and therefore should be taken into consideration while determining the tariff. These costs are stranded costs and cannot be ignored as laid down by the Hon'ble Supreme Court in the West Bengal Regulatory Commission Case.

In terms of the observation of the Hon'ble One Member Bench, in Para 45 of the Order dated 29.05.06, DVC has obtained actuarial valuation of Pension & Gratuity Fund liabilities of both its existing employees & pensioners as well as leave liabilities in respect of the existing employees as on 31.03.06. A copy of the Actuarist Report is enclosed in **Annexure XI** for kind reference of the Hon'ble Commission. In terms of the actuarial valuation, the total Pension liabilities towards Pension Fund, Gratuity Fund and Leave Liabilities are as follows :-

A) EXISTING STAFF

I) PENSION LIABILITY - Number of Employees - 11158

a) Accrued Liability - 609.54 Crs.

- b) Future Service Contribution - 19.60%
as percentage of Salary
- II) **GRATUITY LIABILITY** - Number of Employees - 11158
- a) Accrued Liability - 128.39 Crs.
b) Future Service Contribution - 2.48%
as percentage of Salary
- III) **LEAVE LIABILITY**
- a) Accrued Liability - 67.22 Crs.
- B) **VESTED PENSIONER** - Number of Employees - 12464
- a) Accrued Liability - Rs. 903.44 Crs.

Corporation also prays before the Hon'ble Commission to allow **DVC to continue its existing tariff** to create the necessary fund towards Pension & Gratuity Liabilities and provision of leave liabilities in respect of its existing employees and vested pensioners. **However, in this connection, it is worth-mentioning that liabilities towards Pension and Gratuity Fund to the extent provisions are made but remain unfunded will accrue interest thereon payable by DVC during the period it remain also unfunded. By this way, the one-time funding liability of Rs.1709 Crores (approx.) as certified by the Actuarist as on 31.3.2006 will further increase to the extent Interest on non-funded portion accrue thereon. In such an event, if the number of annual instalments for recovery of the fund through tariff happens to be 5 (five) years, the total past provision & gratuity liabilities of Rs. 1709 crores approx. as on 31.3.2006 will get enhanced to Rs. 2100 crores (Approx) as may kindly be seen from the certificate and table annexed thereto by the Actuarist vide his letter dated 14th June,06. placed in **Annexure XII**) and the annual instalment amount as certified by the Actuarist is Rs. 419.98 Crores. Similarly in the event of funding by way of 2 nos., 3 nos. and 4 nos. Annual Instalments, the liability as on 31.3.2006 towards Pension & Gratuity Fund will increase to Rs.1839.83 Crores, Rs.1933.40 Crores and Rs.2018.30 Crores respectively certified by the Actuarist . **This will be over and above the amount already provided under O&M Head in respect of the years 2004-05 & 2005-06 amounting to Rs. 141 crores and Rs 133 crores respectively on account of pension and gratuity already paid to the Pensioners of DVC. This is so because the cut off date of actuarial valuation as per the report enclosed in Annexure XI is 31.03.2006.It would be, therefore, apparent that more the number of instalments for funding the past liabilities towards Pension & Gratuity Fund as on 31.3.2006, the burden on the consumers due to escalation of the fund on account of interest accrued will tend to increase significantly.****

In addition as certified by the Actuarist, Current year's liability Provision on account of Pension & Gratuity fund for existing employees also needs to be recovered in tariff at the rate of 19.60 % & 2.48 % respectively on Annual Salary.

In the light of the foregoing, recovery of Arrear Pension, Gratuity and Leave liabilities of the employees and pensioners of DVC amounting to Rs.1708.60 cr. (approx.) in one instalment or maximum amounting to Rs. 2100 crores through five annual instalments based on Actuarial Valuation (Annexure-XII) is prayed for allowance by the Hon'ble Commission in the tariff which is a Statutory Liability towards Employees & Retirees fund in addition allowance for Current annual provision towards Pension & Gratuity Fund in respect of the existing employees at the rate of 19.60 % & 2.48 % respectively on Annual Salary.

❖ **Submission VI**

Effect of Plant Operational Performance target to be given with effect from 2007-08

The Thermal Units which are capable of turn around with major repair work have also been identified and investment more than Rs.655 cr. has been proposed for improvement of the performance of Bokaro 'B' Thermal Unit Nos. 1 to 3 (210 MW each), Chandrapura Thermal Unit Nos. 1 to 3 (130 MW each) and two Units of 140 MW and 210 MW at Durgapur Thermal Power Station A copy of the Investment Report is enclosed (Annexure – XIII). Since the major repair works have been decided to be carried out during the current year i.e. 2006-07, the CERC Targets of PLF, Heat Rate, Auxilliary Consumption, SOC etc. as set out in the recommendation can be achieved only from 2007-08 onwards. The Operational Performance Target as recommended by the Hon'ble Bench for the year 2004-05 and 2005-06 is, therefore, possible to be achieved only during 2007-08 and 2008-09 respectively.

It is therefore prayed before the Hon'ble Commission for:

Postponement of the applicability of the Plant Operational Norms for the year 2004-05 and 2005-06 as fixed by the Hon'ble One-Member Bench of the Commission for the existing Units of DVC with prospective effect to the years 2007-08 and 2008-09 respectively and onwards as recommended, keeping in view that such improvement will be possible only from the year 2007-08 after the Augmentation & Improvement of the existing Thermal Units which has been initiated during the current year i.e. 2006-07.

❖ **Submission VII**

Allowances of the following expenses under "O&M" Head:

(a) **Arrear Pay & Allowances** :

The arrear Pay & Allowances include a part of increased amount of Pay & Allowances as paid for seven months during the year 1998-99. This is so because the arrear Pay was settled from 01.01.1996 to 31.10.1998 (31 months). Since the base year for computation of the Average O&M includes the year 1998-99 also, the portion of increased Pay & Allowances for the seven months of the year 1998-99 merit consideration of the Hon'ble Commission in the ratio of 7:31. The actual total amount disallowed by the Hon'ble Commission on this account is Rs 3047.43 Lakhs on account of the years 1998-99 to 2002-03 for Thermal, Hydel & Transmission all taken together.

(b) Ad-hoc Payment to Staff and Ad-hoc Payment to Officer:

The Interim Relief paid to the employees pending Pay Revision has been clubbed under the Head "Ad-hoc Payment to Staff and Ad-hoc Payment to Officers". This being the Interim Relief paid, pending final Pay Revision Order, is part of the Revised Pay & Allowances of the employees. The expenditure under both the Heads "Arrear Pay & Allowances" and "Ad-hoc Payment to Staff and Officers" are exclusive to each other, sum total of which represents the increased Pay to the employees. The entire amount of Ad-hoc Pay as paid during the initial seven months of the year 1998-99 prior to settlement of Arrear Pay & Allowances is, on due & drawn basis, therefore, an allowable expenditure under the "O&M" Head which is prayed for consideration by the Hon'ble Commission. The actual total amount disallowed by the Hon'ble Commission on this account is Rs 498.13 Lakhs on account of the years 1998-99 to 2002-03 for Thermal, Hydel & Transmission all taken together.

(c) Adhoc DA Relief

The term has been loosely used in the Accounts in lieu of Fixed DA (FDA). FDA is part of the Revised Pay in terms of the approved Pay Revision Order of the Corporation which has been provided to protect loss of Pay on fixation in Revised Pay-scale and, therefore, is allowable expenditure under the Head "O&M" which is prayed for inclusion by the Hon'ble Commission in the O&M expenses. The actual total amount disallowed by the Hon'ble Commission on this account is Rs 557.46 Lakhs on account of the years 1998-99 to 2002-03 for Thermal, Hydel & Transmission all taken together.

(d) Loss on Stores :

The Corporation was incorporated in the year 1948 by an Act of Parliament (DVC Act No.XIV of 1948). During the initial years the Corporation followed Cash Accounting in Government Pattern and finally switched over to Mercantile Accounting System since the year 1966. The Corporation since then has not provided for the normal loss of inventories in the Revenue Account prior to 2000-01 and onwards when based on reconciliation and C&AG Audit Report, the

accumulated normal losses at each Field Station have been provided for in the Revenue Account. The following table shows the year-wise value adjustment made due to Past years' normal inventory losses at various Power Stations of DVC, the number of years involved and the average yearly incidence of percentage of loss which varies between a range of 0.91% to 3.94%. This being within normal limits of inventory loss strongly merit consideration by the Hon'ble CERC as part of the O&M expenses, in line with practices followed in case of other Utilities:-

| | 2000-01 (Rs. Crores) | 2001-02 (Rs. Crores) | 2002-03 (Rs. Crores) | Percentage of Loss per year |
|-------|-------------------------|-------------------------|-------------------------|--------------------------------|
| BTPS | - | - | 8.00 | 0.91% |
| CTPS | 21.00 | 22.00 | 10.00 | 3.94% |
| DTPS | 4.00 | - | 14.00 | 2.97% |
| Total | 25.00 | 22.00 | 32.00 | 3% |

In addition to the recovery of past years' accumulated normal inventory losses, additional allowance on account of current year's normal losses provision also deserve inclusion as an element of Tariff which may be limited to 3% of the Inventory Value in respect of the five years from 2004-05 to 2008-09.

(e) Honorarium:

Honorarium is paid to the employees for imparting In-house Training. This is an essential part of the expenditure as prevalent in all Organisations for ensuring Human Resource Development. This is, therefore, an allowable business expenditure under O&M and therefore prayed for inclusion in the Tariff. A part of this also includes Extra Shift/ Hours Overtime Payment to the semi-skilled workers which is also an essential part of Business Expenditure. This is, therefore, prayed for consideration of the Hon'ble Commission for inclusion as an element of Tariff. The actual total amount disallowed by the Hon'ble Commission on this account is Rs 29.37 Lakhs on account of the years 1998-99 to 2002-03 for Thermal, Hydel & Transmission all taken together

(f) Disallowance of Overhauling Expenses:

The Hon'ble Commission disallowed Rs 844 Lakhs included in Repair & Maint. expenditure of DTPS in the year 2001-02 . This includes Consumable of Rs 604 Lakhs and balance contractors payment for Annual Overhauling of Unit 4 during the year. Further, the Hon'ble Commission disallowed Rs 689 Lakhs included in Chargeable Expenditure of MTPS in the year 2002-03 . This includes major overhauling expenditure during the period from 23.6.2002 to 28.8.2002 and from 26.10.2002 to 21.12.2002 of unit 2&3 respectively. This is, therefore, prayed for

consideration of the Hon'ble Commission for inclusion as of the above expenditure as normal annual maintenance expenditure in Tariff.

(g) Double Deduction

There is a double incidence of deduction of “ Loss of Stores” once from Administration Head and that apart included in the disallowed expenses and reduce from the O&M for the second time as per the details furnished below :

| (Rs Lakhs) | | |
|------------|----------------|----------------|
| Project | Administration | Loss on Stores |
| CTPS | 1000 | 1000 |
| BTPS | 1496 | 931 |
| DTPS | 1361 | 1361 |
| MTPS | 1023 | 1023 |

It is, therefore, prayed for consideration of the Hon'ble Commission for rectification of the above error in the Order.

(h) Escalation of O&M Expenditure

The Commission has arrived at the O&M Expenditure by averaging the O&M Expenditure as actually incurred during the five years from 1998-99 to 2002-03. The average O&M Expenditure thus arrived at has been considered for the base year as 2000-01 which has been escalated by 4% each year in 2002-03 and 2003-04. Thereafter, no escalation has been allowed in the Tariff period for 2004-05 to 2008-09.

CERC Regulation has allowed escalation in successive years in O&M expenditure per megawatt for the Tariff years 2004-09 which has been disallowed in the case of DVC. Again, the CERC Regulation 2001 allowed 6% escalation in O&M charges every year over the base year. The Hon'ble Bench while passing the order in the case of DVC has disallowed this escalation on the ground of possible savings from rationalization of manpower by way of redeployment or by offering VRS Scheme. While passing the order the Hon'ble Bench ignored the configuration of manpower of DVC where due to historical background of almost six decades emerging from rehabilitation on account of its past projects, a large proportion of manpower who do not have technical and engineering background cannot be redeployed in the new projects which are being set up as per the present Man:MW norm which is more executive oriented. The other opinion of the Hon'ble Bench on VRS Scheme is also not free from uncertainties as has been evinced in many of the public sector units both in the state sector and central sector. This being so, rationalization of manpower in DVC will follow a natural attrition and therefore disallowance of escalation in the

O&M expenditure till savings in real terms accrues to DVC, will adversely affect the ways and means of the Corporation and ultimately its viable operation.

In terms of the CERC Regulation-2001, it is also prayed before the Hon'ble Commission to allow DVC 10% escalation instead of 4% as considered by the Hon'ble Bench for arriving at the O&M Expenditure from the base year 2000-01 to 2003-04.

It is also prayed before the Hon'ble Commission to consider possible savings in manpower only after 11th Plan-end when it will be practically possible for the Corporation to yield savings from Man Power rationalization in a phased manner and to kindly allow 4% escalation in O&M Expenditures each year during the five years Tariff Period 2004-09..

❖ **Submission VIII**

Share of Operating Expenses of Subsidiary Activities :

The Subsidiary Activities of DVC as mandated statutorily in terms of the DVC Act include the following :-

- i) Soil Conservation and Afforestation.
- ii) Public Health and Sanitation.
- iii) Socio-Economic Development.
- iv) Development of Tourism and Navigation.

The above activities are carried out by the DVC in the command area of DVC including villages within 10 KM radius of its command area. These expenditures are in no way different from Rehabilitation expenses that is incurred for development of Power Projects in the Valley. To put in a different way, the sacrifices made by the villagers in terms of land acquisition for the Power Projects adjacent to these villages and within 10 KM radius of the command area of DVC are compensated by DVC as a responsible Corporate Citizen by way of not only Soil Conservation and Afforestation measures but also by way of promoting various upliftment schemes on account of Education, Health, Sanitation, Self-Employment etc. Such expenses are therefore, in the overall interest of the Power Projects set up by DVC within its command area and, therefore, merit strong justification for recovery through Tariff.

Based on the foregoing justifications, it is prayed before the Hon'ble Commission to allow the amount of Rs.19.06 cr. as incurred by DVC on average during five years from 1998-99 to 2002-03 as an element of Tariff.

❖ **Submission IX****Allowance of Return on Capital Assets invested in Direction Office, Central Office and other Offices :**

The following Capital Assets have been disallowed for consideration of Return on 30% thereof on notional basis:-

| | | |
|-------|---|---------------|
| (i) | Central Office- | Rs. 32.85 cr. |
| (ii) | Subsidiary Activities- (Including Soil Conservation) | Rs. 32.24 cr. |
| (iii) | Direction Office- | Rs. 4.56 cr. |
| (iv) | Other Offices- | Rs. 4.86 cr. |

As regards Capital Assets invested in Soil Conservation, the Hon'ble One-Member Bench of the Commission has already allowed the Revenue Expenditure under the "O&M" Head on the ground that Soil Conservation Activities directly benefit the Thermal and Hydel Stations both. This being so, it is implied that Construction Cost of Power Plant would essentially include an ingredient of Capital Cost on account of Soil Conservation Activities which would merit a fair return on Equity Component thereof.

As regards Direction Office and other Offices viz. CTC, CSO etc., the same have been centralized for economy of Capital expenditure as compared to the higher level of expenditure that would have been otherwise incurred if these Offices could had been decentralized at each of the Thermal, Hydel & Transmission Projects. Disallowance of Return on Capital Investment on these Offices would discourage economy of such investment from centralization and will lead to higher level of Capital Cost by way of decentralization of these Offices at each Thermal and Hydel Plant allocations and would tend to increase Tariff by yielding higher return on higher investment. The Central Offices at Maithon are the Field Operational Headquarter with CLD as the monitoring centre which is highly critical for sustained operation of the Power Stations and T&D Network of DVC. Here again Centralisation is always better on the ground of economy of Capital Expenditure which would otherwise be required to be decentralized as these are operational functions by operative labour and therefore part and parcel of the Power Stations and T&D projects. The centralization of these functions at each of the Power Stations and T&D projects would not be desirable which would only tend to further increase the Tariff by way of higher return and higher decentralized investment. Return on Capital Investment is also an essential ingredients which provides for insurance of recovery of Capital cost at current price level or replacement basis. It is, therefore, prayed before the Commission to

review the disallowance of Return on Equity Component of these Central Offices and kindly allow the same in the Tariff of DVC.

The order of the One Member Commission ought to have considered the following salient aspects:

- (i) An electricity utility having different generating station and multifarious activities station cannot operate without necessary support facilities such as procurement, coordination, finance, marketing, commercial facilities for sale of electricity, import of equipment, custom clearance facilities etc. These are facilities necessarily required.
- (ii) In the case of a generating company having number of generating stations, particularly, as in the case of the Appellant which operates eight generating stations at different part of the country, maintaining various facilities commonly for all generating station is an efficient and optimum use of the recourses and in fact, brings economy in the operation of various generating stations as envisaged in Section 61 of the Electricity Act, 2003. Each of the generating station would have incurred significantly higher cost if they had to maintain such facilities by themselves instead of being maintained in common with other generating stations. Incurring of capital expenditure on Corporate Offices, Regional Offices and other Offices is, therefore, in the interest of each generating station and in fact, reduces the capital expenditure to be incurred on each generating station.
- (iii) The provisions of Section 61 deals with the tariff determination principles for the generating companies and not for any individual generating station. Similarly, Sections 62, 64 and 79 of the Act also envisages tariff determination for the generating company and not for any particular generating station. Such determination of tariff for a generating company should encourage efficient, economical use of resources, good performance and optimum investments are the principles to be adopted. Accordingly, incurring capital expenditure to establish common facilities such as corporate offices, regional offices and other offices is clearly envisaged in the provisions of the Electricity Act, 2003 mentioned above as these would be economical use of resources including reduction in various operating expenses (O&M Expenses) concerning the generating station.
- (iv) The Regulations framed by the Central Commission, namely, both the Tariff Regulations, 2001 and Tariff Regulations, 2004 specifically deals with the common facilities of generating stations wherein stage-wise, unit-wise, line-wise, sub-station wise, break-up of capital cost of the project is not available, the Regulations provide that such capital cost be apportioned on the basis of installed capacity. It was, therefore, envisaged maintenance of common facilities and apportionment of cost.

- (v) The Central Commission itself had apportioned the revenue expenditure in regard to various common facilities recognizing that maintenance of such common facilities are an integral part of the operation of the generating station.
- (vi) The maintenance of Corporate Offices, Regional Offices and other facilities are essential to operate and maintain generating stations and not for the purpose of any business other than the said core business. So long the capital expenditure is incurred on the core business, there is a necessity to apportion such capital expenditure amongst various generating stations and such capital expenditure should be serviced.
- (vii) The tariffs for DVC are being determined on a cost plus based system and, therefore, any and every cost necessarily incurred in connection with the generating station, whether exclusively related to the generating station or whether commonly with other generating station, ought to be considered by the Central Commission.

❖ **Submission X**

Revenue Requirement/Development Surcharge/Development Fund

General Comments

A Study on the global phenomenon in the Power Sector will reveal that prudential and reasonable limits in Regulatory Tariff are applicable in respect of both highs and lows where Tariff reduction has also been limited by prudential principles. **One of the objectives of the Tariff Policy is to ensure financial viability of the Sector and attract investment.** In the case of DVC, Tariff reduction beyond 5% in a year prospectively will stalemate the generation of Power and progress of the on-going Projects. This will be largely detrimental not only to the viability of the Corporation but also will go deadly against the interest of the Consumer industries. Even if the consumers have alternate sources of Power, this will also definitely be costlier than the DVC's existing Tariff if a reference is made to the prevailing Tariff which is more than Rs.5.00/Kwh at which the various Power Deficit States presently continue to purchase Power. In such a situation, when DVC is obligated to its existing domestic consumers to supply Power in terms of the Power Purchase Agreements, principles of equity and justice, therefore, strongly goes in favour of continuation of the existing Tariff of DVC at least till the year 2007-08.

It need not be over-emphasised that whatever Expenditure/Interest/Return may be allowed or disallowed by the Hon'ble Commission ignoring the foregoing Submissions, DVC will not be in a position to absorb more than 5% Tariff reduction in a year, if any prospectively. **The Tariff reduction beyond 5% on prospective basis may result in winding up of DVC including its Irrigation and Flood Control activities. This is more so, when DVC is not recipient of Budgetary Support from Central Govt. or any other State Govt functioning**

as an entirely Self-Financing Organisation and the revenue already realised till date is entirely invested/committed for the on-going projects.

Winding up of DVC due to its inability to absorb Tariff shock beyond a reasonable limit will tantamount to a national disaster as the Corporation statutorily mandated to serve Public interest in its commend area, as this will not only paralyze the operations of the Consumer Industries but also in no time is likely to erode the invisible benefits contributed by DVC from Flood Control and Irrigation activities.

DVC has no intention to pass on its inefficiencies to the consumers and is committed to improve its Operational Performance with major repair of its old Thermal and Hydel Units and by way of attaining the best O&M practices in a phased manner. **The only critical issue is that a large Corporation like DVC has a shock absorbing limit. Tariff reduction, if any, in a single year beyond the said limit will not only contradict the Tariff Policy which mandate to ensure financial viability of the Sector but also will lead to winding up of DVC causing a National Disaster as it was formed to serve Public Interest in its Commend area.**

DVC has not revised its Tariff for five years till date since September, 2000. This is so in a scenario where Consumer End Tariffs are increasing nation-wide with large Demand-Supply mismatch. This has been possible for DVC through 'Performance Improvement' over the last five years and with initiation of 'Strategic Cost Management' measures which off-set the escalation in the expenditures over the years. DVC, therefore, prays before the Hon'ble Bench to allow it to continue its existing basic Tariff at least till the year 2007-08 i.e. when all its 10th Plan Projects are scheduled for completion. As against DVC's existing Capital Base of Rs.5400 cr. (approx.) DVC has already invested more than Rs.2500 cr. towards its on-going 10th Plan Projects and is already committed to invest further Rs 6000 cr. for the 11th Plan Projects for Capacity addition of 4500 MW. **In the larger interest of the Consumers, it is, therefore, essential that the viability of the existing plants and on-going Projects and DVC at large is ensured with at least continuation of the existing Tariff till 2007-08.** It is, therefore, prayed before the Hon'ble Bench to allow the Revenue requirement upto the year 2007-08 to garner the required Internal Resources for faithful completion of the on-going Projects or alternately by allowance of Development Surcharge/Fund for retention of the existing Tariff over normative tariff, if any, till 2007-08 for exclusive Investment in the Projects already approved and committed by DVC.

DVC crave leave to add to the contentions mentioned above at the time of hearing