CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 27/RP/2021
in
Petition No. 30/GT/2020

Coram:

Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Date of Order: 4th April, 2023

IN THE MATTER OF

Review of Commission's Order dated 16.9.2021 in Petition No. 30/GT/2020 regarding determination of tariff of Nathpa Jhakri Hydro Power Station (1500 MW) for the period from 1.4.2019 to 31.3.2024.

AND

IN THE MATTER OF

SJVN Limited,
SJVN Corporate Office Complex,
Shanan, Shimla-171006,
Himachal Pradesh **…Review Petitioner**

Vs

1. Punjab State Power Corporation Limited,
   The Mall, Patiala, Punjab – 147001

2. Haryana Power Purchase Centre,
   Shakti Bhawan, Sector-6
   Panchkula, Haryana – 134109

3. Tata Power Delhi Distribution Limited,
   NDPL House, Hudson Lane, Kingsway Camp,
   New Delhi-110019

4. BSES Rajdhani Power Limited,
   2nd Floor, B-Bock, BSES Bhawan
   Nehru Place, New Delhi-110019

5. BSES Yamuna Power Limited,
   3rd Floor, Shakti Kiran Building, Karkardooma,
   Near Court Road New Delhi-110092

6. Jaipur Vidyut Vitran Nigam Limited,
   Vidyut Bhawan, Janpath,
   Jyoti Nagar, Jaipur – 302005, Rajasthan

7. Ajmer Vidyut Vitran Nigam Limited,
   Vidyut Bhawan, Janpath,
   Jyoti Nagar, Jaipur – 302005, Rajasthan

8. Jodhpur Vidyut Vitran Nigam Limited,
   Vidyut Bhawan, Janpath,
   Jyoti Nagar, Jaipur – 302005, Rajasthan

9. Himachal Pradesh State Electricity Board Limited,
   Vidyut Bhawan, Kumar House,
   Shimla – 171004

10. Power Development Department,
    Government of J&K, Civil Secretariat Building,
    Jammu-180001 (J&K)

11. Engineering Department,
    1st Floor, UT Secretariat, Sector 9-D
    Chandigarh-160009

12. Uttar Pradesh Power Corporation Limited,
    Shakti Bhawan, 14 Ashok Marg,
    Lucknow, Uttar Pradesh – 226001

13. Uttaranchal Power Corporation Limited,
    Urja Bhawan, Kanwali Road,
    Dehradun-248001

14. Government of Himachal Pradesh,
    H.P. Secretariat, Shimla-171002

15. Madhya Pradesh Power Management Company Limited,
    Shakti Bhawan, Rampur,
    Jabalpur-482008 **…Respondents**

Parties Present:

Ms. Anushree Bardhan, Advocate, SJVNL
Ms. Surbhi Kapoor, Advocate, SJVNL
Shri Avinash Jakhar, SJVNL
Shri Sanjay Kumar, SJVNL
Shri. Mohit Mudgal. Advocate, BRPL &BYPL
Shri Sachin Dubey, Advocate, BRPL & BYPL
Ms. Aanchal, Advocate, BRPL & BYPL
Shri Abhishekk Srivastava, BYPL

ORDER

The Review Petitioner, SJVNL has filed this Review Petition against the Commission's order dated 16.9.2021 in Petition No. 30/GT/2020 (in short 'the impugned order') whereby, the generation tariff of Nathpa Jhakri Hydroelectric Project (1500 MW) (hereinafter referred to as 'the generating station') for the period 2019-24 was determined in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (in short 'the 2019 Tariff Regulations'). Aggrieved by the impugned order dated 16.9.2021, the Review Petitioner has filed this Review Petition on the ground that there is error apparent on the face of the record, on the following issues:

(A)Deduction of additional capitalization as against the additional capitalization of Rs 49.38 crore claimed during the period 2019-24;

(B) Disallowance of depreciation of corporate office capital expenditure (Construction of Office Building) amounting to Rs 2485.65 lakh claimed as a part of O & M expenses;

(C) Adjustment of depreciation on account of assets de-capitalized has not been considered in line with provisions of the Tariff Regulations 2019 and the salvage value of IT-equipment and software ought to have been considered as 'nil' and 100% value of the assets ought to have been considered as depreciable; and

(D) Error pertaining to the Return on Equity calculations (filed vide affidavit dated 9.2.2022).

Hearing dated 24.2.2022

2. The Review Petition was heard through virtual hearing, on 24.2.2022, on the issues raised in paragraph 1 above and the Commission reserved its order in the matter. However, as the order in the Review Petition could not be passed prior to the Chairperson, Shri P.K.Pujari demitting the office, the Review Petition was re-listed for hearing. The Review Petitioner has filed certain additional information vide affidavit dated 9.2.2022. Reply has been filed by the Respondent, MPPMCL and Respondent BRPL vide their affidavits dated 12.7.2022 and 13.7.2022 respectively.

Hearing dated 14.7.2022

3. The Review Petition was thereafter heard through virtual conferencing, on 14.7.2022. During the hearing, the learned counsel for the Review Petitioner made detailed submissions in the matter. The learned counsel for the Respondent BRPL and the representative of the Respondent, MPPMCL objected to the prayers of the Review Petitioner. The Commission after hearing the parties, reserved its order on 'admissibility' of the Review Petition. However, considering the submissions of the parties, the Review Petition was 'admitted' by order dated 14.8.2022, on the issues raised in paragraph 1 above and notice was issued to all the Respondents.

Hearing dated 6.12.2022

4. Thereafter, the Review Petition was heard on 6.12.2022 and the Commission after hearing the learned counsel for the parties, at length, reserved its order in the matter.

5. Based on the submissions of the parties and the documents on record, we examine the issues raised by the Review Petitioner, in the subsequent paragraphs.

A. Deduction of additional capitalization as against the additional capitalization of Rs 49.38 crore claimed during the period 2019-24;

(a) Deduction of additional capitalization on account of Procurement/ augmentation of CCTV camera:

6. The Petitioner had claimed additional capital expenditure of Rs.30 lakh in 2019-20, towards the Procurement of CCTV cameras for petrol pump stores and colony below NH5 and Rs.30.00 lakh in 2020-21 for Augmentation of CCTV network in the generating station, under Regulation 26(1)(d) of the 2019 Tariff Regulations. However, the Commission, in paragraphs 24 and 31 of the impugned order dated 16.9.2021 had rejected the claims of the Review Petitioner, as under:

“Since the additional capital expenditure claimed is not directly related with the operation of the generating station, the same is not allowed.”

Submissions of the Review Petitioner, SJVNL

7. The Review Petitioner, in the review petition, has submitted that the Commission has deducted the additional capitalization claimed on account of procurement of CCTV cameras amounting to Rs.30.00 lakh in 2019-20 and Rs.30.00 lakh in 2020-21, for the security and safety of generating station and for adequate surveillance to enhance the operational preparedness thereby assisting in crisis situations, based on the recommendations by NSG (the statutory authority responsible for national and internal security) and under Regulation 26(1)(d) of the 2019 Tariff Regulations. It has also submitted that the detailed justification submitted by the Review Petitioner, in the main petition, ought to have been considered by the Commission, before rejecting the said claim.

Reply of the Respondents

8. The Respondent MPPMCL has submitted that the Commission has appropriately disallowed the claim of Review Petitioner towards the procurement of CCTV cameras for petrol pump stores and colony in 2019-20 and for augmentation of CCTV network in 2020-21, since the additional capital expenditure on these heads are not directly related to the operation of generating station. The Respondent BRPL has submitted that the Petitioner can only claim legitimate expenditure which is directly related to the operation of generating station and cannot claim any expenditure, based on ‘cost plus’ mechanism, as the same is subject to prudence check by the Commission.

Rejoinder of the Review Petitioner

9. The Review Petitioner has clarified that the additional capital expenditure for Procurement/Augmentation of CCTV cameras has been claimed under Regulation 26(1)(d) of the 2019 Tariff Regulations, based on the recommendations of NSG (a statutory authority responsible for the security & safety of the power station) and for adequate surveillance to enhance the operational preparedness, thereby assisting in crisis situations. It has also submitted that the safety and security of the generating station, ought to be considered in line with definition of 'the generating station' under the Electricity Act, 2003, to understand as to what would constitute the term 'directly related to the operation of the generating station', as under; :

> *(30) "generating station" or "station" means any station for generating electricity, including any building and plant with step-up transformer, switchgear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and* ***any building used for housing the operating staff of a generating station****, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station;*

<u>Analysis and Decision</u>

10. We have examined the matter. it is noticed that the Commission while passing the impugned order dated 16.9.2021 had disallowed the additional capitalization of this asset, stating that the same is not directly related to the operation of the generating station, without giving any reference of recommendations of NSG. We however, notice that the NSG in its recommendations has indicated the following:

> *(a) Adequate surveillance device (CCTV Camera, Spotter scope) at requisite locations may be catered for to enhance the operational preparedness of the installation thereby assisting operations in crisis situation".*

11. Admittedly, this recommendation of NSG was not taken into consideration while passing the impugned order dated 16.9.2021. This according to us, is an error apparent on the face of the order and review on this ground is maintainable. Considering the fact that the procurement of CCTV cameras, was based on the recommendations of NSG and form part of the security and safety of the generating station, we allow the additional capital expenditure claimed for augmentation of CCTV network. Review on this ground is disposed of accordingly.

(b) Deduction of additional capitalization on account of Procurement of online meters, EV charging stations and Wi-Fi connectivity;

12. The Petitioner had claimed additional capital expenditure towards the Procurement of online energy meter for Rs. 25.00 lakh in 2019-20, Rs. 25.00 lakh in 2020-21, Rs. 25.00 lakh in 2021-22 and Rs.25.00 lakh in 2023-24, for Supply and installation of EV charging stations for Rs. 15.00 lakh in 2019-20 and Rs. 20.00 lakh in 2021-22 and towards Free Wi-Fi connectivity within Jhakri village for Rs. 65.00 lakh in 2019-20, under Regulation 26(1)(b) of the 2019 Tariff Regulations, based on the directives dated 31.8.2018, issued by the Ministry of Heavy Industries and Public enterprises, GOI. However, the Commission in paragraphs 23, 30, 35 and 41 of the impugned order dated 16.9.2021, had rejected the claims of the Review Petitioner and observing as under:

> *"Since the additional capital expenditure claimed is not directly related with the operation of the generating station, the same is not allowed*."

Submissions of the Review Petitioner, SJVNL

13. The Review Petitioner has submitted that it had placed before the Commission, the detailed supporting documents with regard to the above claim, which the Commission ought to have considered and not to have simply rejected the claims, stating that the asset, is not directly related to the operation of the generating station,

and hence disallowed. The Review Petitioner has stated that being a CPSE, it ought to follow the directives of the Department of Public Enterprises. Accordingly, the Review Petitioner has prayed that the Commission ought to consider the said expenditure under Regulation 26(1)(b) of the 2019 Tariff Regulations.

Reply of the Respondent MPPMCL

14. The Respondent MPPMCL submitted that the Review Petitioner has failed to establish that this expenditure pertains to compliance of any existing law or due to change of or any obligatory regulation issued by any statutory authority. Accordingly, the disallowance of the additional capital expenditure on these heads, is in order.

Analysis and Decision

15. We have examined the matter. The additional capitalization claimed by the Petitioner towards the Procurement of online meter, EV charging station and Wi-Fi connectivity were not related to the operation of the generating station. Accordingly, these assets were not allowed for additional capitalization in the impugned order dated 16.9.2021. In our view, there is no error apparent on the face of the order to consider the review of the impugned order on this ground. Accordingly, review on this ground is not maintainable.

(c) Deduction of additional capitalization on account of Installation of Acoustic chamber;

16. The Petitioner had claimed additional capital expenditure of Rs 94.58 lakh in 2019-20 for Installation of acoustic chamber/enclosure for Turbine Pits and Draft Tube Cone Pits of 06 nos. 250 MW Turbine on the ground that the same is essential to reduce the noise level and for safety and health hazards of the occupants, under Regulation 26 (1) (others). However, the Commission in paragraph 27 of the

impugned order dated 16.9.2021 had rejected the above claim of the Review Petitioner observing as under:

> *"Since the additional capital expenditure claimed is not directly related with the operation of the generating station, the same is not allowed*."

Submissions of the Review Petitioner, SJVNL

17. The Review Petitioner has submitted that the Commission ought to have considered the additional capitalization claimed for Installation of acoustic chamber / enclosure for the Turbine Pit & Draft Tube Cone Pit of 6 nos. 250 MW turbine of the generating station in 2019-20, based on the justifications furnished by the Review Petitioner. It has also submitted the following:

> *"The turbines generate high noise when in operation. This high intensity of noise makes the work environment hazardous for nearby working O&M Staff. In addition, since noise is also a form of vibration, these vibrations affect the working efficiencies of various sensors installed around the machines. The reliability of machine parameters depends greatly upon these sensors. Therefore, curtailing the vibrations to reach these sensors is very important. This is greatly benefitted by installation of acoustic chambers/ enclosure for the Turbine Pits & Draft Tube Cone Pits. It is to also mention that earlier to acoustic enclosures, it was difficult to assess the problems in associated auxiliary systems of machines like pumps, motors, transformers etc. because high noise of turbines used to interfere with the sound of other components. So, to detect any abnormality of auxiliary components based upon sound/ vibration observation was not possible. This problem is also eliminated after installation of acoustic chambers/ enclosure for the Turbine Pits & Draft Tube Cone Pits. In view of above, the installation of acoustic chambers/ enclosure for the Turbine Pits & Draft Tube Cone Pits is directly related to the operation of the generating station and this Hon'ble Commission ought to have allowed the above expenditure."*

Reply of the Respondent MPPMCL

18. The Respondent MPPMCL has submitted that the additional capital expenditure is not directly related with the operation of generating plant. It has further submitted that the Review Petitioner has not mentioned the specific clause under which the said expenditure has been claimed and therefore the Commission has rightly disallowed the additional capital expenditure.

Rejoinder of the Review Petitioner

19. The Review Petitioner has mainly submitted that the Installation of acoustic chambers/ enclosure for the Turbine Pits & Draft Tube Cone Pits is directly related to the operation of the generating station and hence the Commission ought to have allowed the said expenditure claimed.

Analysis and Decision

20. We have examined the matter. it is noticed that the Commission while passing the impugned order dated 16.9.2021 had disallowed the additional capitalization of this asset, stating that the same is not directly related to the operation of the generating station. However, from the submissions of the Review Petitioner, it is evident that the justification furnished by the Review Petitioner, in the main petition, has escaped the attention of the Commission, while passing the impugned order rejecting the claim of the Review Petitioner. In view of this, there is error apparent on the face of the order and review on this ground is maintainable. From the nature of the asset / work claimed by the Review Petitioner, we, prima facie notice, that the asset/work, form part of the original scope of the project. However, in order to examine as to whether the expenditure claimed is towards replacement of the existing asset or for installation of a new asset, we grant liberty to the Review Petitioner, to claim the actual expenditure at the time of truing-up of tariff, along with proper justification/ relevant documents, in support of the same and the dealt with on merits keeping in view the relevant regulations. Issue No.(A) is disposed of in terms of the above.

(B) Disallowance of depreciation of Corporate office capital expenditure (Construction of Office Building) amounting to Rs 2485.65 lakh claimed as a part of O & M expenses

21. The Commission in paragraph 70 of the impugned order dated 16.9.2021 had held as under:

> *"70. As regards the expenditure on account of Corporate Office Building and other Offices and other heads which were not allowed by the Commission, the expenditure under this head was for capitalization of solar plants at various locations. The Commission while disallowing the expenditure had observed that the asset will reduce the O&M expenses of the generating station. As O&M expenses have been allowed for the generating station on a normative basis, the claim of the Petitioner for additional O&M expenses on this count is not allowed for the 2019-24 tariff period."*

Submission of the Review Petitioner, SJVNL

22. The Review Petitioner has submitted that the Commission has not included the depreciation of Corporate office capital expenditure (Construction of Office Building) while computing the O & M Expenses. It has also submitted that depreciation of Corporate office capital expenditure (Construction of Office Building) as a part of the O & M expenses, had been claimed by the Review Petitioner, in line with the order dated 26.4.2006 in Petition No.3/2006, while dealing with the recovery of fixed charges on account of capital expenditure at the various offices of NTPC, for the period 2004-09. It has further stated that a reference to order dated 26.4.2006 has also been given by the Commission in the tariff order dated 20.6.2014 in Petition No. 168/GT/2013 for the period 2009-14, wherein it was held in paragraph 21 (a) that only the O&M expenses (including depreciation) incurred is allowed to be recovered by way of allocation of the Corporate O&M expenses to the various plants of the Review Petitioner, under operation. Further, it is clarified that the said expenditure does not include expenditure for capitalization of solar plants at various locations, as stated by Hon'ble Commission in para 70 of the impugned order dated 16.9.2021. The Review Petitioner has further submitted that the additional capitalization on account of Corporate office (Construction of Office Building) has not been allowed as claimed under O&M Expenses for the period 2019-24 contrary to the directions of the Commission in its earlier orders dated 26.4.2006, 20.6.2014 and 19.7.2019. The

Review Petitioner has stated that in view of the above submissions, the Commission may please allow the amount of Rs 2485.65 lakh related to the depreciation of Corporate office capital expenditure (Construction of Office Building) as a part of the O & M expenses for the period 2019-24.

Submission of the Respondents

23. The Respondent MPPMCL has submitted that the O&M expenditure is allowed strictly on normative basis and therefore the Commission has rightly disallowed the same. The Respondent BRPL has submitted that the Commission in the impugned order dated 16.9.2021 has clearly mentioned that the expenditure on account of Corporate Office Building and other offices was for capitalization of solar plants at various locations. It has added that the value base for the purposes of depreciation as per Regulation 33(2) of the 2019 Tariff Regulations, is the capital cost of the asset admitted by the Commission and not the O&M expenses, and accordingly there is no error apparent on the face of the record on this issue.

Analysis and Decision

24. We have examined the matter. As regards the claim of the Review Petitioner for Corporate Office expenses, the Commission while approving the tariff of the generating station of the Review Petitioner, for the period 2014-19, had vide order dated 19.7.2019 in Petition No. 314/GT/2018 observed as under:

> *"The Commission in its order dated 26.4.2006 in Petition No. 3/2006 had disallowed the expenditure on creation of " Corporate office and other offices" of NTPC and the same was affirmed by the Appellate Tribunal for Electricity. Accordingly, the capitalization claimed is not allowed."*

25. The Review Petitioner had claimed the expenditure related to Corporate office, as additional O&M expenses for the period 2019-24 and submitted as under:

> *"69. ….It has also submitted that the Corporate Office capital expenditure was not charged to P&L A/c as per Accounting Standards. Referring to the order dated*

20.6.2014 in Petition No. 168/GT/2013, the Petitioner has submitted that corporate office expenses have been claimed (as depreciation) based on the balance useful life of the generating station under O&M expenses, in line with the order dated 26.4.2006 in Petition No.3/2006."

26. The aforesaid claim of the Review Petitioner was however rejected, as mentioned in paragraph 21 above. It is observed that the Review Petitioner, in the main petition, has claimed certain other items for capitalization, other than for capitalization of solar plants, at various locations pertaining to corporate office. However, while passing the impugned order, had taken note of only the capitalization for solar plants, while inadvertently, due to oversight, failed to note the other items of expenditure under this head. This according to us, is an error apparent on the face of the order and review on this ground is maintainable. However, it is noticed from the submissions of the Review Petitioner in the main petition that the items claimed as additional O&M expenses have not been reconciled / identified, as items which were not allowed for capitalization, in the earlier orders. In view of this, the rectification of the impugned order dated 16.9.2021, cannot be undertaken in this order. Accordingly, the Petitioner shall, at the time of truing-up of tariff of the generating station, furnish proper reconciliation of the claims / items claimed under additional O&M expenses, for consideration of the Commission. Issue No (B) is disposed of in terms of the above.

(C) <u>Adjustment of depreciation on account of assets de-capitalized has not been considered in line with provisions of the Tariff Regulations 2019 and the salvage value of IT-equipment and software ought to have been considered as 'nil' and 100% value of the assets ought to have been considered as depreciable; and</u>

Submissions of the Review Petitioner, SJVNL

27. The Review Petitioner has submitted that the Commission, while calculating depreciation, in paragraph 64 of the impugned order dated 16.9.2021, had not

considered the following: (i) the salvage value of IT equipment and software had to be considered as ‘nil’ and 100% value of the assets ought to have been considered depreciable in terms of Regulation 33 (3) of the 2019 Tariff Regulations. It has also submitted that, in addition to the above, the adjustment of depreciation on account of assets de-capitalized has not been considered in line with Regulation 33 (8) of the 2019 Tariff Regulations. The Review Petitioner has further submitted that reference in may be made to order dated 26.9.2021 in Petition No.220/GT/2020, in respect of Ramgundam STPS, Stage-III, of NTPC, wherein adjustment of depreciation on account of assets de-capitalized has been made. Accordingly, the Review Petitioner has submitted that the depreciation for this generating station may be re-computed in line with the above submissions.

Submission of the Respondents

28. The Respondent MPPMCL and the Respondent BRPL have submitted that the Commission has appropriately computed depreciation in terms of Regulation 33 of the 2019 Tariff Regulations.

Analysis and Decision

29. We have examined the matter and the calculations therein. It is observed that the depreciable value (in Form-12) has been considered as per proviso to Regulation 33(3) of the 2019 Tariff Regulations. Though the submissions of the Review Petitioner in Form-12 of the main petition, were taken note of in the impugned order, however while calculating depreciation, the proviso to Regulation 33(3) of the 2019 Tariff Regulations was overlooked, which resulted in the depreciable value of 90% of the capital cost, being allowed with a salvage value of 10% on IT Assets. This according to us, is an inadvertent error and the same is required to be rectified in

review. Hence, review on this ground is maintainable. Accordingly, in terms of the proviso to Regulation 33(3) of the 2019 Tariff Regulations, the depreciable value on IT Assets shall be considered as 100% (instead of 90% considered in the impugned order), for the purpose of tariff. Further, the adjustment on account of de-capitalization and add-cap allowed under para 12 of the instant order has been considered. Accordingly, the Depreciation allowed in paragraph 64 of the impugned order dated 16.9.2021 stands revised, as under:

(Rs. in lakh)

	2019-20	**2020-21**	**2021-22**	**2022-23**	**2023-24**
Opening Capital Cost (A)	886426.68	881377.33	880966.92	878518.57	878301.37
Closing Capital Cost (B)	881377.33	880966.92	878518.57	878301.37	876609.89
Average Capital Cost (C=(A+B)/2)	883902.01	881172.13	879742.74	878409.97	877455.63
Freehold Land Value (D)	7319.78	7419.78	7469.78	7533.38	7533.38
Value of software and IT equipment included in average capital cost (E)	1882.71	1902.71	1902.71	1902.71	1902.71
Weighted Average Rate of Depreciation (%) (F=K/C)	0.991%	1.009%	1.006%	1.011%	1.008%
Depreciable Value (G=90% of (C-D-E)+E)	789112.27	786567.38	785235.93	783979.20	783120.29
Balance Life (H)	25.12	24.12	23.12	22.12	21.12
Cumulative Depreciation beginning (I)	569095.00	572009.03	580496.33	587540.41	596229.01
Remaining Depreciable value (J= G-I)	220017.27	214558.35	204739.60	196438.78	186891.28
Depreciation during the period (K= J/H)	**8757.50**	**8894.24**	**8854.26**	**8879.28**	**8847.64**
Cumulative Depreciation (L=I+K)	577852.50	580903.27	589350.59	596419.69	605076.66
Less Adjustment on Account of De-capitalization (M)	5843.48	406.94	1810.18	190.68	1167.54
Net Cumulative Depreciation (N=L-M)	**572009.03**	**580496.33**	**587540.41**	**596229.01**	**603909.12**

30. The normative loan for the project has already been repaid. The normative loan on account of admitted additional capital expenditure during the respective years of the tariff period has been considered as paid fully, as the admitted depreciation is more than the amount of normative loan in these years. As such, the Interest on loan during the 2019-24 tariff period is ‘nil’.

Issue No. (c) is disposed of as above.

(D) Error pertaining to the Return on Equity calculations

Submission of the Review Petitioner, SJVNL

31. The Review Petitioner vide affidavit dated 9.2.2022, has submitted that the Commission while computing the Return on Equity (ROE), had not considered the grossing up of ROE ,as per Regulation 31 of the 2019 Tariff Regulations. with the effective tax rate (i.e. MAT including surcharge and cess as applicable to the Review Petitioner at the rate of 17.472%) of the respective financial year in respect of the additional capitalization after the cut-off date and beyond the original scope of work, excluding the additional capitalization due to change in law.

Submission of the Respondent MPPMCL

32. The Respondent MPPMCL submitted that the Commission has appropriately computed ROE in terms of Regulation 30 (2) of the 2019 Tariff Regulations.

Analysis and Decision

33. We have examined the matter. Regulation 30 and Regulation 31 of the 2019 Tariff Regulations provide as under:

> *"30. Return on Equity*
>
> *(1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with Regulation 18 of these regulations.*
>
> *(2) Return on equity shall be computed at the base rate of 15.50% for thermal generating station, transmission system including communication system and run-of river hydro generating station, and at the base rate of 16.50% for the storage type hydro generating stations including pumped storage hydro generating stations and run-of river generating station with pondage:*
>
> *Provided that return on equity in respect of additional capitalization after cut-off date beyond the original scope excluding additional capitalization due to Change in Law, shall be computed at the weighted average rate of interest on actual loan portfolio of the generating station or the transmission system;*
>
> *Provided further that:*

i. In case of a new project, the rate of return on equity shall be reduced by 1.00% for such period as may be decided by the Commission, if the generating station or transmission system is found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO) or Free Governor Mode Operation (FGMO), data telemetry, communication system up to load dispatch centre or protection system based on the report submitted by the respective RLDC;

ii. in case of existing generating station, as and when any of the requirements under (i) above of this Regulation are found lacking based on the report submitted by the concerned RLDC, rate of return on equity shall be reduced by 1.00% for the period for which the deficiency continues;

iii. in case of a thermal generating station, with effect from 1.4.2020:

a) rate of return on equity shall be reduced by 0.25% in case of failure to achieve the ramp rate of 1% per minute;

b) an additional rate of return on equity of 0.25% shall be allowed for every incremental ramp rate of 1% per minute achieved over and above the ramp rate of 1% per minute, subject to ceiling of additional rate of return on equity of 1.00%:

Provided that the detailed guidelines in this regard shall be issued by National Load Dispatch Centre by 30.6.2019.

31. Tax on Return on Equity:

(1) The base rate of return on equity as allowed by the Commission under Regulation 30 of these regulations shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid in respect of the financial year in line with the provisions of the relevant Finance Acts by the concerned generating company or the transmission licensee, as the case may be. The actual tax paid on income from other businesses including deferred tax liability (i.e. income from business other than business of generation or transmission, as the case may be) shall be excluded for the calculation of effective tax rate.

(2) Rate of return on equity shall be rounded off to three decimal places and shall be computed as per the formula given below:

Rate of pre-tax return on equity = Base rate / (1-t)

Where "t" is the effective tax rate in accordance with clause (1) of this Regulation and shall be calculated at the beginning of every financial year based on the estimated profit and tax to be paid estimated in line with the provisions of the relevant Finance Act applicable for that financial year to the company on pro-rata basis by excluding the income of non-generation or non-transmission business, as the case may be, and the corresponding tax thereon. In case of generating company or transmission licensee paying Minimum Alternate Tax (MAT), "t" shall be considered as MAT rate including surcharge and cess.

Illustration-
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(c) Effective Tax Rate for the year 2019-20 = Rs. 240 Crore/Rs. 1000 Crore = 24%;

(d) Rate of return on equity = 15.50/ (1-0.24) = 20.395%.

(3) The generating company or the transmission licensee, as the case may be, shall true up the grossed up rate of return on equity at the end of every financial year based on actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2019-24 on actual gross income of any financial year. However, penalty, if any, arising on account of delay in deposit or short deposit of tax amount shall not be claimed by the generating company or the transmission licensee, as the case may be. Any under-recovery or over-recovery of grossed up rate on return on equity after truing up, shall be recovered or refunded to beneficiaries or the long term customers, as the case may be, on year to year basis."

34. In our view, once ROE is allowed, the income tax liability arising out of such returns provided on the admitted equity of the project, considered for the purpose of tariff are to be borne by the beneficiaries. Accordingly, the rate of return on equity is required to be grossed up at the effective tax rate, for passing on the income tax liability in tariff. As per proviso to Regulation 30 of the 2019 Tariff Regulations, the ROE in respect of the additional capitalization, after the cut-off date, and beyond the original scope of work, excluding the additional capitalization due to change in law, shall be computed at the weighted average rate of interest (WAROI) on actual loan portfolio of the generating station. However, as per Regulation 31 of the 2019 Tariff Regulations, the ROE is required to be grossed up with the effective tax rate of the respective financial year. We, therefore, are of the view that there is error apparent on the face of the order and the same is required to be rectified. Accordingly, review on this ground is maintainable.

35. Based on the above findings, the table under para 53 of the impugned order dated 16.9.2021, pertaining to the net additional capital expenditure allowed, stands revised as under:

(Rs. in lakh)

	2019-20	**2020-21**	**2021-22**	**2022-23**	**2023-24**
Additions allowed during the year (a)	3863.49	206.72	250.00	63.60	0.00
Deletions considered during the year (b)	0.00	0.00	0.00	0.00	0.00
Exclusions in deletions	(-)8912.84	(-) 617.14	(-) 2698.35	(-) 280.79	(-)1691.48

	2019-20	2020-21	2021-22	2022-23	2023-24
not allowed (c)					
Net additional capital expenditure allowed (d)=(a)-(b)+(c)	**(-) 5049.35**	**(-) 410.42**	**(-) 2448.35**	**(-) 217.19**	**(-) 1691.48**

Capital cost

36. Accordingly, the capital cost allowed for the period 2019-24 under para graph 54 of the impugned order dated 16.9.2021, stands revised as under:

(Rs. in lakh)

	2019-20	2020-21	2021-22	2022-23	2023-24
Opening Capital Cost (a)	886426.68	881377.33	880966.92	878518.57	878301.37
Net additional capital expenditure allowed during the year/period (b)	(-)5049.35	(-)410.42	(-)2448.35	(-)217.19	(-)1691.48
Closing Capital Cost (c)=(a)+(b)	**881377.33**	**880966.92**	**878518.57**	**878301.37**	**876609.89**

Return on Equity

37. Based on the above discussion, the bifurcation of the net additional capital expenditure within the original scope of work and beyond the cut-off date, excluding additional capitalization due to change in law shown under para 59 and ROE allowed in paragraph 60 of the impugned order dated 16.9.2021 stands revised as under:

(Rs. in lakh)

	2019-20	2020-21	2021-22	2022-23	2023-24
Additional capital expenditure allowed	3863.49	206.72	250.00	63.60	0.00
Additional capital expenditure within the original scope of work and due to change in law	153.70	120.00	50.00	63.60	0.00
Additional capital expenditure beyond original scope of work excluding change in law	3709.79	86.72	200.00	0.00	0.00

(Rs. in lakh)

	2019-20	2020-21	2021-22	2022-23	2023-24
Opening Equity (A)	416705.70	414077.96	413928.82	413134.32	413069.16
Total addition due to	1159.05	62.02	75.00	19.08	0.00

	2019-20	2020-21	2021-22	2022-23	2023-24
Capitalization (B)					
Addition due to capitalization within scope of work (C)	46.11	36.00	15.00	19.08	0.00
Addition due to capitalization beyond scope of work (D)	1112.94	26.02	60.00	0.00	0.00
Addition due to un-discharged liability (E)	0.00	0.00	0.00	0.00	0.00
Assumed Deletions (F)	0.00	0.00	0.00	0.00	0.00
Un-discharged liability (G)	0.00	0.00	0.00	0.00	0.00
Exclusion in deletion not allowed (H)	(-)2673.85	(-)185.14	(-)809.50	(-)84.24	(-)507.45
Closing Equity (I =A+C+E+F+G+H)	414077.96	413928.82	413134.32	413069.16	412561.71
Base rate (%) (J)	16.500	16.500	16.500	16.500	16.500
Effective Tax rate (%) (K)	17.472	17.472	17.472	17.472	17.472
Effective ROE rate (%) (L)	19.993	19.993	19.993	19.993	19.993
Return on Equity for Original scope (M = Average(A+I) x L)	**83050.18**	**82772.59**	**82678.25**	**82592.32**	**82535.08**
Addition due to Capitalization beyond scope of work					
Opening Equity (A)	0.00	1112.94	1138.95	1198.95	1198.95
Addition due to Capitalization beyond scope of work (B)	1112.94	26.02	60.00	0.00	0.00
Closing Equity (C = A+B)	1112.94	1138.95	1198.95	1198.95	1198.95
Average Equity (D)	556.47	1125.95	1168.95	1198.95	1198.95
Rate of return for additional capitalization beyond original scope (i.e. weighted average rate of interest approved by the Commission vide order dated 22.5.2019 in Petition No. 309/GT/2018) (%) (E)	8.850	8.850	8.850	8.850	8.850
Effective Tax rate (%) (F)	17.472	17.472	17.472	17.472	17.472
Effective ROE rate (%) (G)	10.724	10.724	10.724	10.724	10.724
Return on equity for additional capitalization beyond the original scope (H = D x G)	59.68	120.75	125.36	128.58	128.58
Total Return on Equity (I)	**83109.86**	**82893.33**	**82803.61**	**82720.89**	**82663.65**

Interest on Working Capital

38. In view of the above, the Interest on working capital allowed in paragraph 76 of the impugned order dated 16.9.2021 is revised as follows:

(Rs. in lakh)

	2019-20	2020-21	2021-22	2022-23	2023-24
O&M Expenses for working capital	3037.56	3182.36	3334.06	3492.99	3659.49
Maintenance Spares for working capital	5467.62	5728.25	6001.31	6287.38	6587.09
Receivables for working capital	16141.98	16375.14	16568.19	16805.03	17002.42
Total	**24647.16**	**25285.75**	**25903.56**	**26585.40**	**27249.00**
Rate of interest for Working Capital	12.050%	11.250%	10.500%	10.500%	10.500%
Interest on working capital	**2969.98**	**2844.65**	**2719.87**	**2791.47**	**2861.15**

Annual Fixed Charges

39. Accordingly, the annual fixed charges for the period 2019-24 as allowed in paragraph 77 of the impugned order dated 16.9.2021 stands revised as under:

(Rs. in lakh)

	2019-20	2020-21	2021-22	2022-23	2023-24
Depreciation	8757.50	8894.24	8854.26	8879.28	8847.64
Interest on Loan	0.00	0.00	0.00	0.00	0.00
Return on Equity	83109.86	82893.33	82803.61	82720.89	82663.65
O&M Expenses	36450.78	38188.34	40008.71	41915.87	43913.93
Interest on Working Capital	2969.98	2844.65	2719.87	2791.47	2861.15
Total	**131288.12**	**132820.56**	**134386.46**	**136307.50**	**138286.36**

Note: (1) All figures are on annualized basis. All figures under each head have been rounded. The figure in total column in each year is also rounded. As such, the sum of individual items may not be equal to the arithmetic total of the column in the order.

40. Review Petition No. 27/RP/2021 in Petition No.30/GT/2020 is disposed of in terms of the above.

Sd/-	Sd/-	Sd/-
(Pravas Kumar Singh)	**(Arun Goyal)**	**(I.S. Jha)**
Member	**Member**	**Member**