

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 3/RP/2023
in
Petition No. 145/GT/2020

Coram:

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

Date of Order: 27th December, 2023

In the matter of

Review of the Commission's order dated 30.11.2022 in Petition No. 145/GT/2022 in the matter of revision of tariff for the period 2014-19 and determination of tariff for the period 2019-24 in respect of Chamera-I Hydroelectric Power Station (540 MW).

And

In the matter of

NHPC Limited,
NHPC Office Complex, Sector-33,
Faridabad (Haryana)- 121003

.....Petitioner

Vs

1. Punjab State Power Corporation Limited,
The Mall, Near Kali Badi Mandir,
Patiala - 147 001 (Punjab)
2. Haryana Power Purchase Centre,
Shakti Bhawan, Sector – 6,
Panchkula-134 109 (Haryana).
3. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110 019.
4. BSES Yamuna Power Limited,
Shakti Kiran Building, Karkardooma, Delhi-110 072.
5. Tata Power Delhi Distribution Limited,
33 kV Sub-Station Building, Hudson Lane,
Kingsway Camp, New Delhi-110 009.



6. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House,
Shimla - 171 004 (H.P).
7. Uttar Pradesh Power Corporation Limited,
Shakti Bhavan, 14, Ashok Marg,
Lucknow - 226 001 (U.P).
8. Ajmer Vidyut Vitaran Nigam Limited,
Old Powerhouse, Hatthi Bhatta, Jaipur Road,
Ajmer - 305 001 (Rajasthan)
9. Jaipur Vidyut Vitaran Nigam Limited,
Vidyut Bhawan, Janpath, Jaipur - 302 005
10. Jodhpur Vidyut Vitaran Nigam Limited,
New Powerhouse, Industrial Area,
Jodhpur - 342 003 (Rajasthan).
11. Uttaranchal Power Corporation Limited,
Urja Bhawan, Kanwali Road,
Dehradun – 248 001 (Uttarakhand).
12. Engineering Department,
1st floor, UT Secretariat, Sector 9-D,
Chandigarh – 160 009.
13. Power Development Department,
New Secretariat, Jammu -180 001 (J&K)

...Respondents

Parties Present:

Shri Bharat Gangadharan, Advocate, NHPC
Shri Siddharth Nigotia, Advocate, NHPC
Ms. Simran Saluja, Advocate, NHPC
Shri R.D. Sharde, NHPC
Shri Piyush Kumar, NHPC
Shri Mohit K. Mudgal, Advocate, BRPL
Shri Sachin Dubey, Advocate, BRPL
Ms. Aachal, Advocate, BRPL

ORDER

The Review Petitioner, NHPC Limited, had filed Petition No. 145/GT/2020 for truing up of tariff of Chamera-I Hydroelectric Power Station, 540 MW (in short “the generating station”) for the period 2014-19, in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (in short



'the 2014 Tariff Regulations) and for determination of tariff of the generating station for the period 2019-24, in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (in short 'the 2019 Tariff Regulations) and the Commission vide its order dated 30.11.2022 (in short 'the impugned order') had disposed of the same. Aggrieved by the impugned order, 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. *Error in disallowing the additional capital expenditure for the period 2014-19 and for the period 2019-24:*
- (i) *Disallowance of additional capital expenditure on account of purchase of CCTV camera amounting to Rs. 24.97 lakh during 2014-17 (Rs. 9.32 lakh in 2014-15, Rs. 0.89 lakh in 2015-16 and Rs. 14.76 lakh in 2016-17);*
 - (ii) *Disallowance of additional capitalisation for replacement of Sequential Event Recorder amounting to Rs. 52.91 lakh in 2017-18;*
 - (iii) *Disallowance of construction of Sewage Treatment Plant for Executive field hostel/transit camp amounting to Rs. 6.80 lakh in 2018-19;*
 - (iv) *Disallowance of Security Hut for newly built executive field hostel amounting to Rs. 4.70 lakh in 2019-20;*
 - (v) *Disallowance of Replacement of Motor Control Panel for Booster Pump, Drainage Pump and Main Cooling Water Pump amounting to Rs. 111.50 lakh during 2019-24;*
 - (vi) *Disallowance of Hospital Equipment's amounting to Rs. 26.00 lakh for 2019-24 (2021-22 Rs. 16.50 lakh, 2022-23 Rs. 5.80 lakh, 2023-24 Rs. 3.70 lakh);*
- B. *Error in the disallowance of impact of Goods & Services Taxes (GST) for the period 2014-19;*
- C. *Error in allowance of interest on arbitration cases as additional O&M expenses in place of additional capital expenditure for the periods 2014-19 and 2019-24; and*
- D. *Error in the adoption of incorrect methodology and disallowance of the impact of wage revision for the periods 2014-19 and 2019-24.*

Hearing dated 27.4.2023

2. The Review Petition was heard on 27.4.2023 and the Commission, after considering the submissions of the learned counsel of the Petitioner, reserved its order



on “admissibility” of the Review Petition. Accordingly, based on the submissions of the Review Petitioner, we proceed to examine the issues raised by the Review Petitioner in the subsequent paragraphs:

A. Error in disallowing the additional capital expenditure for the period 2014-19 and for the period 2019-24:

(i) Disallowance of additional capital expenditure on account of purchase of CCTV Camera amounting to Rs. 24.97 lakh during 2014-19 (Rs. 9.32 lakh in 2014-15, Rs. 0.89 lakh in 2015-16 and Rs. 14.76 lakh in 2016-17)

3. The Commission vide the impugned order dated 30.11.2022, had disallowed the additional capital expenditure claimed by the Review Petitioner towards Purchase of CCTV camera for the period 2014-19 as under:

“For the period 2014-15 (Item 1, Page 67 of the Impugned Order)

“.... It is also observed that the Petitioner has claimed Rs.9.32 lakh towards cameras (fixed network camera - Rs.5.62 lakh and PTZ network camera - Rs. 3.7 lakh) purchased in the year 2020–21. Accordingly, the claim of Rs.24.91 lakh towards Boundary wall of 20 quarters, guest house related expenses and CCTV is not allowed...”

For the period 2015-16 (Item 2, Page 75 of the Impugned Order)

“The item has been dealt with in item no. 1 in 2014-15. It is observed that the Petitioner has claimed Rs. 0.89 lakh towards cameras purchased in 2020-21. Accordingly, an, expenditure of Rs. 6.61 lakh (Rs 7.50-Rs 0.89) is allowed towards Security and Surveillance in 2015 -16 under Regulation 14(3)(iii) of the 2014 Tariff Regulations”

For the period 2016-17 (Item 1, Page 81 of the Impugned Order)

“This item has already been dealt with in item no. 1 in 2014-15 and in item no. 2 in 2015-16. In 2017-18. Since the claim of the Petitioner for Rs 14.76 lakh towards Camera, relate to the year 2020-21, the same is not allowed.”

Submissions of the Review Petitioner

4. The Review Petitioner has submitted that it has purchased the CCTV cameras for surveillance in the generating station, for Rs. 9.32 lakh, Rs. 0.89 lakh and Rs. 14.76 lakh during the years 2014-15, 2015-16 and 2016-17, respectively and had prayed for additional capitalization of the same. The Review Petitioner has further submitted that Regulation 14(3)(iii) of 2014 Tariff Regulations provides for additional capital expenditure towards Security & Surveillance and in Petition No. 237/GT/2014 filed for determination of tariff for the generating station for the period 2014-19, the Commission



vide order dated 4.9.2015 had allowed the projected additional capital expenditure of Rs. 70.00 lakh claimed by the Petitioner for 'Security and Surveillance'. The Review Petitioner has also submitted that in the original petition, it had claimed the actual additional capital expenditure against these approved items and it has also furnished the supporting documents vide compliance report dated 21.6.2021. Accordingly, the Review Petitioner has submitted that the Commission has erred in disallowing the expenditure for purchase of CCTV by linking the purchase of cameras during the period 2014-19 under the mistaken understanding that the same was done in 2020-21.

Analysis and Decision

5. The matter has been considered. The Review Petitioner, in the Review Petition, has submitted that the Commission has erred in disallowing the additional capital expenditure for Purchase of CCTV by mistakenly understanding that the said purchase was done in 2020-21, which is incorrect. It is observed that Commission vide its order dated 4.9.2015 in Petition No. 237/GT/2014 had allowed an additional capital expenditure of Rs. 70.00 lakh towards the installation of CCTV, water scanners, security devices such as HHMD, Dragon lights etc during the period 2014-19. However, the Commission while passing the impugned order dated 30.11.2022, observed that a total amount of Rs. 24.97 lakh (i.e Rs. 9.32 lakh in 2014-15, Rs. 0.89 lakh in 2015-16 and Rs. 14.76 lakh in 2016-17) towards Purchase of Cameras related to the year 2020-21, which was claimed in 2014 -19 and accordingly, the claim of the Petitioner was restricted / disallowed. However, the Review Petitioner has now stated that the expenditure claimed in 2014-19 pertains to 2014-19, but not associated with the period 2019-24. On reviewing the submissions, it is noted that the Review Petitioner has provided an additional information that the claims made in 2019-24 are for obsolete and replaced with cameras purchased in 2020-21, which was not relevant for the claims for the period



2014-19, and the same led to an incorrect finding in the order. Considering the above, the inference made in the impugned order dated 30.11.2022 is required to be reviewed. Accordingly, the prayer of the Review Petitioner for review of the impugned order on this count is admitted.

(ii) Disallowance of additional capitalisation for replacement of Sequential Event Recorder amounting to Rs. 52.91 lakh in 2017-18.

6. The Commission in the impugned order dated 30.11.2022 had disallowed the claim of the Review Petitioner towards Replacement of Sequential event recorder for 2017-18, with the following observation:

(Item-9, Page 94 & 95 of the Impugned Order)

“Considering the fact that the expenditure incurred is in the nature of tools and tackles, the claim is not allowed under first proviso of Regulation 14(3) of the 2014 Tariff Regulations.”

Submissions of the Review Petitioner

7. The Review Petitioner has submitted that it had purchased the Sequential event recorder for Rs. 52.91 lakh in 2017-18 and had prayed for additional capitalization of the same, but Commission in its impugned order had erred in disallowing the expenditure on the ground that the same was in the nature of ‘tools and tackles’. The Review Petitioner has submitted that the claim was made under Regulation 14 (3)(viii) of the 2014 Tariff Regulations, which provides for additional capital expenditure incurred for any additional work which has become necessary for the successful and efficient plant operation. The Review Petitioner has further submitted that the Sequential event recorder is an equipment/device, which is used for recording and reporting each and every event of the generating station, on a continuous basis, with respect to Power plant monitoring and control units, which enables the Review Petitioner to identify the reasons of tripping and mal-operations, after confirming with Disturbance Recorder (DR)/Event Logger (EL). It has further stated that the CEA (Grid Standards) Regulations, 2007 and



CEA (Technical Standards for Connectivity to Grid), 2010 provides for disturbance recorder and event logger and data of these equipment's shall be shared with RLDC. The Review Petitioner has added that such report to RLDC requires the Sequential event recorder also and therefore the 'said asset is not in the nature of 'tools or tackles', but is an important equipment for the functioning of the generating units. Accordingly, the Review Petitioner has submitted that the Commission had erred in disallowing the said claim towards Sequential event recorder.

Analysis and Decision

8. The matter has been examined. It is noted that the Review Petitioner has claimed the said item under Regulation 14(3)(viii) of the 2014 Tariff Regulations and the Commission vide impugned order dated 30.11.2023 had disallowed the same considering the same to be in the nature of tools and tackles, in terms of the first proviso to Regulation 14(3) of the 2014 Tariff Regulations. As the claim of the Review Petitioner has not been examined under Regulation 14(3)(viii) of the 2014 Tariff Regulations, as claimed, the prayer of the Review Petitioner for review of the impugned order on this count is admitted.

(iii) Disallowance of construction of Sewage Treatment Plant for Executive field hostel/transit camp amounting to Rs. 6.80 lakh in 2018-19

9. The Commission in the impugned order dated 30.11.2022 had disallowed the claim of the Review Petitioner towards the Cost of construction of Sewage Treatment Plant in 2018-19, as under:

(Item no. 8, Page 100 of the Impugned order)

"The item has already been dealt with in item no. 6 in 2017-18. It is noticed that the additional capital expenditure claimed is Rs. 4.46 lakh on cash basis (Rs. 6.80 on accrual basis) towards the Construction of Septic Tank (STP) for field hostel, which is a new claim and is over and above the amount of Rs. 321.02 lakh allowed towards the construction of executive filed hostel/transit camp. Accordingly, the claim of the Petitioner is not allowed."



Submissions of the Review Petitioner

10. The Review Petitioner has submitted that it had constructed the Sewage Treatment Plant (STP) for the Executive field hostel/transit camp at the generating station, for Rs. 6.80 lakh in 2018-19 and had claimed the additional capitalization of the same, which was disallowed by the Commission in the impugned order. The Review Petitioner has further submitted that in order dated 4.9.2015 in Petition No. 237/GT/2014, an amount of Rs. 300.00 lakh was allowed for the Construction of Executive field hostel/transit camp in 2015-16 with the observation that the same was *“allowed under Regulation 14(3)(viii) as the work has been approved works by the Commission in order dated 12.7.2013.”* It has further been submitted that while carrying out the said work for Construction of Executive field hostel, the award for Construction of the Executive Field hostel and STP were awarded separately by the Review Petitioner, and the same was also brought to the notice of the Commission. The Review Petitioner has also submitted that in terms of the award, the Executive field hostel was completed in 2017-18 for Rs. 314.22 lakh and thereafter, the Construction of STP was completed in 2018-19 for Rs.6.80 lakh (4.46 lakh on cash basis). Accordingly, it has pointed out that the Commission had allowed the Cost for construction of Executive field hostel i.e., Rs. 291.82 lakh in 2017-18 in the impugned order dated 30.11.2022, but erroneously disallowed the claim of the Review Petitioner for Construction of STP for the Executive field hostel, mistakenly proceeding on the basis that the same was a new claim, and not covered under the permitted expenses for Construction of Executive field hostel and the same is an error apparent on face of record. Accordingly, the Review Petitioner has submitted that the claim for Rs. 6.80 lakh for Construction of STP for Executive field hostel/transit camp may be allowed as it is against the asset approved vide order dated 4.9.2015 in Petition No. 237/GT/2014.



Analysis and Decision

11. The matter has been examined. It is noticed that the Review Petitioner in Petition No. 145/GT/2020 had claimed additional capital expenditure for Rs. 314.20 lakh towards the 'Construction of Executive field hostel/transit camp' in 2017-18 and Rs. 6.80 lakh towards 'Sewage Treatment Plant for Executive field hostel / transit camp' in 2018-19. In justification for the same, the Review Petitioner had submitted that the Commission had allowed the projected additional capital expenditure of Rs. 300 lakh towards the 'Construction of Executive field hostel/transit camp' and the proposal for Construction of Executive field hostel and STP were different. Accordingly, the Executive field hostel was completed in 2017-18 and same was put to use in the said year. Prior to completion of STP, the mode of disposal was through Septic Tank which form part of the Executive field hostel. Therefore, the expenditure of Rs. 314.22 lakh for Main building was capitalized in the books of account in 2017-18. Subsequently, the Construction of STP was completed in 2018-19 and the same was capitalized in 2018-19. The Commission while passing the impugned order dated 30.11.2022, noticed that the additional capital expenditure claimed for Rs. 4.46 lakh on cash basis (Rs. 6.80 on accrual basis) for Construction of STP for field hostel, was a new claim, which was over and above the expenditure allowed for the Construction of Executive filed hostel / transit camp and therefore, the said claim of the Petitioner was disallowed.

12. The Review Petitioner has submitted that STP works were part of Construction of Executive Field Hostel only but the works were awarded separately. In this regard, it is noted that considering the information provided by the Review Petitioner in original petition and cost claimed thereof, it was inferred that the construction of STP was a new work and over and above the works allowed for construction of filed hostel. However,



considering the submissions of the Review Petitioner, the prayer of the Review Petitioner for review of the impugned order on this count is admitted.

(iv) Disallowance of Security Hut for newly built executive field hostel amounting to Rs. 4.70 lakh in 2019-20

13. The Commission in the impugned order had disallowed the claim of the Review Petitioner for Rs. 4.70 lakh towards the Construction of Security hut for the newly built Executive field hostel in 2019-20, as under:

(Item no. 7, Page 135-136 of the Impugned order)

“The proposed expenditure pertains to security hut for executive field hostel. However, the documents submitted in support of the claim is only an internal noting, which does not satisfy the requirements under Regulation 26(1)(d) of 2019 Tariff Regulations. Hence, the claim of the Petitioner is not allowed.”

Submissions of the Review Petitioner

14. The Review Petitioner has submitted that it had claimed an expenditure of Rs. 4.70 lakh towards the Construction of a Security hut for the newly built Executive field hostel in 2019-20. The Review Petitioner has also submitted that though as per Regulation 26(1)(d) of the 2019 Tariff Regulations, the additional capitalisation on account of need for higher security and safety of the plant as advised or directed by appropriate Indian Government Instrumentality or statutory authorities responsible for national or internal security is permissible, the Commission has erred in disallowing the said claim, thereby failing to appreciate that the generating station has a high threat perception. The Review Petitioner has stated that the Commission in its order dated 4.9.2015 in Petition No. 237/GT/2014 had observed that there is a high threat perception for the Review Petitioner’s plant, as concluded by the Intelligence Bureau. The Review Petitioner has further stated that it claimed the expenditure for Construction of the Security hut for newly built Executive field hostel for Rs. 4.70 lakh in 2019-20 based on the available document i.e., internal noting for the same. The Review



Petitioner has added that based on a similar internal noting, it had claimed expenditure for Construction of Boundary wall at CISF complex (KCT Camp) at Khairi (*Item No. 5, Page 135, Impugned Order*) and for Construction of Roof top Morcha for CISF at Dam (*Item No. 6, Page 135, Impugned Order*) in 2019-20, which was allowed under Regulation 26 (1)(d) of the 2019 Tariff Regulations, with the direction to submit the documents at the time of truing up. Accordingly, the Review Petitioner has submitted that the Commission may review the impugned order by allowing the expenditure for Construction of Security hut for newly built Executive field hostel for Rs. 4.70 lakh in 2019-20, with liberty to the Review Petitioner to submit the relevant supporting documents at the time of truing up of tariff.

Analysis and Decision

15. The matter has been considered. It is observed that the Review Petitioner, in the main petition (Petition No. 145/GT/2020), had claimed expenditure for Rs. 4.70 lakh towards 'Security hut for newly built Executive field hostel' in 2019–20 and in justification for the same had submitted that a new field hostel was built near TRT and it has no security post and therefore, it has proposed to build a Security post for the Executive field hostel. However, the Commission on prudence check, vide the impugned order dated 30.11.2022, observed that since the documents furnished by the Review Petitioner, in support of the claim, were only an internal noting, the same does not satisfy the requirements of Regulation 26(1)(d) of 2019 Tariff Regulations and accordingly disallowed the said claim.

16. The Review Petitioner while pointing out that the Commission in its order dated 4.9.2015 in Petition No. 237/GT/2014 had observed that there is high threat perception for the generating station, has submitted that Commission was therefore aware of the



security and safety concerns of the generating station and had allowed the expenditure for 'Construction of Boundary wall at CISF Complex (KCT Camp) at Khairi' and the 'Construction of Roof top Morcha for CISF at Dam' during the period 2014-19 based on internal noting, with directions to submit the relevant supporting documents including IB report etc., to substantiate the said claim, at the time of truing-up of tariff. In our view, the additional capital expenditure based on an internal noting of the Review Petitioner does not meet the requirements under Regulation 26(1)(d) of the 2019 Tariff Regulations. Also, the expenditure allowed towards CISF complex/ Morcha for CISF at Dam based on recommendations of CISF/IB, cannot be a ground for consideration of the expenditure towards Security hut for field hostel. The Commission having consciously disallowed the additional capital expenditure for Rs. 4.70 lakh in 2019-20, the same cannot be reviewed based on the submissions of the Review Petitioner, on merits. In our view, there is no error apparent on the face of the impugned order, and hence review on this count is not maintainable.

(v) Disallowance of Replacement of Motor Control Panel for Booster Pump, Drainage Pump and Main Cooling Water Pump amounting to Rs. 111.50 lakh during 2019-24;

17. The Commission in the impugned order dated 30.11.2022 had disallowed the claim of the Review Petitioner, as under:

(Item Nos. 5&6 at Page 147-148 and Item No. 3 at Page 156 of the Impugned order)

"It is evident from the Petitioner's submission that the expenditure claimed is towards energy conservation during the start of booster pump but not on account of obsolescence. Accordingly, the claim of the Petitioner is not allowed."

Submissions of the Review Petitioner

18. The Review Petitioner has submitted that it had claimed expenditures of Rs. 23.00 lakh, Rs. 43.50 lakh and Rs. 45.00 lakh for 2021-22, 2021-22 and 2022-23, respectively towards the Replacement of Motor control panel of Pumps, under Regulation 25(2)(c) of the 2019 Tariff Regulations, which provides for admissibility of expenditure for



replacement of assets deployed under the original scope of the existing project after cut-off date, if the replacement of such asset or equipment is necessary on account of obsolescence of technology. The Review Petitioner has also submitted that it had duly submitted that “...the body of existing panels has also been worn out due to their installations in high humidity zone” and as per the de-capitalization value furnished in Form-9B(i), it was clearly indicated that old control panels installed with mother plant during 1994 had already completed 28 years i.e., their useful life. It has further submitted that the Commission had erred in failing to take note that the expenditure was not on account of obsolescence as the motors sought to be replaced had completed their useful life and are outdated, apart from having become worn out. Therefore, the Review Petitioner has submitted that the Commission erred in disallowing the claim of the Review Petitioner for replacement of the control panels, which are sought to be replaced with high efficiency new generation control panels, which will also benefit the beneficiaries of the plant as was detailed in the Petition. Accordingly, the Review Petitioner has prayed for allowing the cost of Replacement of control panels for Rs. 111.15 lakh in 2021-22 and 2022-23.

Analysis and Decision

19. The Review Petitioner, in the main petition, had claimed a total expenditure of Rs. 111.50 lakh towards the Replacement of motor control panels for various motors i.e. Rs. 23 lakh towards Replacement of motor control panel for 6 no. of 40 HP booster pumps in 2021-22; Rs. 43.50 lakh towards the Replacement of motor control panels for 4 no. of 50 HP drainage pumps, 4 no. of 27 HP drainage pumps and 1 no. of 120 HP drainage pumps in 2021-22; and Rs. 45 lakh towards the Replacement of motor control panel of 6 no. of 100 HP main cooling water pumps in 2022-23. In justification for the same, the Review Petitioner had submitted that the existing starter panels of motors



were of Direct on-line (DOL), wherein, the motor draws very high inrush current and leads to mechanical stresses on winding and bearings and that these existing panels were proposed to be replaced with soft / VFD panels, wherein, the inrush current reduced by 1/3rd which results in less mechanical stress, reduced O & M expenses and AFC etc, and will be beneficial to beneficiaries. Based on the above submissions, the Commission in the impugned order dated 30.11.2022 observed that the expenditure claimed is towards Energy conservation during starting of the subject pumps but, not on account of obsolescence. It was also observed that the claim for 2022-23 was after 25 years of plant operation and would not yield much benefit and accordingly these claims were not allowed.

20. In our considered view, Regulation 25(2)(c) of the 2019 Tariff Regulations provides for replacement of an asset on account of obsolescence of technology, but not otherwise. The submission of the Review Petitioner that the body of existing panels has also been worn out due to their installations in high humidity zone to justify review, cannot be considered as obsolescence of technology under Regulation 25(2)(c) of the 2019 Tariff Regulations. As regards the submissions of the Review Petitioner that the claim would result in reduced O&M expenses and AFC thereof and therefore will benefit the Respondents, we note that the O&M expenses are allowed on normative basis, and no benefit is passed onto the beneficiaries on this count. Also, the reliance placed on Form 9B(i) is also not acceptable, as it is observed that the decision to allow any additional capital expenditure is based on the information furnished in the additional capital expenditure i.e. Form 9A, and not based on information furnished in Form 9(B)(i). In this background, the submissions of the Review Petitioner are not acceptable. We therefore find no error apparent on the face of the impugned order, to permit review on



this count. Accordingly, the prayer of the Review Petitioner to review the impugned order on this count is not maintainable.

(vi) Disallowance of Hospital Equipment's amounting to Rs. 26.00 lakh for 2019-24 (2021-22 Rs. 16.50 lakh, 2022-23 Rs. 5.80 lakh, 2023-24 Rs. 3.70 lakh)

21. The Commission, in the impugned order, had disallowed the total claim of the Review Petitioner for Rs. 26.00 lakh (Rs. 16.50 lakh in 2021-22, Rs. 5.80 lakh in 2022-23 and Rs. 3.70 lakh in 2023-24) towards the Purchase of hospital items, with the following observations:

"It is noticed that the Petitioner has claimed Rs. 8.70 lakh in 2020-21 towards the replacement of hospital equipment, Rs. 22.30 lakh during the period 2019-24 towards hospital equipment (Rs. 16.50 lakh in 2021-22 and Rs. 5.80 lakh in 2022-23 and Rs. 3.70 lakh in 2023-24) towards purchase of hospital equipment. It is observed that during the period 2014-19, the Petitioner had claimed total amount of Rs. 39.02 lakh (Rs. 18.57 lakh towards purchase of hospital equipment and Rs. 18.94 lakh (Rs. 20.45 lakh on accrual basis) towards the replacement of hospital equipment's and for various equipment's of hospital and the same were allowed by the Commission. The projected claim of the Petitioner is over and above the amount of Rs. 39.02 lakh already allowed during the period 2014-19 and is in addition to claim for replacement of hospital equipment's during the period 2019-24. The Petitioner has also not substantiated the need for the said expenditure with supporting documents. In view of this, the claim of the Petitioner is not allowed."

Submissions of the Review Petitioner

22. The Review Petitioner has submitted that it had claimed Rs. 26.00 lakh (Rs. 16.50 lakh in 2021-22, Rs. 5.80 lakh in 2022-23 and Rs. 3.70 lakh in 2023-24) for the Purchase of Hospital items, under Regulation 25(2)(a) of the 2019 Tariff Regulations. Further, the Review Petitioner had claimed expenditure for Rs. 26.00 lakh towards the Purchase of Hospital equipment during the period 2019-24 with the following justification:

- a) Since the commissioning of the project hospital, several medical equipment were purchased for betterment of medical facility. Due to continuous R&D and application of information technology to clinical purpose, new instruments are available which have intelligent functions and are more accurate.
- b) The existing dental chair was purchased in 1999 (20 yrs. ago) and spare parts are not readily available as model has become obsolete. The ECG machine was purchased in 2014-15 and after 5 years, it will be 10 years old. Oxygen cylinder and auto clave were purchased in 1990-91 and in 2003-04 respectively.



- c) Purchase of Crash cart, BMI calculator, digital video auto clave, Computerized Radio Grapy (CR) system, automated external Defibrillator, centrifuge and digital hemoglobin, ambulance auto loader emergency stretcher drawers & cabinets examination couch, physiotherapy Laser Therapy unit, IFT (Interferential Therapy) Tens lead, Mortuary I body with stainless steel chamber for medical purpose, CPR Manikan with AED trainer etc. are also required for upgradation of hospital.

23. The Review Petitioner has submitted that the Commission had disallowed the projected expenditure for Replacement of Hospital equipment, on the ground that the said claim was over and above the amount of Rs. 39.02 lakh already allowed during the period 2014-19 and is in addition to the claim for Replacement of Hospital equipment's during the period 2019-24 and that the Review Petitioner had also not substantiated the need for the said expenditure with supporting documents. The Review Petitioner has further submitted that it had duly submitted the documents in support of the claim and that the equipment sought to be replaced had become obsolete and therefore their useful life was not commensurate with the useful life of the Review Petitioner's Plant, and that these old assets are not being used and case of survey off has not been initiated yet while indicating that the deletion claimed in 2020-21 was available in Form 9B(i) as submitted. Accordingly, the Review Petitioner has submitted that the Commission has erred in disallowing the said claim.

Analysis and Decision

24. The Review Petitioner in the original Petition had claimed additional capital expenditure of Rs. 16.50 lakh in 2021-22 and Rs. 5.80 lakh in 2022-23 and Rs. 3.70 lakh in 2023-24 towards the 'Purchase of hospital equipment's'. Considering the justification furnished by the Review Petitioner, as above, the Commission vide the impugned order observed that the Review Petitioner has claimed Rs. 39.02 lakh in 2014-19 and Rs. 12.40 lakh in 2019-24 towards the Purchase of hospital equipment



and for the replacement of hospital equipment which were allowed. However, the claim for additional expenditure of Rs. 22.30 lakh towards hospital equipment was over and above the expenditure of Rs. 39.02 lakh in 2014-19 and Rs. 12.40 lakh in 2019-24, allowed towards hospital expenditure and the Review Petitioner had also not substantiated the need for the said expenditure with supporting documents. It is noticed that the Commission vide its order dated 4.9.2015 in Petition No. 237/GT/2014, had on projection basis, allowed the expenditure of Rs. 2.45 lakh towards the Purchase of hospital equipment' and Rs. 30.55 lakh towards the 'replacement of hospital equipment' in 2014-19, whereas, the Review Petitioner in the original Petition, had claimed expenditure for Rs. 18.57 lakh towards 'purchase of hospital equipment' and Rs. 20.45 lakh towards the 'replacement of hospital equipment' for the period 2014-19; Further, the Review Petitioner had claimed projected expenditure of Rs. 8.70 lakh towards 'replacement of hospital equipment'; Rs. 3.70 lakh towards 'purchase of hospital equipment'; and Rs. 22.30 lakh towards 'hospital equipment', wherein, Rs. 8.70 lakh was allowed towards 'replacement of hospital equipment' but the projected claims for Rs. 3.70 lakh towards 'purchase of hospital equipment'; and Rs. 22.30 lakh towards 'hospital equipment' were disallowed.

25. It is noticed that in para 10.47, the Review Petitioner has submitted that 'replacement of hospital equipment' were disallowed, whereas, the same were allowed in order dated 30.11.2022. If the expenditure claimed are for 'purchase of hospital equipment' and 'Hospital equipment' for the period 2019-24, it is observed that the claims of the Review Petitioner for Rs. 3.70 lakh towards 'Purchase of Hospital equipment' is over and above the allowed claim for Rs. 18.57 lakh during the period 2014-19, as against the expenditure for Rs. 2.45 lakh allowed vide order dated 4.9.2015, for the period 2014-19. As regards 'Hospital equipment', it is noticed that this



claim is new and is also over and above the claims already allowed towards the 'replacement of hospital equipment' during the periods 2014-19 and 2019-24 and for the 'purchase of hospital equipment' in 2014-19. Accordingly, the Commission on prudence check, disallowed the expenditure for Rs. 3.70 lakh towards the 'purchase of hospital equipment' and Rs. 22.30 lakh towards 'Hospital equipment' in 2019-24. As regards the reliance placed on Form 9B(i), it is pointed out that the decision to allow any additional capital expenditure on prudence check, is based on the information furnished in Form 9A and not based on Form 9(B)(i). In our considered view, the Review Petitioner has sought to reargue the case on merits, which is not permissible in review. We therefore find no error apparent on the face of the impugned order, and review on this count is not maintainable. Accordingly, the prayer of the Review Petitioner is rejected. Issues in 'point (A)' are disposed of as above.

B. Error in disallowance of impact of GST for the period 2014-19

26. The Review Petitioner had claimed the reimbursement of additional tax paid due to implementation of GST Act, 2017 in respect of generating station as additional O&M expenses. However, the Commission in the impugned order had disallowed the same as under:

'46. The matter has been considered. It is observed that the Commission while specifying the O&M expense norms for the 2014-19 tariff period had considered taxes to form part of the O&M expense calculations and, accordingly, had factored the same in the said norms. This is evident from paragraph 49.6 of the SOR (Statement of Objects and Reasons) to the 2014 Tariff Regulations, which is extracted hereunder:

"49.6 With regards to suggestion received on other taxes to be allowed, the Commission while approving the norms of O&M expenses has considered the taxes as part of O&M expenses while working out the norms and therefore the same has already been factored in..."

47. Further, the escalation rates considered in the O&M expense norms under the 2014 Tariff Regulations is only after accounting for the variations during the past five years of the 2014-19 tariff period, which in our view, takes care of any variation in taxes also. It is pertinent to mention that in case of reduction of taxes or duties, no reimbursement is ordered. In this background, we find no reason to allow the prayer for grant of additional O&M expenses towards payment of GST'



27. The Review Petitioner has submitted that the enactment of the GST Act, 2017 amounts to a 'change in law' event under the 2014 Tariff Regulations and therefore, the Review Petitioner is entitled to the claims raised by it towards impact of GST.

Analysis and Decision

28. The matter has been considered. It is observed that the Commission while framing the O&M expense norms for the period 2014-19 had considered the escalation rates in O&M expenses, which include the variations in taxes for the past five years. In this background and placing reliance on the SOR to the 2014 Tariff Regulations, the Commission, by a conscious decision had disallowed the claim of the Review Petitioner on this count. It is also noticed that the Review Petitioner has challenged this issue before the APTEL and the same is pending consideration. In view of this, the review sought by the Review Petitioner is not maintainable. Issue (B) is disposed of as above.

C. Error in allowance of the interest on arbitration cases as additional O&M expenses in place of additional capital expenditure for the periods 2014-19 and 2019-24.

29. The Commission, in the impugned order had rejected the claim of the Review Petitioner on this count as under:

"53. We have considered the matter. Regulation 14(3)(i) of the 2014 Tariff Regulations provides the additional capital expenditure incurred for existing generating station in respect of "Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law". In this case, the principal amount of Rs.186.30 lakh has been allowed as additional capitalization. However, the Commission is of the view that the interest amount of Rs.301.90 lakh, instead of being capitalized, shall be allowed as a onetime reimbursement as additional O&M expenses. Further, the interest amount of Rs.301.90 lakh allowed as above, shall not be made part of the annual fixed charges determined in this order."

Xxxxxx

"105. It is further observed that the Petitioner vide affidavit dated 21.6.2021, has also claimed principal amount of Rs.178.27 lakh along with interest charges of Rs.890.91 lakh in 2019-20 towards the claim for arbitration cases settled, along with documentary evidence. The principal amount of Rs.178.27 lakh has been allowed as additional capitalization during 2019-20, while the interest amount of Rs.890.91 lakh is allowed as an one-time reimbursement, as additional O&M expense, in line with paragraph 53 above of this order. Further, the interest charges of Rs.890.91 lakh shall not be made part of the annual fixed charges determined in this order."



Submissions of the Review Petitioner

30. The Review Petitioner has submitted that it had claimed the additional capitalization on account of arbitration cases with respect to work associated with M/s HCC, M/s CCL and M/s. GEML, but the Commission in the impugned order had allowed only the principal amount as additional capital expenditure, while allowing the interest amount as additional O&M expenses. Accordingly, the Review Petitioner has prayed that the error may be rectified and the interest amount may be permitted to be capitalized for the said tariff periods.

Analysis and Decision

31. The matter has been considered. It is observed that the Commission in the impugned order, after due consideration of the submissions and to avoid unnecessary burden on consumers and balance interest of both parties, petitioner as well as beneficiaries, had consciously allowed the arbitration 'interest' amount as one time reimbursement. In view of this, the claim of the Review Petitioner, in the Review Petition, to permit the capitalization of the interest amount, is not maintainable. As stated, the Review Petitioner cannot be permitted to re-argue the case on merits, in the Review Petition. Accordingly, the prayer of the Review Petitioner to review the impugned order on this ground is rejected. Issue (C) is disposed of as above.

D. Error in adoption of incorrect methodology and disallowance of the impact of wage revision for the periods 2014-19 and 2019-24.

32. The Commission, in the impugned order had rejected the claim of the Review Petitioner on this count as under:

"98. Based on the impact of pay revision of Petitioner's staff and KV staff in 2018- 19, the Petitioner has claimed expenses for Rs.1438.09 lakh and Rs. 23.45 lakh in 2019-20, as additional O&M expenses, due to impact of pay revision of Petitioner's Staff and KV staff, respectively. It is pertinent to mention that the Commission in its order dated 22.11.2021 in Petition No. 235/MP/2019 filed by the Petitioner for the seeking recovery of additional O&M expenses on account of impact of wage / pay revision for the 2014-19 tariff period, had observed that there is no under recovery due to Impact of pay revision of Petitioner's



staff and KV staff in 2018-19. Accordingly, the claim of the Petitioner on account of impact due to pay revision of Petitioner's staff and KV staff has been disallowed during the period 2019-24. However, the Petitioner is granted liberty to approach the Commission for the same at the time of truing up of tariff along with relevant documents including auditor certified statement."

Submissions of the Review Petitioner

33. The Review Petitioner in the main petition had claimed Rs. 1438.90 lakh in 2018-19 and Rs. 23.45 lakh in 2019-20 as additional O&M expenses, due to impact of pay revision for the Review Petitioner's staff and KV staff. However, it has submitted that the Commission in the impugned order had erred in not considering the impact of wage revision, though note to the Regulation 36 (2)(a) of 2019 Tariff Regulations, provides that the impact of wage and pay revision, if any, shall be considered at the time of determination of tariff i.e. in the impugned order.

Analysis and Decision

34. The matter has been considered. It is noted that in terms of Regulation 36 (2)(a) of 2019 Tariff Regulations, the Commission in order to determine the wage revision impact for the period 2019-24, had assessed the impact of wage revision for the generating station in 2018-19 in Petition No. 235/MP/2019 and observed that the O&M expense norms allowed, including the impact of pay revision of the Review Petitioner's staff and KV staff in 2018-19, are in excess to the actuals. Accordingly, the impact of pay revision on account of the Review Petitioner's staff and KV staff was not allowed, separately 2018-19. In line with the above and note to Regulation 36(2)(a) of the 2019 Tariff Regulations, the wage revision impact for 2019-24 was not considered in the impugned order. However, it is noticed that the Review Petitioner has been granted liberty to approach the Commission on this issue, at the time of truing-up of tariff for the period 2019-24, along with relevant documents including the auditor certified statement. Since liberty has been granted to the Review Petitioner to approach the Commission with the



said claim, at the time of truing-up of tariff for the period 2019-24, with relevant documents, we find no error apparent on the face of the impugned order to permit the review on this count. Accordingly, the prayer of the Review Petitioner to review the impugned order on this ground is not maintainable and is accordingly rejected. Issue (D) is disposed of as above.

35. In terms of the discussions above, the Review Petition is admitted on the issues A(i) to A(iii) raised by the Review Petitioner. All other issues raised by the Review Petitioner, viz., A(iv) to A(vi), including B, C and D are disposed of as 'not maintainable' at the admission stage.

36. The Review Petition No. 3/RP/2023 (in Petition No. 145/GT/2020) will be listed for hearing on the issues A(i) to A(iii) raised by the Review Petitioner. Meanwhile, the Respondents are permitted to file their replies on the said issues by **20.1.2024**, after serving copy to the Review Petitioner, who may file its rejoinder, if any, **9.2.2024**. The Review Petitioner will be listed for hearing on **28.2.2024**.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S. Jha)
Member

