CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 16/RP/2018

in

Petition No. 152/GT/2015

Coram:

Shri P. K. Pujari, Chairperson
Dr. M. K. Iyer, Member

Date of Order: 25th April, 2019

In the matter of

Review of Commission's Order dated 26.12.2017 in Petition No.152/GT/2015 pertaining to truing-up of tariff for the period 2011-14 and determination of tariff for the period 2014-19 in respect of 1050 MW unit of Maithon Power Limited

And

In the matter of

Maithon Power Limited
Jeevan Bharti, 10th Floor
Tower-I 124, Connaught Circus
New Delhi-110001 **…Review Petitioner**

Vs

1. Tata Power Delhi Distribution Ltd
33 kV Sub-station, Kingsway Camp
Delhi –110 009

2. Damodar Valley Corporation
DVC Towers, VIP Road
Kolkata-700054

3. West Bengal State Electricity Distribution Company Ltd
Bidyut Bhawan (8th Floor), Block-DJ, Sector-II
Salt Lake, Kolkata-70009

4. Punjab State Power Corporation Ltd
The Mall, Secretariat Complex,
Patiala – 147 001

5. Tata Power Trading Company Ltd
Corporate Centre, 'A' Block, 34, Sant Tukaram Road,
Carnac Bunder, Mumbai – 400006

6. Kerala State Electricity Board Ltd
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram, Kerala-695004 **….Respondents**

Parties present:

Shri Venkatesh, Advocate, MPL
Shri Sandeep Rajpurohit, Advocate, MPL
Shri Pramod Singh, Advocate, Tata Power
Shri Pankaj Prakash, Advocate, Tata Power
Ms. Puja Priyadarshini, Advocate, WBSEDCL
Shri Nived Veerapareni, Advocate, WBSEDCL

ORDER

Petition No. 152/GT/2015 was filed by the Petitioner, Maithon Power Limited (MPL) for revision of tariff based on truing-up exercise for the period 2011-14 and for determination of tariff for the period 2014-19 in respect of Maithon Right Bank Thermal Power Plant (1050 MW unit) (hereinafter referred to as "generating station"). The Commission by its order dated 26.12.2017 revised the tariff of the generating station based on truing-up exercise for 2011-14 and determined the tariff for 2014-19.

2. Aggrieved by the said order dated 26.12.2017, the Review Petitioner has submitted that there are certain errors apparent on the face of the record and has sought review on the following issues:

a) *Disallowance of 1% of additional interest rate for computing the Interest During Construction and Interest on Loan for the period 2011-14 to recover fully the interest cost with actual weighted average;*
b) *Weighted average depreciation rate for the entire generating station as shown in Form-11 and accordingly, revise the depreciation on the fixed assets for the period 2014 -19 and grant consequential relief;*
c) *Billing as 'on received' basis at unloading point through hydraulic augur or manually;*
d) *Allow ash disposal expenses for the period 2014-19;and*
e) *Non-consideration of reimbursement of refinancing cost and financing charges.*

3. The Petition was heard on 11.5.2018 and based on the submissions of the parties, the Commission by interim order dated 16.5.2018 directed the hearing of the Petition on 'maintainability'. Preliminary reply with regard to the maintainability of the review petition has been filed by the Respondent, WBSEDCL vide affidavit dated 11.6.2018 and

Respondent KSEBL vide its affidavit dated 2.7.2018. Rejoinder to the said replies have been filed by the Review petitioner vide its affidavits dated 20.6.2018 and 16.7.2018 respectively. Thereafter the matter was heard on 15.11.2018 and the Commission after directing the parties to file their written submissions, reserved its order in the Petition. In response, the Petitioner and the Respondents, WBSEDCL and Respondent, TPDDL have filed their written submissions. Based on the submissions of the parties and the documents available on record, we proceed to examine the issues raised in the Review Petition as detailed in the subsequent paragraphs.

(1) Disallowance of 1% additional interest rate for computing IDC & interest on long term loan for the period 2011-14

4. The Review Petitioner has submitted that the Commission while passing the order, has disallowed the actual interest rate claimed for computing the IDC and the Weighted Average Rate of Interest claimed for computing interest on long term loan for the period 2011-14. It has submitted that the interest rate claimed included the additional interest rate of 1% levied by the banks. However, the review petitioner has pointed out that while disallowing the interest rate claimed, the Commission has held that the rate of interest applied for calculation of IDC and Interest on long term loan is on a higher side and does not match with the rates furnished by the bank and therefore it will not be prudent to allow the additional interest of 1% levied by the Banks for non-compliance of the securitization clause in the Common Loan Agreement ('CLA') dated 4.2.2008. The Review Petitioner has further submitted that the findings of the Commission with respect to the interest rate is an error apparent on the face of the record for the following reasons: -

(i) The rate of interest sought for computing the IDC and the Weighted Average Rate of Interest for Computing Interest on Long term Loan for 2011-14 included the applicable interest rate stipulated by the Bank in the CLA and an additional interest rate of 1% levied by the Banks for non-compliance of securitization clause in the CLA.

(ii) MPL had availed loan for the project from a Consortium of 17 bankers with

SBI as the lead Banker. Clause 2.6 (iii) of the CLA provided that MPL shall create a security over the project land within 180 days of the initial disbursement and non-compliance of this securitization clause would result in additional interest of 1% per annum over and above the applicable interest rate.

(iii) The Commission vide RoP for hearing dated 9.7.2013 in Petition No. 274 of 2010 had raised a specific query seeking clarification from MPL qua the increased rate of interest and MPL vide its additional affidavit dated 27.8.2013 had explained the reasons beyond its control and the hardship faced by it in creating mortgage/ security over Government land in favor of its lenders, which had led to the imposition of an additional 1% interest over and above the applicable rate of interest. In the said affidavit, MPL by giving justified reasons had established that creation of security on Government land was completely out of its control and an uncontrollable factor and in view thereof prayed for approval of the additional interest of 1% w.e.f. 3.9.2008. The additional interest of 1% case of non-creation of security, for whatsoever reason, was payable as per the covenants of CLA. Hence, same is not penal interest, especially since it is attributable to reasons beyond the control of MPL.

(iv) In the above submissions, MPL had brought out that the total Land requirement of MPL is about 1116 Acres and it is spread across *Raiyati* Land, Government Land and Forest Land. MPL had created security over *Raiyati* Land in favor of the Lenders. Further, the Lenders had subsequently agreed to exclude the Forest land from the Security covenant. However, pending the approval from Government of Jharkhand to permit DVC to sub-lease the Government lLand to MPL and due to various legal and commercial complexities surrounding the said process, MPL could not create security over the Government land in favor of its lenders. Therefore, the loan disbursed by the lenders for execution of the Project remained unsecured and attracted an additional interest rate of 1% over and above the applicable rate as stipulated in the CLA. The requirement of security creation on Government Land was ultimately conceded by banks post its refinancing on 03.03.2014.

(v) The Commission taking note of the aforesaid submissions made by MPL vide its final order dated 19.11.2014 allowed the additional interest rate of 1%. The Commission in its order dated 19.11.2014 had not specifically recorded any observation or finding on the said issue, however, the computation of IDC during construction period and Interest on Long Term Loan for the period 2011-14 was done on the rate of interest as claimed by MPL, which included the additional interest rate of 1%. Therefore, in the tariff order itself the Commission had accepted the justification given by MPL and permitted recovery of the additional interest charges under the CLA.

(vi) In the present proceedings, the said issue had not been raised by either party and nor any details were sought by the Commission as it did in the previous tariff proceedings. However, while passing the Impugned order, the Commission

has disallowed the additional 1% interest rate, which was earlier approved and allowed by the Commission in order dated 19.11.2014 for the 2009-2014 (i.e., Petition No. 274 of 2010) without noticing the past history on the imposition which has been affirmed previously.

(vii) It is well settled that truing up is not the stage where any new methodology can be adopted by the Commission. The Appropriate Commission must undertake only the financial true up and cannot change the principle followed at the time of initial determination of tariff. It is submitted that the Appellate Tribunal for Electricity in its Judgment dated 04.12.2007 in Appeal No. 100 of 2007 in the matter of 'Karnataka Power Transmission Company Limited V/s Karnataka Electricity Regulatory Commission' has held that at the truing up stage, it is not open to the Commission to change the principle and disallow the actual cost on different reasoning. The Tribunal has taken a similar view in its Judgment in Appeal No. 265 of 2006 in the matter of 'North Delhi Power Limited V/s Delhi Electricity Regulatory Commission'. Further the Tribunal in its Judgment dated 10.08.2010 in Appeal No. 37 of 2010 (Meghalaya State Electricity Board vs. Meghalaya State Electricity Regulatory Commission) had held that at the stage of truing up it is not open to the Commission to reopen the basis of determination of tariff and the Commission has to only compare the estimated figures at the beginning of the year with the actual figures at the end of the year.

(ix) In view of the above, once the Commission vide its Order dated 19.11.2014 in Petition No. 274 of 2010 has allowed the additional interest of 1% over and above the applicable rate of interest for computation of IDC and computation of Weighted Average Rate of Interest for arriving at Interest on long term loan, the Commission may not disallow the same in the true-up proceedings for 2011-2014. Pursuant to the order dated 19.11.2014, MPL has been computing its IDC and Weighted Average Rate of Interest for long term loan on the paid rate of interest including 1% additional interest.

5. Accordingly, the Review Petitioner has submitted that there is error apparent on the face of the order and there exists sufficient reason for review of the said order dated 26.12.2017.

6. The Respondent, WBSEDCL in its preliminary reply and in the written submissions have mainly stated that the review petition is not maintainable for the following reasons:

(a) Under Order 47 Rule 1 of CPC, the power of review can be exercised on discovery of new and important matter of evidence which after the exercise of due diligence was not within the knowledge of the person concerned or could not be produced at the time when the order was made. The power can also be

exercised on account of some mistake or error apparent on the face of record or for any other sufficient reason. A review cannot be sought merely for fresh hearing or argument or correction of an erroneous view taken earlier. The power of review can only be exercised for correction of a patent error of law or fact, which stares in the face without any elaborate argument being needed for establishing it.

(b) The expression "any other sufficient reason" used in Order 47 Rule 1 of CPC means a reason sufficiently analogous to those specified in the earlier part of the rule. The above legal position emerges out of various judgments of the Supreme Court, including, the case of Ajit Kumar Rathi v. State of Orissa & Ors. reported as (1999)9 SCC 596 (Paras 29 to 31).

(c) The Hon'ble Supreme Court in Kamlesh Verma v Mayawati and Ors (2013) 8 SCC 320, has listed the grounds on which a review is maintainable. The review petitioner in the review petition has failed to demonstrate any "error apparent on the face of record" or "misconception of facts" or "other sufficient grounds" or "discovery of new and important matter" warranting the exercise of review and is merely attempting to have the matter re-heard.

(d) As regards the disallowance of 1% additional interest rate for computing IDC and interest on long term loan for the period 2011-14, the Commission after considering the affidavit of the Petitioner in the original petition had arrived at a conclusion that it was not prudent to allow the penal interest charged by the Bank. The review petitioner has once again placed the same reason before this Commission in review. Hence, it is evident that under the guise of review, the review petitioner is seeking the re-appreciation of the evidence which is impermissible within the purview of review proceedings as has been held by the Hon'ble Supreme Court in the case of Meera Bhanja v. Nirmala Kumari Choudhury reported as (1995)1 SCC 170.

(e) While ARR is based on projections, truing up is done after a thorough prudence check. The role of the Commission while conducting truing-up exercise is not limited to determining/verifying whether expenditure was incurred. The Commission is duty bound to also verify whether such expenditure was prudently incurred. In the present case, the levy of 1% additional interest was on account of failure of MPL to create securities and hence, the same cannot by any stretch of imagination be termed as "prudent" expenditure. The Commission has not deviated from the methodology prescribed under the original ARR order dated 19.11.2014. On the other hand, the Commission has duly followed and implemented the law laid down in various judgments that a true-up must always be conducted with prudence check.

(f) While dealing with a similar issue of 'deviation from ARR findings at the true-up stage', APTEL in its order dated 28.11.2013 in Tata Power Company Limited. V. MERC & batch (Appeal Nos. 104, 105 and 106 of 2012) (paras 60 to 67) has

distinguished the case laws cited by MPL in its' review petition and held that the Commission is duty bound to apply prudence check while truing up otherwise, no purpose would be served in truing up.

(g) Further, the APTEL after analyzing the scope of Regulation 6(1) of the CERC (Terms and Conditions of Tariff) Regulations, 2009, has in its order dated 30.9.2015 in NTPC Limited v. CERC & ors (Appeal No. 251 of 2014) had held that this Commission is empowered to review, revisit and modify its earlier decision taken in the ARR order (please refer to para 9.12 and 9.13 of the order dated 30.09.2015). In light of the above, the findings in the Impugned Order with respect to levy of 1% additional interest merit no interference.

Accordingly, the Respondent, WBSEDCL has submitted that since the expense towards 1% additional interest was incurred due to failure of MPL to create securities, such expenses are penal interest and have not been "prudently" incurred. Hence, the disallowance of the same by the Commission is in order and the review sought for by the Petitioner is not maintainable.

7. The Respondent, KSEB has submitted that the Commission had disallowed 1% additional rate of interest after duly considering the reasons and based on detailed examination of the documents on record. It has also submitted that the additional interest rate of 1% ism a penal interest charges by the banks for non-compliance of the CLA. It has further submitted that the weighted average interest rate of actual loan claimed by the Petitioner and allowed by the Commission is very high compared to market rate of interest rate of loan. Accordingly, the Respondent has submitted that any additional expenditure incurred for meeting additional rate of interest of 1% can be met from the Interest on loan allowed and hence the claim of the Petitioner may be rejected.

8. The Respondent, TPDDL has also objected to the submissions of the review petitioner and has mainly submitted the following:

(a) The Commission was right in concluding that the additional interest of 1% is in the nature of penal charges and should be disallowed. It is pertinent to note that, the review petitioner in its affidavit dated 27.8.2013 had submitted that

the additional interest payment was due to "non-creation of mortgage over the government land". The same is an admitted position as per the review petition.

(b) The Commission's Order dated 19.11.2014 in Petition No. 274/2010 was challenged by MPL before the APTEL and the findings of the Commission that the delay in hand over of government land is attributable to MPL, was affirmed by the APTEL in its judgment dated 10.5.2016 in Appeal No. 48 of 2015 MPL v. CERC & Ors

(c) The Commission has duly factored the delay in handing over of Government land while computing the IDC in the Impugned order. MPL has sought to aver that the 1% additional charge has been incurred due to failure on the part of MPL to "create and perfect its title" over the government land and not due to a delay in the "handover" of government land. Notably, such averment and distinction drawn is not borne out of and is in fact contradicted by the pleadings on record.

Analysis and decision

9. We have examined the submissions of the parties. The Petitioner in Petition No. 274/2010 had submitted amongst others, the following towards Time overrun on account of delay in land handover:

"xxxx

(iii) Therefore, there was an effective delay of 158 days from the 'Zero date' of 25.10.2007 till the agreement was signed between the petitioner and the R&R Committee on 31.3.2008.

(iv) There was illegal encroachment by private individuals/villagers on GM Land and Forest Land. The handover of land from these private individuals/villagers was not smooth and required huge efforts from MPL in absence of any State R&R Policy/Agreement for such Government land. MPL could not enter the land before end of March, 2008 and no substantive project activity could be taken on any part of the land viz. private/Raiyati Land, GM Land or Forest Land.

(v) The delay due to Land handover is an uncontrollable factor for MPL and the same should not be considered as a reason for time overrun. The Applicant therefore humbly requests the Commission not to consider the same as a reason for time overrun"

10. Based on the above, the Commission in its order dated 19.11.2014 held as under:

"31. It is observed that the delay of 158 days in handing over Land to the petitioner was on account of the delay on the part of DVC to frame R&R package in consultation with the State Government of Jharkhand. We notice that State Government had transferred the private land to DVC during 2003-04 and DVC being a joint partner of the petitioner ought to have taken appropriate steps so that the R&R package was settled and physical possession of the Land was handed over to the petitioner well before the 'Zero date' on 25.10.2007. In view of above, we hold that the delay of 158 days due to handing over Land to the petitioner is attributable to the petitioner as the same was not beyond its control. Accordingly, we hold that the petitioner is responsible for time overrun involved in the commissioning of the project on this count."

11. It is observed that against the above said order, the Petitioner had filed Appeal No. 48/2015 before the APTEL on this issue and the Tribunal vide its judgment dated 10.5.2016 had upheld the order of the Commission. The relevant portion is extracted hereunder:

> *"9.3) The Central Commission has also observed in the Impugned Order that the delay of 158 days in handing over land to the appellant was on account of delay on the part of DVC to frame R&R package in consultation with the State Government of Jharkhand. The State Government has transferred the private land to DVC during 2003-04 and DVC being a joint partner of the appellant ought to have taken appropriate steps so that the R&R package was settled and physical possession of the land was handed over to the appellant well before the zero date on 25.10.2007. Considering these aspects of the delay, the Central Commission has held that delay of 158 days due to handing over of land to the appellant was attributable to the appellant as the same was beyond its control. On this basis, the Central Commission has held the appellant liable for time overrun involved in the commissioning of the project on this account*
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> *9.6) It is established from the record that the time overrun of 2.3 months in Unit-1 and 3.3 months in case of Unit-2 is due to the reasons attributable to the appellant and the Central Commission has rightly not condoned the same. The Interest During Construction, after factoring this delay has rightly been worked out by the Central Commission. We do not find any perversity or illegality in this finding of the Central Commission that no IDC is payable for the said period of time overrun of the project of the appellant. Further, we hold that the Central Commission has rightly allowed the capital cost for the generating station by giving details in a table in the Impugned Order.*
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> *9.7) In view of the above discussion, contentions of the appellant on this issue are sans merit and liable to be rejected. Accordingly, while agreeing to the view recorded by the Central Commission in the Impugned Order, we decide this issue No.(1) against the appellant."*

12. Against this judgment, the Petitioner had filed review petition before the Tribunal (R.P No.16/2016) contending that there was also need for necessary concurrence of the participating governments (Govt of India/Govt of WB and Govt of Jharkahnd) and that it was incorrect to conclude that the review petitioner could have possibly accelerated the process of land acquisition of the project with the help of DVC. The Tribunal by order dated 10.10.2017 had rejected the said review petition and held that the Petitioner was seeking to reargue the case on merits.

13. The Review Petitioner in this petition has mainly contended that the Commission in its order dated 19.11.2014 had allowed the additional interest rate of 1% taking into

consideration its submissions vide affidavit dated 27.8.2013 in Petition No. 274/2010, but the same has been disallowed in its order dated 26.12.2017. According to the review petitioner, it was not open to the Commission to change the principle and disallow the actual cost on different reasoning in terms of the judgment dated 14.12.2007 of the APTEL in KPTCL V KERC case. The review petitioner has submitted that the total land requirement of MPL is about 1116 acres and is spread across Raiyati Land (565 acres), Government Land (116 acres) and Forest land (436 acres). It has submitted that it had created security over Raiyati land in favour of the lenders and further the lenders had subsequently agreed to exclude the Forest land from the Security covenant. However, pending the approval from Govt. of Jharkhand to permit DVC to sub-lease the Government land to MPL and due to various legal and commercial complexities surrounding the said process, MPL could not create security on Government land to the lenders and therefore the loan disbursed by the lenders for execution of the project remained unsecured and attracted an additional interest rate of 1% over and above the applicable rates. Per contra the Respondents have submitted that the Commission has rightly disallowed the additional rate of interest on prudence check at the time of truing up of tariff.

14. The Commission while undertaking truing-up exercise for the period 2011-14 in its order dated 26.12.2017 in Petition No. 152/GT/2015 had disallowed the additional interest rate of 1% and had observed as under:

"18. The petitioner has availed loan for the project from a Consortium of 17 bankers with SBI ("the Bank") as the lead Banker. The petitioner has submitted the loan agreements and bank documents providing the loan details such as (i) the date-wise drawls, (ii) the repayments made along with the rate of interest with reset thereof. Based on this, the loan position arrived as on the COD of both the Units are as under:

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The petitioner vide affidavit dated 5.2.2016 has submitted the letters from the bank intimating the reset of the rate of interest. It is noticed that the rate of interest applied by the petitioner for calculation of IDC are on a higher side and does not match with the rates furnished by the bank in the said letters. The rates of interest as furnished by the bank vis-à-vis those considered by the petitioner are as under:

Xxxxxxx

It is observed that the Common Loan Agreement (CLA) dated 4.2.2008 provides for charging of penal interest in case of non-compliance of the Securitization clause. Clause 2.6 (iii) of the said agreement reads as follows:

> *"If security as stipulated in Article 3.1 A is not created and perfected within 180 (One hundred Eighty) days from the date of initial disbursement, the loan shall carry an additional interest at the rate of 1% (one per cent) per annum over and above the Applicable Interest rate from the first day of the 7th month from the date of initial Disbursement till the security is created and perfected….."*

21. It is noticed that the Bank vide letter dated 6.11.2008 had communicated to the petitioner that the extension of time for creation of security was subject to the following condition:

> *"3. (i) payment of an additional interest of 1% p.a. w.e.f. 3.9.08 till creation and perfection of security and providing substitution of security of forest land (as above)."*

22. It is further noticed that the bank vide its letters dated 29.4.2009, 8.3.2010, 17.3.2011 and 10.3.2012 while intimating the reset of rate of interest has also informed that "….additional interest of 1% shall be levied for non-creation of mortgage on project land, till further instruction from our side in this regard.

23. Based on the CLA dated 4.2.2008 and the communications of the Bank as mentioned above, it is evident that the petitioner has paid additional interest to the bank for non-compliance of the terms regarding Securitization. In this background, we do not find it prudent to allow the rates claimed by the petitioner for calculation of IDC, which include the penal interest charged by the bank for non-compliance of claim of CLA by the petitioner as stated above. Hence, IDC has been allowed by applying the rate of interest as stipulated by the bank from time to time."

15. It is therefore evident that the Commission, after taking into consideration the affidavit of the Petitioner dated 5.2.2016 enclosing therewith the letters of the Bank intimating the reset of the rate of interest, had considered it prudent not to allow the additional rate of interest of 1% levied by Bank for non-compliance of the covenants of the CLA. No methodology or principle has been changed by the Commission while truing up as contended by the review petitioner, since the additional rate of interest of 1% allowed vide order dated 19.11.2014 was not based on any specific finding of the Commission. As rightly pointed out by the Respondents, the Commission is empowered at the time of truing-up exercise to review, modify its earlier decision and disallow any expenditure on prudence check. Hence, the disallowance of the additional rate of interest of 1% is in order.

16. Also, the submissions of the review petitioner that pending approval of the Govt. of Jharkhand to permit sublease the Government land to MPL and due to various legal and commercial complexities surrounding the said process, it could not create security over the Government land in favour of its lenders, cannot also be considered to allow the additional rate of interest of 1%, since the delay due to land handover was attributable to the review petitioner as per decision in Commission's order dated 19.11.2014 and affirmed by the Tribunal vide its judgments dated 10.5.2016/10.10.2017. In our considered view, the disallowance of the additional rate of 1% in truing-up based on prudence check of the documents available on record is in order. The review petitioner in our view cannot be permitted to reopen and re-argue the case on merits. Accordingly, we find no reason to review the order dated 26.12.2017 on this ground and review on this count fails.

(2) <u>Error in applying weighted average rate of depreciation for the period 2014-19</u>

17. The Review Petitioner has submitted that there is an error in the impugned Order in applying the rate of depreciation. The submission by the Review Petitioner in this regard is as below:-:

(a) MPL in Form 11 of the Tariff Forms for FY 2014-15 to FY 2018-19 submitted along with its Tariff Petition has shown the 'Weighted Average Rate of Depreciation' for Gross Block as on 31.03.2014 and only for Projected Additions in subsequent years of the Control Period separately for Unit 1 and Unit 2 of its Power Plant. Additionally MPL also mentioned the rate of depreciation of the additional capitalization proposed for each year. However, in the said Form 11, MPL did not show the calculated value of the Weighted Average Rate of Depreciation for Average Gross Block for each year of Control Period, i.e. weighted average of the Opening Gross Block and additional capitalization for each year for each Unit or for Unit 1 and Unit 2 taken together.

(b) Such inadvertent error has led to incorrect computations of the Weighted Average Depreciation Rate for the entire Station for FY 2014-15 to FY 2018-19.The Commission is requested to recompute the depreciation with the corrected rates in case the values of Opening Gross Block or Additions each year are modified/ revised.

Analysis and decision

18. It is noticed that certain linkage errors have crept in while applying the weighted average rate of depreciation in computation of the depreciation for the tariff period 2014-19. Accordingly, review on this count is allowed and the same shall be corrected at the time of truing-up the tariff for the period 2014-19.

(3)Disallowance of relaxation sought by MPL with respect to Commission's Order dated 25.1.2016 qua measurement of GCV

19. The Petitioner has submitted that while passing the Impugned Order, the Commission has rejected the relaxation sought by MPL relying upon its directions in Order dated 25.1.2016 in Petition No.283/GT/2014 (Petition filed by NTPC) and has held that measurement of GCV of coal on 'as received' basis shall be taken from the loaded wagons at the unloading point either manually or through the Hydraulic Augur. The Petitioner in its reason has submitted that, MPL does not transport coal through wagons but through a series of trucks through a village road. The challenges of measurement of GCV from every truck top are much different and problematic as compared to sampling from loaded wagons. The extreme practical and operational difficulties/ challenges including safety challenges faced in implementing the Order/ direction of the Commission with regard to sampling/ measuring GCV of the Coal from top of the trucks tipper and the critical and unique issues is furnished by the Petitioner are as under:-

(a) MPL receives most of the Coal from CCL and BCCL of size more than 100 mm going up to 300 mm, which also contains other impurities like boulders, rocks and stones, the characteristics of which do not match with that of Coal. Coal samples collected from the top of the truck tipper, therefore, would not form a representative sample and will not serve the basic purpose of sampling coal and the measurement of GCV. Hence, Hydraulic Auger would not be effective.

(b) There are about 800 to 1000 Truck Tippers, going up to 1200 Trucks on day of high receipt, which carry coal from various mines to the Petitioner's generating station. In case of normal traffic of 800-1000 Trucks per day, samples are required to be collected from at least 200-300 Trucks to comply with the condition under IS: 436.

(c) Considering even about 12 minutes per truck for sample collection by means of proposed Hydraulic Auger, the samples can be collected about 5 trucks per hour. The truck tippers carrying coal from the mines to the site avail the arterial Nirsa - Jamtara road, which remains very busy during peak hours and the movement of coal carrying truck tippers is restricted for 4 hours every day to facilitate public traffic movement. Such restrictions reduce the available time for truck movement to 20 hours per day. Therefore, samples from only 100 Truck/Auger can be collected daily if the process of collection of coal sample is conducted by means of Hydraulic Auger, which would result in non- conformance to IS. The additional time required for taking samples from each selected truck would also lead to delay in truck entry into the plant causing long traffic jam on the Nirsa–Jamtara road, which will lead to public discomfort and unrest.

(d) The trucks contain coal from different mines unlike the wagons of Railway Rake, which carry coal from the same mine. Therefore, sampling from every fourth Truck Tipper, unlike the process for Wagon Sampling, truck could be from different mine and would not yield correct results.

20. The Review Petitioner has further submitted that it is taking appropriate steps to implement the Order of the Commission on GCV measurement from the Truck top, and the prayer on relaxation in the GCV measurement direction may be evaluated in view of the practical difficulties faced in implementation of the directions of Commission in the impugned Order. Moreover, the Petitioner has also filed a separate Petition No. 139/MP/2017. The impugned Order of the Commission rejecting the relaxation sought by MPL has been passed before adjudication of the pending Petition on the said issue and is in ignorance of the pendency of a substantial Petition filed by MPL and hence is an error apparent on the face of the record.

21. The Respondent WBSEDCL vide its affidavit dated 11.6.2018 and 26.11.2018 has submitted that the present Review Petition is not maintainable. The respondent in affidavit dated 11.6.2018 has submitted that, under the garb of review, the Petitioner is seeking a fresh hearing. The Petitioner, instead of taking steps to put in place a system for measurement of GCV of coal on 'as received' basis, merely filed an application for relaxation to allow it to continue to perform coal sampling from track hopper/ crusher

outlet for measurement of 'as received' GCV of coal. Further, the averments in the review Petition are a repetition of old and overruled arguments which are not enough for re-opening concluded adjudication on the issue. Hence, the review Petition is not maintainable. The Petitioner, vide its rejoinder dated 20.6.2018 have denied the averments made in the reply of WBSEDCL.

22. The Respondent KSEBL vide affidavit dated 4.7.2018, in its reply has submitted that the statement and submissions made by the Petitioner in the review Petition are denied for being false and baseless and the matter raised is outside the scope of review Petition and the review Petition is not maintainable. The Petitioner, vide its rejoinder dated 16.7.2018 have denied the averments made in the reply of KSEBL. The Petitioner, vide affidavit dated 26.11.2018 has reiterated its contention and submitted that the issue the reply submitted by KSEBL ought to be rejected.

23. The Review Petitioner vide affidavit dated 26.11.2018 has reiterated its contention and submitted that the issue has also been raised in a separate Petition no 139/MP/2017. The MoP has recently forwarded the CEA's Recommendations dated 17.10.2017 to the Commission in Petition No.244/MP/2016, which is still pending consideration along with Petition No. 139/MP/2017 and related matters. Therefore, presently MPL is only seeking for the clarification that the impugned Order dated 26.12.2017 would not in any manner come in the way of adjudication of Petition No.139/MP/2017.

24. The respondent TPDDL, vide affidavit dated 10.12.2018, has submitted that during the course of proceedings MPL has denied of pressing the issue. Since, the matter on the issue of GCV is pending in APTEL; the Commission may consider the same in light of the decision taken by APTEL. However, the Review Petitioner's prayer for clarification as regards the decision taken in the impugned Order will not affect the adjudication of

Petition No. 139/MP/2017, may not be considered as the issue of GCV will have direct impact on the billing on as received basis.

Analysis and Decision

25. We have examined the submission of the Review Petitioner and the Respondents. The Commission while passing the impugned Order has held that measurement of GCV of coal on 'as received' basis shall be taken from the loaded wagons at the unloading point either manually or through the Hydraulic Augur. However, the Petitioner has submitted that, MPL does not transport coal through wagons but through a series of trucks through a village road. The relevant extract of the impugned Order is reproduced as below: -

> *"165. The Petitioner has claimed Energy Charge Rate (ECR) of 240.60 paise/kWh based on the weighted average price, GCV of coal (as fired basis) and Oil procured and burnt for the preceding three months. The Petitioner has however not placed on record the GCV of coal for the preceding three months on "as received" basis, in compliance with the directions of the Commission that the measurement of GCV of coal on "as received" basis shall be taken from the loaded wagons at the unloading point either manually or through the Hydraulic Augur, in Order dated 25.1.2016. We take serious note of the fact that despite our Order dated 25.1.2016, the Petitioner instead of taking steps to put in place a system for measurement of GCV of coal on "as received basis" till date, has prayed for relaxation to allow the Petitioner to continue to perform the coal sampling from track hopper/ crusher outlet for measurement of "as received" GCV of coal. We are not convinced with the submissions of the Petitioner. Accordingly, we are not inclined to relax the directions in Order dated 25.1.2016 and do not allow the measurement of coal from crusher outlet/ track hopper, as prayed for by the Petitioner.*
>
> *The 'as received GCV' furnished by the Petitioner for the few days of the month of October, 2016 for which sample is taken from the track hopper cannot be considered 'as received' GCV of coal since the computation for fuel components in the working capital is undertaken based on the preceding three months i.e. for the month of January, 2014, February, 2014, and March, 2014. Also, the sample taken from track hopper is not in compliance with the Commission Order dated 25.1.2016 in Petition No. 283/GT/2014, which specify that the measurement of GCV of coal on "as received" basis shall be taken from the loaded wagons at the unloading point either manually or through the Hydraulic Augur."*

26. As such, for the purpose of calculating the working capital, Commission relied on the "As billed GCV" to be corrected by the Petitioner for reworking the working capital after applying moisture correction formulae on "As billed GCV" to arrive at the "As received GCV". As such, the issue of non-submission of "As received GCV" for the period of three preceding months was settled by the Commission in terms of the above.

27. The Review Petitioner has submitted that prior to the disposal of the impugned Order dated 26.12.2017 in Petition No.152/GT/2015, a separate Petition No. 139/MP/2017 on the same issue i.e relaxation sought by MPL with respect to measurement of GCV was filed by the Petitioner, wherein, the Petitioner has brought out the unique challenges of measurement of GCV from every truck top which is much different and problematic as compared to sampling from loaded wagons. However, the Petitioner vide affidavit dated 16.7.2018 has submitted that MPL has complied with the direction of Commission with regard to measurement of GCV on as received basis.

28. Regarding the contention of the Petitioner that Commission in the Order dated 26.12.2017 in Petition no. 152/GT/2015 has rejected its claim without adjudicating the pending Petition no. 139/MP/2017 and that the same amounts to an error apparent on the face of record, it is to clarify that in case, the Commission in Petition no. 139/MP/2017 provides some relief to the Petitioner on the basis of merit, the same would be applicable in the Petition no. 152/GT/2015 during truing up for the period 2014-19.

29. Further, the Petitioner in the affidavit dated 16.7.2018 has raised another issue of missing footnote to the table at para 168 of the impugned Order as has been indicated in all Orders of NTPC. The Petitioner has submitted that the Commission in Tariff Order dated 30.7.2016 and 29.7.2016 in Petition No. 279/GT/2014 and 294/GT/2014 respectively, in case of NTPC generating stations, had clearly depicted the correction required to be done by the generator to work out the GCV with Total moisture correction and Energy Charge Rate. However, the clarification given in the footnote for the above NTPC stations, has not been provided in the table given in Para 168 of the impugned Order in case of Petitioner's generating station.

30. The relevant extract of the said para and the footnote in particular, in Petition No. 279/GT/2014, is extracted as under:

> *67. Similarly, the energy charge rate (ECR) based on operational norms specified in 2014 Regulations and on "as billed" GCV of coal for preceding 3 months i.e. March to January 2014 is worked out as under:*

	Unit	2014-19
Capacity	MW	840.00
Gross Station Heat Rate	kCal/kWh	2450.00
Aux. Energy Consumption	%	9.00%
Weighted average GCV of oil (As fired)	kCal/lt.	9718.67
Weighted average GCV of Coal (As Billed)	kCal/kg	3867.77
Adjustment on account of coal received at the generating station for equilibrated basis (Air dried) in the billed GCV Of Coal India	-	*
Weighted average price of oil	Rs./KL	54826.82
Weighted average price of Coal	Rs./MT	2825.90
Rate of energy charge ex-bus	Paise/kWh	199.33**

** To be calculated by the Petitioner based on the adjustment formula*
*** To be revised as per the figures at Sr. No. 6"*

31. Further, the relevant extract of Para-168 of the impugned Order dated 26.12.2017 in Petition No.152/GT/2015 is reproduced as under:-

> *"168. Similarly, the Energy Charge Rate (ECR) based on operational norms specified under 2014 Regulations and on "as billed" GCV of coal for preceding 3 months i.e. January, 2014 to March, 2014 is worked out as under:*

Sl. No.	Description	Unit	2014-19
1.	Capacity	MW	2x525
2.	Gross Station Heat Rate	kCal/kWh	2375
3.	Aux. Energy Consumption	%	5.75
4.	Weighted average GCV of oil (As fired)	kCal/lt.	9100
6.	Weighted average GCV of Coal (As Billed)	kCal/kg	5006.98
7.	Weighted average price of oil	Rs./KL	47213
8.	Weighted average price of Coal	Rs./MT	3472.42

32. In the above orders, it is clear that the GCV values considered by the Commission in the Order did not incorporate such adjustment of moisture. Hence, the contention of the review petitioner is permitted and similar footnote as given in para 67 of Petition No. 279/GT/2014, is incorporated in the Order dated 26.12.2017. Accordingly, the footnote and the table at para 168 of the Order dated 26.12.2017 stands modified as under:-

"168. Similarly, the Energy Charge Rate (ECR) based on operational norms specified under 2014 Regulations and on „as billed" GCV of coal for preceding 3 months i.e. January, 2014 to March, 2014 is worked out as under:

Sl. No.	*Description*	*Unit*	*2014-19*
1.	*Capacity*	*MW*	*2x525*
2.	*Gross Station Heat Rate*	*kCal/kWh*	*2375*
3.	*Aux. Energy Consumption*	*%*	*5.75*
4.	*Weighted average GCV of oil (As fired)*	*kCal/lt.*	*9100*
5.	*Weighted average GCV of Coal (As Billed)*	*kCal/kg*	*5006.98*
6.	*Adjustment on account of coal received at the generating station for equilibrated basis (Air dried) in the billed GCV Of Coal India*	*-*	***
7.	*Weighted average price of oil*	*Rs./KL*	*47213*
8.	*Weighted average price of Coal*	*Rs./MT*	*3472.42*
	Rate of energy charge ex-bus	*Paise/kWh*	*176.929***

** To be calculated by the Petitioner based on the adjustment formula*
*** To be revised as per the figures at Sr. No. 6"*

(4) <u>Ash disposal expenses for 2014-2019</u>

33. The Petitioner in the Review Petition has submitted that while passing the impugned Order, the Commission has ignored the prayer of MPL for grant of additional O&M expenses for ash disposal on the premise that Petition No. 172/MP/2016 filed by NTPC praying for recovery of additional expenditure incurred due to sharing of transportation cost of fly ash consequent to Ministry of Environment and Forest ('MoEF') Notification dated 25.1.2016 is pending consideration before the Commission.

34. The Review Petitioner has submitted that the above finding of the Commission is an error apparent on the face of the record for the following reasons: -

a. The MoEF vide its Notification dated 03.11.2009 has been issued by the MoEF, GoI under the statutory provisions of Environment (Protection) Act 1986 and hence the same is binding upon MPL.

b. Among the various routes of ash utilization, mine stowing has been identified as the most effective and economical option of Ash Utilization at MPL's Generating Station. Pursuant thereto MPL has entered into an agreement with Eastern Coalfields Limited ('ECL') to utilize their abandoned mines for mine stowing. These mines are located at about 20 km from MPL's Generating Station. Therefore, MPL has engaged M/s Amex and M/s Nirman, who have been operating the Ash Stowing operation through excavation and transportation of ash from MPL's Ash Ponds, Main Silos & Hydrobins through Bulkers/Hyvas.

c. The cost of such excavation & transportation of Ash incurred by MPL is consequent to the mandate of MoEF Notification dated 03.11.2009 and is a Statutory Expense being imposed upon MPL, which is beyond the control of MPL and hence the same must be a pass through.

d. The cost incurred by MPL qua ash disposal is consequent to the statutory mandate of the said MoEF Notification and hence the same shall be allowed as pass through considering the Tribunal judgment and Regulation 8 (3) (ii) of the CERC Tariff Regulation 2014, which provides for Truing-up of Tariff of the generating station due to uncontrollable parameters.

e. The Commission through Order dated 19.11.2014 allowed such additional O&M expenses on account of Ash Disposal expense incurred by MPL considering the following facts:

   (i) Capacity of ash pond is limited and requires frequent disposal as per the statutory provision of the MoEF; and

   (ii) Normative O&M expenses allowed under the 2009 Tariff Regulations does not include such expenses and such factors hold true for the control period 2014-19.

f. It shall not be out of place to mention that, in line with earlier Tariff Regulations, the Commission while formulating Tariff Regulations 2014-19 has not included the Ash Disposal Expenses in the Normative O&M expenses allowed in the Tariff Regulations 2014.

g. The Commission deferred the claim of MPL qua additional O&M expenses for ash disposal on the premise that similar Petition filed by NTPC being Petition No.172/MP/2016 is pending consideration before the Commission and its decision will be applicable in the present case of MPL. Petition No.172/MP/2016 has been filed by NTPC seeking reimbursement of additional expenditure incurred by it due to sharing of transportation cost of fly ash consequent to MoEF Notification dated 25.01.2016 and not 100% Ash Utilization as mandated in the MoEF Notification dated 03.11.2009.

h. Fly ash produced at a Thermal Power Plant is utilized by the generators in various manners viz; mine stowing, disposing in ash ponds, sale to users of fly ash (for example - brick manufacturer, road construction, cement industry etc). The MoEF Notification dated 25.01.2016 is an amendment to the earlier Notification and inter-alia stipulates an additional condition that the cost of transportation of ash for road construction projects or for manufacturing of ash based products or use as soil conditioner in agriculture activity with radius of 100 km of any coal based power plant shall be borne by such coal based thermal power plant and the cost of transportation beyond the radius of 100 km and up to 300 km shall be shared equally between the user and the coal based thermal power plant.

Therefore, in addition to the obligation of 100% ash utilization, MoEF Notification dated 25.01.2016 has imposed an additional obligation upon the Thermal Generators to share the cost of transportation of fly ash with the users to whom fly ash is sold.

i. In view thereof, the issue raised in Petition No.172/MP/2016 is substantially different from the present claim of MPL. In the present case, MPL is only claiming the cost incurred by it pertaining to the activity of ash disposal during the period 2014-19 on the same basis as was approved during 2011-14. Whereas, NTPC in its Petition has claimed to recover the additional expenditure to be incurred by it for transportation of ash up to 300 km radius from its Thermal Power Plant pursuant to Notification dated 25.01.2016.

j. Further, the Commission has previously allowed the ash disposal expenses of Rs.1366.00 lakh in FY 2012-13 and Rs.4100.00 lakh in FY 2013-14 vide its Order dated 19.11.2014. Accordingly, based on actual expenditure incurred, the Commission vide the Impugned Order dated 26.12.2017 Trued-up the ash disposal expenses for Long term sales at Rs (-)11 lakh in FY 2011-12, Rs 861 lakh in FY 2012-13 and Rs 3376 lakh in FY 2013-14 for Generating Station. Production of ash is a consequence of Power generation and in terms of the mandate of MoEF Notification, MPL is duty bound to utilize 100% of the fly ash generated at its Generating Station, which is done by mine stowing. Therefore, MPL continues to incur substantial expenditure towards ash disposal activity.

35. The Respondent WBSEDCL vide its affidavits dated 11.6.2018 and 26.11.2018 has submitted that the present Review Petition is not maintainable. The respondent in affidavit dated 26.11.2018 has submitted that, the Commission directed Petitioner to furnish the requisite details regarding ash utilization expenses and revenue earned at the time of truing-up of the tariff in terms of the CERC 2014, Tariff Regulations and further submitted that there is no “error apparent” that is made out warranting exercise of the review jurisdiction of this Commission. MPL should instead furnish the requisite information as instructed by this Commission to enable this Commission to compute the same at the appropriate stage. The Petitioner vide its rejoinder dated 26.11.2018 has reiterated its contention and claim.

36. The respondent KSEBL vide affidavit dated 4.7.2018, has submitted that the statement and submissions made by the Petitioner in the Review Petition are denied for being false and baseless and the matter raised is outside the scope of Review Petition and the Review Petition is not maintainable. The Petitioner vide its rejoinder dated 16.7.2018 have denied the averments made by KSEBL.

37. The respondent TPDDL, vide affidavit dated 10.12.2018, has submitted that there is no "error apparent" in the impugned Order. Therefore, the Commission may consider the claim towards Ash Disposal of the Review Petitioner in light of the decision taken in Order dated 5.11.2018 in Petition No. 172/MP/2016.

Analysis and Decision

38. We have examined the submission of the Petitioner and respondents in the Review Petition. The Commission vide Order dated 19.11.2014 in Petition No. 274/2010, had approved the projected additional O&M expenses of ₹1366.00 lakh in 2012-13 and ₹4100.00 lakh in 2013-14 towards ash disposal, with the following observations:-

> *"78. We have examined the submissions of the Petitioner. Considering the fact that the capacity of ash pond is limited and require frequent disposal as per the statutory provision of the MOEF and since the normative O&M allowed under the 2009 Tariff Regulations does not include such expenses, we are inclined to consider the claim of the Petitioner on this count."*

39. The Commission, vide Order dated 26.12.2017 in Petition No. 152/GT/2015 (i.e. Petition for truing-up of tariff for the period 2011-14 and determination of tariff for the period 2014-19), had allowed the actual Ash disposal expenses of (-)₹11.00 lakh in 2011-12, ₹861.00 lakh in 2012-13 and ₹3376.00 lakh in 2013-14 after truing up for the period 2011-14.

40. Further, the Petitioner in the original petition had claimed the projected additional O&M expenses of ₹260.90 lakh during 2014-18 (₹60.98 lakh in 2014-15, ₹ 62.70 lakh in

2015-16, ₹66.50 lakh in 2016-17, ₹70.72 lakh in 2017-18) towards Ash disposal, citing that:

> *"The Fly Ash Generated is partially sent to the Ash Pond in wet form along with Bottom Ash for temporary storage and partially sent to nearby developers in dry form. Due to limited capacity of the Ash Pond, the Wet Ash is also required to be evacuated to designated low lying areas within 100 Km radius of the Generating Station for the purpose of 100% utilization of Fly Ash in compliance with the directive of the MoEF under Notification dated 03.11.2009."*

41. The Commission in the impugned Order dated 26.12.2017 in Petition No 152/GT/2015, disallowed the claim of the Petitioner. While dealing with the claim of the Petitioner regarding expenses on account of Ash Disposal, has held as under:

> *"139 We have examined the matter. Regulation 29(1)(a) of the 2014 Tariff Regulations provide for the grant of normative O&M expenses to the generating stations. As regards the grant of additional O&M expenses over and above the normative O&M expenses for the period 2014-19, we notice that Petition No. 172/MP/2016 has been filed by NTPC praying for recovery of additional expenditure incurred due to sharing of transportation cost of fly ash consequent to Ministry of Environment and Forest, Govt. of India Notification dated 25.1.2016 as "Change in Law" event and the same is pending for consideration of the Commission. In view of this, the prayer of the Petitioner has not been considered at this stage. The decision of the Commission in Petition No.172/MP/2016 shall be applicable in the present case of the Petitioner. Meanwhile, the Petitioner is directed to furnish the details regarding the ash utilization and the revenue earned at the time of truing-up of tariff of the generating station in terms of Regulation 8 of the 2014 Tariff Regulations."*

42. The expenditure on ash disposal is a statutory requirement as per MoEF Notification dated 3.11.2009, which was required to be incurred for utilizing 100% of the ash generated at their Power Plant and entitled the generator for claiming the compensation for ash disposal charge. However, the Petition No.172/MP/2016 filed by NTPC seeking reimbursement of additional expenditure incurred by it due to sharing of transportation cost of fly ash is consequent to MoEF Notification dated 25.1.2016. Hence, the issue raised in Petition No.172/MP/2016 is different from the claims raised in impugned Order. In the present case, the Petitioner is only claiming the cost incurred by it pertaining to the activity of ash disposal during the period 2014-18 periods on the same basis as was approved during 2011-14. The Additional O&M expenses for Ash Disposal claimed by the Petitioner in the impugned Order is basically due to limited ash pond

capacity, which require mandatory disposal of ash from the pond, as per the statute prescribed by MoEF and not of the nature of expenses claimed by NTPC, in Petition No. 172/MP/2016. Hence, there is an error apparent on the face of the record and the expenditure of ₹260.90 lakh claimed by the Petitioner for Ash disposal during 2014-18 is allowed. However, the same will be trued up at the end of tariff period with prudence check and the Petitioner is directed to submit the relevant documents in support of the said expenditure.

(5) Non-consideration of reimbursement of re-financing cost and financing charges

43. The Review Petitioner has submitted that the Commission in its order has not considered the reimbursement of re-financing cost of ₹10.92 crore and Financing charges of ₹1.84 crore incurred during 2009-14 and the same is an error apparent on the face of the record due to following reasons: -

(i) In terms of Regulation 16 (7) of the 2009 Tariff Regulations, the benefit accruing from refinancing of debt is to be shared amongst the parties. However, the cost associated to refinance has to be borne by the beneficiary. MPL through affidavit dated 05.02.2016 and 19.02.2016 filed in the tariff petition had provided detailed justification and proof of re-financing/financing charges claimed by it. Further, it had sought reimbursement of certain fees payable annually over the life of NCDs associated with such refinancing viz. Annual Listing Fees (Rs. 30000), Debenture Trustee Fees (Rs. 100000), Registrar & Transfer Agent Fees (Rs. 25000) and Certification Charges for creation of Security.

(ii) However, the Commission while adjudicating the petition has not returned any finding on the same and hence non-grant/ consideration of Re-financing cost and financing charges is an error apparent of the face of the record warranting exercise of review jurisdiction.

Analysis and Decision

44. Clauses (7), (8) & (9) of Regulation 16 of the 2009 Tariff Regulations provide as below:

> *"16(7) The generating company or the transmission licensee, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the*

beneficiaries and the net savings shall be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:1.

(8) The changes to the terms and conditions of the loans shall be reflected from the date of such re-financing.

(9) In case of dispute, any of the parties may make an application in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, as amended from time to time, including statutory re-enactment thereof for settlement of the dispute."

45. The Commission in its order dated 26.12.2017 while working out the interest on loan had considered the submissions of the review petitioner and had observed as under:

44. The petitioner has submitted that it has refinanced the loan and the same has resulted in substantial benefits to the respondents on account of lower interest rates and the benefits of refinancing will be calculated and shared between the beneficiaries and the petitioner in the ratio of 2:1 in terms of Regulation 26 (7), (8) & (9) of the 2009 Tariff Regulations. Accordingly, Interest on loan is worked out as under.

46. The Regulation 26 (7), (8) & (9) as referred to in our order shall be read as Regulation 16 (7), (8) & (9) of the 2009 Tariff Regulations. Interest on normative loan has been worked out and allowed in accordance with Regulation 16 (7), (8) & (9) of the 2009 Tariff Regulations, considering the claim of the Petitioner. It is further clarified that in terms of the above regulations, the cost of refinancing of loan and financing charges shall be payable by the beneficiaries and the net savings, if any, shall be shared between the beneficiaries and the generating company in the ratio of 2:1.

47. The prayers of the Petitioner for review are disposed of as above and accordingly, the Review Petition No.16/RP/2018 stands disposed of.

Sd/-	*Sd/-*
(Dr. M.K. Iyer)	**(P.K. Pujari)**
Member	Chairperson