

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 285/MP/2018

Coram:

Shri P.K. Pujari, Chairperson

Dr. M.K. Iyer, Member

Shri I.S.Jha, Member

Date of Order: 17th July, 2019

In the matter of

Petition for inclusion of liquidated damages deducted from capital cost and re-computation of tariff for the period 2011-14 and 2014-19 pursuant to Commission's order dated 26.12.2017 in Petition No. 152/GT/2015 in respect of Maithon Right Bank Thermal Power Plant (Units I and II) (1050 MW) of Maithon Power Ltd

And

In the matter of

Maithon Power Ltd.
Jeevan Bharti, 10th Floor, Tower-I
124, Connaught Circus,
New Delhi-110001

.....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-700 054
3. West Bengal State Electricity Distribution Company Ltd
Bidyut Bhawan (8th Floor), Block-DJ, Sector-II
Salt Lake, Kolkata-700 091
4. Kerala State Electricity Board Ltd
Vidyuthi Bhavan, Pattom, Thiruvananthapuram-695 004
5. Tata Power Trading Company Ltd
Corporate Centre, 'A' Block, 34, Sant Tukaram Road,
Carnac Bunder, Mumbai - 400 006

.....Respondents



Parties present:

Shri Amit Kapur, Advocate, MPL
Shri Vishrov Mukerjee, Advocate, MPL
Shri Ameya Vikram Mishra, Advocate, MPL
Shri Pramod Singh, MPL
Shri Pankaj Prakash, MPL
Shri Mansoor Ali, Advocate, TPDDL
Ms. Shefali Sobti, TPDDL

ORDER

Maithon Right Bank Power Project is situated in Dhanbad District of the State of Jharkhand. The project is envisaged as a Mega Power Project in terms of Ministry of Finance's Notification No. 63/99 dated 13.5.1999 and 100/99-Customs dated 28.7.1999.

2. The Petitioner, Maithon Power limited (MPL) is a public limited company incorporated on 26.7.2000 under the provisions of the Companies Act, 1956. MPL is a joint venture between Tata Power Trading Company Ltd (TPTCL) having an equity participation of 74% and Damodar Valley Corporation (DVC) having an equity participation of the remaining 26%. The actual date of commercial operation of Unit-I is 1.9.2011 and Unit-II is 24.7.2012.

Background

3. Petition No. 274/2010 was filed by the Petitioner for approval of capital cost and determination of generation tariff of the generating station for the period from the date of commercial operation of Units-I (1.9.2011) and Unit-II (24.7.2012) till 31.3.2014 in terms of the 2009 Tariff Regulations. The Commission vide its order dated 19.11.2014 had determined the tariff of the generating station from COD of the Units till 31.3.2014 based on the capital cost of ₹244839 lakh (as on 1.9.2011) and ₹ 137002 lakh (as on 24.7.2012). Thereafter, Petition No. 152/GT/2015 was filed by the



Petitioner for true-up of tariff for the period 2011-14 (in terms of the 2009 Tariff Regulations) and for determination of tariff for the period 2014-19 (in terms of the 2014 Tariff Regulations) and the Commission by its order dated 26.12.2017 revised the tariff of the generating station for the period 2011-14 and approved the tariff for the period 2014-19 vide its order dated 26.12.2017. The Commission in the said order had deducted an expected amount of ₹160 crore as Liquidated Damages (LD) from the capital cost for the period 2011-14 till the time the Petitioner furnishes the details of LD settlement.

Submissions of the Petitioner

4. The Petitioner in this Petition has submitted the particulars of the LD amount actually recovered and has accordingly sought the inclusion of ₹160 crore in the capital cost which was provisionally deducted towards Liquidated Damages (LD) in order dated 19.12.2017 on the following grounds:

(A) As regards BTG package sourced from M/s BHEL against an anticipated LD of ₹144.50 crore, no LD was recovered since the delay was for reasons beyond the control of BHEL ; and

(B) As regards packages for General Civil Works, Plant water system, Coal Handling System, against anticipated LD of ₹15.50 crore, a total amount of ₹41.12 crore was recovered which has already been adjusted in the gross block of Fixed Assets (GFA) for the years 2011-12 and 2014-15.

(A) Recovery of LD from BHEL for BTG package

5. As regards the recovery of LD from BHEL with respect to BTG contract, the Petitioner has submitted the following:

(i) The BTG contract package was executed between the Petitioner and BHEL on 23.10.2007 and as per the contract, the package commencement date was 25.10.2007 and the completion date was 24.10.2010 for Unit-I and 24.4.2011 for



Unit-II. The contract provided for levy of LD for (a) delay in completion of works and (b) not meeting the performance guarantee during operations period.

(ii) BHEL was issued Letter of Intent on 17.8.2007 for supply and services of BTG package for the generating station and contracts were entered into with BHEL with major provisions. The contract also provided for applicability of LD for (i) delay in achieving provisional take over and (ii) LD for failure to meet performance guarantee parameters for levy of LD in respect of each unit.

(iii) After the commissioning of the units, it was observed that there were shortcomings/quality issues in the performance of equipment such as multiple Boiler Tube Leakages, Exciter Rotor replacement, APH support bearing failure etc., which impacted the operational efficiency and availability. This caused loss of revenue to the Petitioner due to lower availability and hence lower recovery of capacity charges.

(iv) BHEL vide its letter dated 19.5.2012 submitted that the reasons for the delay in completion of work was not attributable to BHEL and sought extension of contract upto June, 2012, provisionally without imposition of LD and submitted detailed explanation. From the analysis, it was evident that majority of the delays in the project execution happened due to the impact of various external circumstances and dependencies on progress of other project packages (delayed due to various reasons) which were beyond control of BHEL.

(v) After careful consideration of all the facets of delays and provisions of contract, it was concluded that even though the completion of the project could not be done within the guaranteed completion date, the reasons for the delay were not attributable to and were beyond the control of BHEL.

(vi) As per Clause 20.1 of the BTG contract, the reasons were of the nature of force majeure and accordingly, BHEL was not liable to pay any LD for delay in completion of the package. Thus, after detailed deliberations and analysis, the issue of LD was finally settled between BHEL and the Petitioner vide Minutes of Meeting dated 7.9.2013. The Petitioner agreed with the contention of BHEL that the delay in completion of BTG packages was due to force majeure reasons and, hence, no LD was leviable for such delay.

(vii) Based on the above, the Contract Closure Committee of the Petitioner, through its Circular dated 24.9.2013, recommended waiver of LD on BHEL, which was put up to the Board in its meeting on 30.10.2013. The Board accorded its approval for proceeding on the basis of resolution mechanism for LD of ₹206.66 crore agreed with BHEL in meeting dated 7.9.2013. The Contract Closure Committee, Commercial Committee and the Board of the Petitioner Company



having analysed the reasons for delay, concluded that no LD will be imposed on BHEL.

(viii) As evident from the above, no LD (as against ₹144.50 crore) estimated earlier or ₹206.66 crore later claimed by the Petitioner based on the actual delay) was recovered from BHEL for the delay in completion of the BTG package in terms of the contract, since the delays were due to local objections etc., which were beyond control of BHEL. Accordingly, no adjustment of LD towards the BTG package is warranted in the Capital Cost.

(ix) As regards the compensation of loss to the Petitioner due to multiple failures of equipment after COD leading to lower availability and generation, significant efforts were made by BHEL to minimise the overall generation loss. For example, in the event of failure of Generator Transformer of Unit-I post COD, the available GT of Unit-II (near commissioning) was used as replacement in the absence of spare GT. BHEL had made an arrangement for repair of failed GT at site instead of shifting the same to their works at Bhopal. This reduced repair cycle has contributed to avoiding delay in commissioning of Unit-II. Therefore, in order to balance the interests of both the parties, it was agreed that as a one-time settlement for all shortcomings faced by the Petitioner impacting availability of the Plant, BHEL would compensate the Petitioner by providing free supply of spares worth ₹84 crore (including taxes & duties).

(x) In addition, BHEL agreed to provide free technical consultancy services till December, 2014 to prevent/ overcome unforeseen outages or operational issues caused by various major/ critical quality/ operational gaps. Further, BHEL would also support operational performance improvement. Therefore, the arrangement approved by the Board of MPL will result in better and more efficient operations without any burden on beneficiaries.

(xi) The compensation for not meeting performance guarantee related to operations period after commissioning of the Units, has no relation with the capital cost/additional capitalisation of the Project and hence, the same cannot be considered as LD for delay in commissioning and deducted from the capital cost.

(xii) Interest During Construction (IDC) for the delay not condoned was disallowed in the order dated 19.12.2014 and the same has been trued up with the same disallowance. The Petitioner having already been penalised for delay in commissioning of the Project, it should not be penalised again by deduction of LD, more so, when no LD has been recovered from BHEL for the delay.



(B) Recovery of LD from contractors other than BHEL

6. As regards the recovery of LD from contractors other than BHEL, the Petitioner has submitted the following:

(i) The actual amount of LD settled with and levied on contractors other than BHEL was ₹41.12 crore as against the earlier estimated/ expected ₹15.50 crore. The said amount of ₹41.12 crore towards LD had been adjusted in the GFA as under:

Packages	(₹ in lakh)		
	2011-12	2012-13	2013-14
Ash Handling Systems	-	462.07	462.07
Coal Handling Systems	-	1550.00	1550.00
General Civil Work	3.00	1872.20	1875.20
Plant Electrical Systems	25.63	53.88	79.50
Plant Watering Systems	-	130.74	130.74
Pre-Operating Expenses	-	14.75	14.75
Grand Total	28.63	4083.64	4112.27

(ii) The aforesaid has already been reviewed and confirmed by the Statutory Auditor of the Petitioner. The Petitioner vide letter dated 24.1.2018 requested the Statutory Auditor to provide confirmation regarding the adjustment of the LD amount of Rs.41.12 crore from GFA in the Books of Account. In response, the Statutory Auditor of the Petitioner has given its “Report on Liquidated damages deducted from the Gross Block of Fixed Assets during the financial years 2011-12 and 2014-15” on 29.1.2018.

(iii) The Statutory Auditor at para 12 of its Report has vindicated the Petitioner’s position in the statement enclosed with the Report containing the amounts of LD alongwith their accounting treatment and concluded as follows:

“12. Based on the information, explanations and representation provided to us by the management and procedures performed by us, as referred in paragraph 11 above, nothing has come to our attention that causes us to believe that the Statement showing the amount of liquidated damages adjusted against amounts payable to vendors and subsequently credited to the Gross block of Fixed Assets for the financial year 2011-12 and 2014-15 are not in agreement with the related books of account certified by the management and supporting records of the Company.”

(iv) Therefore, the amount of LD of ₹41.12 crore recoverable from various contractors was deducted from the balance amount payable to each contractor against the final payment made by the Petitioner. The effect of such deduction was reflected in the Books of Accounts of the Petitioner by adjusting (reducing) the value of GFA additions in the relevant year in which such deduction was



made by crediting the corresponding Asset. Since, the entire amount of LD of ₹41.12 crore had already been adjusted in the Books of Accounts of the Petitioner, there is no need for any further deduction of the LD of ₹41.12 crore.

(v) Barring a minor adjustment of ₹0.29 crore in 2011-12, majority of LD amount of ₹41.12 crore was adjusted in the year 2014-15. The projections for the period 2014-19 which have been approved in the tariff order dated 26.12.2017 are subject to true up at the end of the control period. Therefore, the impact of variation in projected capitalisations and LD amount adjustment in GFA as reflected in Books of Account for 2014-15 shall be captured in trueing up. Even the capital cost corresponding to LD of ₹0.29 crore. Adjusted in 2011-12 was neither claimed nor allowed in true-up for 2011-12 to 2013-14 as the GFA as on 31.3.2012 onwards stands adjusted /reduced by that amount.

(vi) The Commission has not allowed the capital cost as on COD of Units I & II based on actual cash expenditure and not on the entire GFA reflected in the Books of Account. Even for true-up for the period till 31.3.2014, the Commission had approved additional capitalisations on cash basis after deducting the outstanding un-discharged liabilities. Since the adjustment of ₹41.12 crore has been done from un-discharged liabilities, for which neither any tariff has been allowed to the Petitioner by way of capital cost nor the Petitioner is seeking any additional capitalisation due to discharge of such liabilities through LD, there is no need to adjust this LD amount from the capital cost

Accordingly, the Petitioner has submitted that no LD amount, whether actual or estimated/expected amount of ₹160 crore is required to be deducted from the capital cost approved by this Commission in its tariff order dated 26.12.2017 in Petition No. 152/GT/2015. In the above background, the Petitioner has filed this Petition and has made the following prayers:

- a. Allow inclusion of amount of Rs.160 crore in the Capital Cost as deducted under Order dated 26.12.2017;*
- b. Revise the tariff for the period 2011-12 to 2013-14 and the period 2014-15 to 2018-19 on account of inclusion of Rs.160 crore in the Capital Cost; and*
- c. Pass such further /other order(s) /direction(s) /relief(s) as the Commission may deem fit and proper in the interest of justice.*



7. The Petition was admitted on 19.12.2018 and the Commission directed the respondents to file its reply in the matter. Reply to the Petition has been filed by the Respondents, TPDDL and KSEBL. The Petitioner has filed its rejoinder to the reply filed by KSEBL.

Submissions of the Respondent, TPDDL

8. The Respondent No.1, TPDDL vide its affidavit dated 7.3.2019 has submitted that the Commission in its earlier orders had concluded that the LD deducted from capital cost was provisional in nature. It has stated that now, from the pleadings and document placed on record, the Petitioner has contended its inability to recover the LD. The Respondent has further stated that in view of the submissions of the Petitioner, the Commission may, taking into consideration the recommendations of the Contract Closure Committee and the validity of its decision of waiver of LD, pass appropriate orders.

Submissions of the Respondent, KSEBL

9. The Respondent No.4, KSEBL vide its affidavit dated 15.3.2019 has submitted that the Petitioner has not furnished any documentary proof to show the delay in the commissioning of BTG package by BHEL was beyond its control. It has further stated that some of the delay listed by the petitioner under para 41 of the petition cannot be categorized as being caused due to force majeure conditions. Hence, the Respondent has submitted that the waiver of LD of ₹160 crore and for inclusion of the same in the capital cost and for revision of tariff for the period 2011-14 and 2014-19 may be rejected. The Respondent has also submitted that the Commission in its order dated 26.12.2017 had approved ₹71.64 crore as initial spares and has further allowed 20% of



the O&M cost as maintenance spares and included the same in tariff to be recovered from beneficiaries. Hence, it has contended that spares worth ₹84 crore received free of cost by the Petitioner may be passed on to the beneficiaries through reduction of amount from capital cost. The Respondent has added that retrospective revision of tariff from 2011 based on the claim of the Petitioner will lead to difficulties in accounting of the utilities as the accounts have been tried up by the State Commission and cannot be reopened.

Rejoinder of the Petitioner

10. The Petitioner vide its rejoinder affidavit dated 22.3.2019 (to reply of KSEBL) has submitted that since the Commission in its order dated 26.12.2017 had deducted the amount of ₹160 crore pending final settlement of LD, if any, to be paid by BHEL, the respondent has no right to object to its inclusion. It has also stated that the Contract Closure Committee, Commercial Committee of the Board and the Board of the petitioner having analyzed the reasons for the delay had concluded that no LD will be imposed on delay. Therefore, KSEBL in a tariff determination petition cannot sit in judgment over a decision taken pursuant to the contract entered into between the Petitioner and BHEL and approved by the Petitioner's Board of Directors. The Petitioner has also clarified that free supply of spares has been taken in Books of Accounts at almost zero value (notional ₹1 for each spare) and have neither been claimed under additional capitalization or additional capital spares during operations period. Accordingly, it has submitted that the amount of spares to be supplied by BHEL cannot be adjusted from capital cost/additional capitalization. As regards retrospective revision of tariff, the Petitioner has submitted that the Commission had granted liberty to seek appropriate adjustment in terms of order dated 26.12.2017. It has further stated



that the State Commission also carries true-up of expenses of the respondent every year which may include prior period expenses incurred in true-up year pursuant to a judicial order. Accordingly, the Petitioner has prayed that the submissions of the Respondent KSEBL may be rejected and the amount of ₹160 crore may be included in the capital cost and the tariff determined vide order dated 26.12.2017 may be re-computed.

11. The Petition was heard on 11.4.2019 and the Commission after permitting to place on record the LD clause with regard to the BTG contract of BHEL with the Petitioner, reserved its order in the Petition. In compliance the Petitioner vide its affidavit dated 15.4.2019 has placed on record the copy of the relevant provisions of the BTG contract with BHEL along with its note of arguments dated 11.4.2019.

Analysis and Decision

12. In Petition No.274/2010 filed by the Petitioner for determination of tariff of the generating station from COD of Units I & II till 31.3.2014, the Commission vide ROP of the hearing dated 24.5.2011 had directed the Petitioner to file, amongst others, additional information on the following:

“(b) Completion date as per the contract/agreement in respect of 16 packages awarded through ICB/DCB. If the completion date has expired, then the amount of Liquidated Damages recovered/to be recovered as per the contract /agreement to be furnished.”

13. In compliance with the above directions, the Petitioner vide its affidavit dated 22.6.2011 had furnished a table containing the completion dates in respect of 16 packages awarded through ICB/domestic competitive bidding and submitted that it envisaged a recovery of ₹160 crore toward LD from various package owners. The Petitioner had further submitted that the expected amount of ₹160 crore to be



recovered comprised of ₹144.50 crore towards BTG package awarded to BHEL and ₹ 15.5 crore towards other packages. Accordingly, the Commission in its order dated 19.11.2014 decided as under:

“46. The petitioner has further submitted that an amount of Rs.16000 lakh is expected to be recovered as Liquidated Damage (LD) amount against the different packages of the generating station. The major portion of the LD amounting to Rs.14400 lakh is to be recovered in respect of Boiler Turbine Generator (BTG) package. However, the petitioner has not clarified if the said LD is on account of delay in the execution of project. It is observed that the completed cost of Rs.550011 lakh considered by the petitioner is without the LD amount. However, the petitioner has submitted that any recovery of LD would be adjusted in the capital cost of the project at the time of truing up at the end of control period.

XXXXX

54. The petitioner has also submitted that an amount of Rs.160.00 crore is expected to be recovered as 'Liquidated Damages' against different packages. As the same is yet to be settled, the said amount has not been considered. However, the same would be considered for adjustment in capital cost at the time of truing up, based on the final settlement made by the petitioner.”

14. However, in Petition No. 151/GT/2015 filed by the Petitioner for revision of tariff for the period 2011-14 based on truing-up exercise and for determination of tariff for 2014-19, the Petitioner had failed to furnish any details with respect to the final settlement of the LD amount. Accordingly, the Commission in its order dated 26.12.2017 decided as under:

“Liquidated damages

29. The Commission in its order dated 19.11.2014 in Petition No. 274/2010, had observed that the completion cost of Rs.550011 lakh considered by the petitioner is without the LD amount, which according to the submission of the petitioner was expected to be Rs.16000 lakh. The Commission in the said order had further observed that “as the same is yet to be settled, the said amount has not been considered. However, the same would be considered for adjustment in capital cost at the time of truing up, based on the final settlement made by the petitioner.” However, in the instant petition, it is observed that the petitioner has failed to furnish any details with respect to the final settlement of the LD amount. As the same needs to be taken care of, it is hereby decided to deduct Rs.16000 lakh of expected LD amount out of the tariff computation, till the time, the petitioner furnishes details of LD settlement.”

15. It is evident from the above that the deduction of ₹160 crore of expected LD from the capital cost of the generating station by order dated 26.12.2017 was subject



to details being furnished by the Petitioner with regard to final settlement of the LD amount. In other words, the Petitioner, in terms of the said order, had been given the opportunity to approach the Commission after the final settlement of LD amount. Accordingly, the Petitioner has approached this Commission with this Petition, furnishing the details of the final settlement of the LD amount of ₹160 crore with the aforesaid prayers. In this background, we proceed to examine the prayers of the Petitioner in subsequent paragraphs.

16. The Petitioner has submitted that post completion of project packages and as a part of process of contract closure, the negotiations for final settlement of LD were initiated with the contractors. It has submitted that against the expected LD of ₹ 144.50 crore for delay in execution by BHEL an LD amount of ₹206.66 crore was claimed from BHEL. Similarly, against the expected aggregate LD of ₹15.50 crore for delay from other Contractors, the actual LD amount settled was ₹41.12 crore.

17. As regards the recovery of expected LD amount from BHEL, the Petitioner has submitted that BHEL had written to the Petitioner on 19.5.2012 for extension of contract without imposition of LD on the ground that the delay in completion was for reasons beyond the control of BHEL. It has also submitted that the Board of the Petitioner Company in a meeting held on 11.6.2012 had authorised the Commercial Committee of the Board, to examine and approve the applicability/non applicability of LD and/or deferment/condonation of the immediate milestone for all project contractors except for BHEL, L&T etc., It has also submitted that based on the recommendation of the Contract Closure Committee, the Commercial Committee of the Board of the Petitioner Company accorded its consent for non-applicability of LD



amount to BHEL as per Minutes of Meeting (MOM) dated 7.9.2013. It has further submitted that the Board of Director's had passed a resolution approving the resolution mechanism for LD qua BHEL as per MOM dated 7.9.2013.

18. As regards the recovery of expected LD amount from other contractors aggregating ₹15.50 crore (actually settled at ₹41.12 crore), the Petitioner has submitted that the said amount has been adjusted in the GFA reflected in annual Books of Account of the Petitioner by deducting the LD amount from additions during that year to arrive at the net additions for 2011-12 (LD adjustment ₹0.29 crore) and 2014-15 (LD adjustment ₹40.83 crore). The Petitioner has also submitted that based on its request to the Statutory Auditor to provide confirmation of the LD adjustments in the Gross Fixed Assets (as per the table under para 6(i) above), the Statutory Auditor has on 29.1.2018 submitted its report on the LD deducted from the gross block of fixed assets for the years 2011-12 and 2014-15.

19. Accordingly, the Petitioner has submitted that when no LD was recovered from BHEL for the delay and the LD from Other contractors has also been adjusted from the Gross Fixed Assets during the years of 2011-12 and 2014-15, the Commission may allow the capital cost without deduction of LD amount and re-compute the tariff determined vide order dated 26.12.2017. While the Respondent, KSEBL has submitted that the prayer of the Petitioner may be rejected, the Respondent TPDDL has submitted that the Commission may consider the recommendations of the Contract Closure Committee for waiver of LD amount and pass appropriate orders

20. The submissions of the parties along with the various documents placed on record by the Petitioner, namely, the MOM dated 7.9.2013, the Circular dated 24.9.2013 of the



Contract Closure Committee, the Board Resolution dated 30.10.2013 and the Report of the Statutory Auditor dated 29.1.2018 have been examined. It is observed that against the expected LD amount of ₹144.50 crore for delay in execution by BHEL, an LD of ₹206.66 crore was reassessed and claimed from BHEL. However, based on the willingness shown by BHEL to settle the issues for an amount of ₹84 crore, in the meeting held on 7.9.2013, the Contract Closure Committee of the Petitioner vide its Circular dated 24.9.2013, had recommended to the Commercial Committee of the Board of the Petitioner Company for closure of contract with BHEL, without imposing the LD amount (₹144.50 crore which was later reassessed to ₹206.66 crore). Thereafter, vide Resolution dated 30.10.2013, the Board of Directors of the Petitioner Company had approved the recommendations of the Contract Closure Committee/ Commercial Committee of the Board. Accordingly, no LD was recovered from BHEL for the delay in completion of the package in terms of the BTG contract since the delay was considered to be beyond the control of BHEL. Considering the fact that the Petitioner and BHEL after detailed deliberation and negotiations have arrived at a settlement in terms of the contract and consequent upon this, the Board of the Petitioner Company having decided not to impose LD on BHEL, we find no reason to make any adjustment of the LD amount towards BTG package in the capital cost.

21. Similarly, the LD amount of ₹41.12 crore (reassessed from ₹15.50 crore) recoverable from various other contractors have been deducted from the balance amount payable to these contractors against the final payment made to them. These deductions have also been reflected in the Books of Account of the Petitioner by reducing the value of GFA additions in the relevant years and the same has been confirmed by the Statutory Auditor in his report dated 29.1.2018. Accordingly we find



no reason to adjust the LD amount towards delay by other contractors from the capital cost of the generating station.

22. In view of the above, the total expected LD amount of ₹160 crore which was deducted from the capital cost vide Commission's order dated 26.12.2017 in Petition No. 152/GT/2015 is allowed to be included in the capital cost of the generating station. Consequently, the impact due to inclusion of the said LD amount in the capital cost shall be worked out and tariff of the generating station for the period 2011-14 and 2014-19 shall be revised by a separate order in Petition No. 152/GT/2015. We decide accordingly.

23. We notice that as per Minutes of Meeting dated 7.9.2013 between the Petitioner and BHEL, BHEL has agreed to provide free spares worth ₹84 crore to compensate the Petitioner for loss due to multiple failures of equipment after COD leading to lower availability and generation. The Respondent, KSEBL has submitted that the Commission in its order dated 26.12.2017 had approved an amount of ₹71.64 crore as initial spares for the project and had also allowed 20% of the O&M cost as maintenance spares for the project. It has therefore submitted that since the Petitioner has received spares worth ₹84 crore free of cost, the benefit of the same may be passed on to the beneficiaries through reduction of the amount from the capital cost. The Petitioner has objected to this and has stated that the amount of spares to be supplied by BHEL cannot be adjusted from capital cost or additional capitalisation. It has also submitted that the additional spares would improve the availability and reliability of the project and ultimately the beneficiaries would be benefitted without any additional burden on them. The Petitioner in its additional submissions dated 15.4.2019 has submitted that the spares



worth ₹84 crore provided by BHEL relates to performance failure during operations period as one time settlement and has no correlation with the LD amount of ₹144.50 crore for delay in commissioning the project. It has also stated that no part of spares worth ₹84 crore have ever been claimed by Petitioner either under initial spares in capital cost or as additional capitalisation thereafter. We however direct the Petitioner to furnish the year-wise details of the free spares received from BHEL at the time of revision of tariff based on truing-up exercise for the period 2014-19 period.

24. Petition No. 285/MP/2018 is disposed of in terms of the above.

Sd/-
(I. S. Jha)
Member

Sd/-
(Dr. M. K. Iyer)
Member

Sd/-
(P.K.Pujari)
Chairperson

