

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.11/RP/2023

in

Petition No. 229/GT/2020

Coram:

**Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri Ramesh Babu V, Member**

Date of Order: 2nd August, 2024

In the matter of:

Review of Commission's order dated 13.2.2023 in Petition No. 229/GT/2020 in the matter of truing-up of tariff for the period 2014-19 and determination of tariff for the period 2019-24 in respect of Salal Hydro Power Station (690MW)

And

In the matter of:

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

...Review 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. Power Development Department,
New Secretariat, Jammu -180 001



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. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House, Shimla– 171 004
-Respondents**

Parties Present:

Shri Anand Singh Ubeja, Advocate, NHPC
Shri Kunal Veer Chopra, Advocate, NHPC
Shri Mohd. Faruque, NHPC
Shri Piyush Kumar, NHPC
Shri Jitendra Kumar Jha, NHPC
Shri Ajay Shrivastava, NHPC

ORDER

Petition No. 229/GT/2020 was filed by the Review Petitioner for truing-up of the tariff of Salal Hydroelectric Power Station (690 MW) (in short, 'the generating station') for the period 2014-19 in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (in short, 'the 2014 Tariff Regulations') and the Commission, vide order dated 13.2.2023 (in short, the 'impugned order'), disposed of the said Petition. The annual fixed charges determined vide the impugned order dated 13.2.2023 is as under:



	<i>(Rs. in lakh)</i>				
	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation	2012.60	2034.22	2102.37	2243.63	2565.78
Interest on Loan	0.00	0.00	0.00	32.02	105.04
Return on Equity	9547.08	9583.63	9589.69	9662.02	9835.39
O&M Expenses	14429.58	15388.29	16430.64	17742.14	19000.37
Interest on Working Capital	1063.21	1117.51	1176.80	1254.91	1337.50
Total	27052.48	28123.66	29299.51	30934.72	32844.07

2. Aggrieved by the said order, the Review Petitioner has sought the Review of the impugned order on the ground of error apparent on the face of the record on the following issues:

- a) *Error in disallowing the impact of the Goods and Services Taxes (GST) for 2017-18 and 2018-19;*
- b) *Error in grossing up of the Return on Equity with MAT Rate in place of Effective Tax Rate;*
- c) *Error in disallowing the additional capitalization on few counts for the period 2014-19 and 2019-24; and*
- d) *Erroneously applied a methodology for calculating the gross value of the asset being de-capitalized for "assumed deletion" by de-escalating the gross value of the new asset @ 5% per annum till the year of capitalization of the old asset.*
- e) *Disallowance of the additional capital expenditure amounting to Rs. 1400 lakh towards the purchase of two (2) modified Spare runners on replacement basis in 2021-22 for the period 2019-24.*

Hearing dated 5.7.2023

3. During the hearing, the learned counsel for the Review Petitioner made detailed oral submissions in the matter. Accordingly, the Review Petition was admitted on the issues raised in para 2 above, and notice was served on the Respondents. The Commission also directed the parties to complete their pleadings in the matter.

4. In compliance with the above directions, the Respondents Rajasthan Discoms, BRPL, and UPPCL have filed their replies vide affidavits dated 1.9.2023, 17.11.2023 and 15.12.2023 respectively. The Review Petitioner has filed its rejoinder to the abovesaid replies vide affidavits dated 20.10.2023 (Rajasthan Discoms), 24.11.2023 (BRPL) and 22.12.2023 (UPPCL).



Hearing dated 29.11.2023

5. The matter was heard on 29.11.2023. During the hearing, the learned counsel for the Review Petitioner made detailed oral submissions on the issues raised in the Review Petition. The learned counsel for the Respondents BRPL & BYPL submitted that their reply may be considered by the Commission while passing the order. The Commission, after hearing the parties, directed the Review Petitioner to file an additional affidavit, to confirm that the amounts indicated under the column of 'assumed deletions' in Petition No. 229/GT/2020 are the gross value of the assets being de-capitalized. The Commission, after permitting the Respondents to file its response to the additional affidavits to be filed by the Review Petitioner, reserved its order in the Review Petition.

Hearing dated 4.4.2024

6. Since the order in the Review Petition (which was reserved on 29.11.2023) could not be issued prior to one Member of this Commission, who formed part of the Coram, demitting office, the matter was re-listed for hearing. During the hearing, the learned counsel for the Review Petitioner and the learned counsel for the Respondents BRPL & BYPL submitted that since the pleadings and arguments have been completed, the Commission may reserve its order in the matter. Accordingly, based on the consent of the parties, the Commission reserved its order in the matter.

Hearing dated 18.6.2024

7. Since the order in the Petition (which was reserved on 4.4.2024) could not be issued prior to one Member of this Commission, who formed part of the Coram, demitting office, the matter has been re-listed for hearing. During the hearing, the learned counsel for the Review Petitioner and the Respondents submitted that since



pleadings and arguments have already been completed, the Commission may reserve its order in the review petition. Based on the consent of the parties, the order in the review petition was reserved.

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

A) Error in disallowing the impact of GST for the period 2017-18 and 2018-19.

9. The Commission in the impugned order dated 13.2.2023 in Petition No. 229/GT/2020 had disallowed the impact of GST claimed by the Review Petitioner for the years 2017-18 and 2018-19, as under:

“62. The matter has been considered. It is observed that the Review Petitioner has claimed a total amount of Rs. 719.76 lakh towards impact of GST. 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...”

*63. 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 of the Review Petitioner to allow the additional O&M expenses towards payment of GST, in respect of works (in sl Nos. 2 to 7 of the table under para 60 above) which form part of O&M of the generating station.**”*

[Emphasis Supplied]

Submissions of the Review Petitioner

10. The Review Petitioner has submitted the following:

- a. Reimbursement of the additional tax paid due to the implementation of Goods and Services Tax, 2017 (“GST Act, 2017”) in respect of generating station as additional O&M expenses.



- b. Relaxation of O&M expense norms have been sought as specified in Regulation 29(4) of the 2014 Tariff Regulations in the exercise of the powers vested with the Commission under Regulation 54 and 55 of the 2014 Tariff Regulation.
- c. The implementation of GST is a “Change in law” event and the impact of the same should be passed through in tariff. As such, the tax paid towards O&M expenditures of Salal is claimed over and above the O&M expenses of the respective power stations.
- d. The Commission, in its order dated 22.8.2019 in Petition No. 133/MP/2019, granted liberty to the Review Petitioner to raise its claim for reimbursement of additional tax on the O&M expenses, due to implementation of the GST Act, 2017 along with the truing-up exercise for the period 2014-19.
- e. In view of the above, additional impact of GST for the years 2017-18 and 2018-19 (as duly certified by statutory auditors) has been claimed, as under:

Additional Impact of GST on O&M expenses (Rs. in lakh)			
2017-18	2018-19 (1.4.2018 to 31.12.2018)	2018-19 (1.1.2019 to 31.3.2019)	Total
281.02	323.33	115.40	719.76

- f. The Government of India has implemented the GST Act, 2017 with effect from 1.7.2017. Thereafter, the MOP GOI, had issued a direction to the Commission under Section 107 of the Act on 27.8.2018, which inter alia stated as follows:

“(a) Any change in domestic duties, levies, cess and taxes imposed by Central Government, State Governments / Union Territories or by any Government instrumentality leading to corresponding changes in the cost, may be treated as “Change in Law” and may unless provided otherwise in the PPA, be allowed as pass through.

*...
(e) The impact of such change in law shall be effective from the date of change in law.”*

- g. Taxes paid in the operation and management of plants are loaded in the O&M expenses of the respective power stations. In view of the same, the e Commission had fixed the O&M expenses in the case of Review Petitioner’s power stations for the period 2014-19 based on actual expenses incurred during the last 5 years (i.e., 2008-09 to 2012-13) in Regulation 29(3) of the 2014 Tariff Regulations. However, the GST has been brought into force and implemented only w.e.f. 1.7.2017 in the country and w.e.f. 8.7.2017 in the State of Jammu & Kashmir. Therefore, the additional tax implications due to the implementation of the GST Act, 2017 could not have possibly been factored into the O&M expenses for the period 2014-19 under the 2014 Tariff Regulations by the Commission while prescribing the same.



- h. The Commission has allowed the impact of GST only on security services of Rs. 567.97 lakh for the period 2017-18 and 2018-19 in Para. 64 of the impugned order, while considering that such taxes were not factored into the O&M expenses while fixing the norms for O&M expenditure in the 2014 Tariff Regulations for the period 2014-19. However, the Commission has erroneously disallowed the impact of GST other than security services amounting to Rs. 151.79 lakh for the period 2017-18 and 2018-19.
- i. The enactment of the GST Act, 2017 amounts to a 'change in law' event under the 2014 Tariff Regulations. In view of the above it is evident that an enactment, bringing into effect or promulgation of any new Indian law, including laws such as the GST Act, 2017, is a change in law as envisaged by the 2014 Tariff Regulations.
- j. The Commission has erred in disallowing the claim of the Review Petitioner on account of impact of GST other than on security services for the period 2017-18 and 2018-19, as the prescribed escalation rates in Regulation 29(3) of the 2014 Tariff Regulation for O&M norms cannot have any nexus with GST, which was in any case imposed more than three years (8.7.2017) after the notification of the 2014 Tariff Regulations. Therefore, it is submitted that such denial is contrary to the mandate of ensuring recovery of all reasonable costs through tariff.
- k. It is evident that the implementation of GST is a change in law event. Therefore, it is submitted that the e Commission has erred in disallowing the claim of the Review Petitioner on this account of the impact of GST other than on security services, and it is submitted that the Review Petitioner is entitled to be reimbursed for the additional expenditure incurred by it on account of such change in law event.
- l. The prescribed escalation rates in the 2014 Tariff Regulations for O&M norms cannot be a ground for refusing the Review Petitioner's claim *qua* impact of GST, which was imposed three years after the notification of the 2014 Tariff Regulations. In this respect, the e Commission, in its previous orders, has itself observed that "the abolition of taxes, duties, cess, etc. on the introduction of GST are "change in law" events" and that "the additional impact due to introduction of GST shall be borne by the beneficiaries". Therefore, the e Commission ought to allow the Review Petitioner's claim.
- m. Further, the O&M norms for the period 2014-19 allowed by the e Commission in the 2014 Tariff Regulations were based on the actuals for the period 2008-2013, when the total taxes, duties, etc., paid by the Review Petitioner were less than the newly enacted GST regime. However, , the Review Petitioner is currently incurring increased expenditure due to the higher taxes, payable under GST w.e.f. 8.7.2017. It is pertinent to note here that, keeping in view of



significant impact of GST on O&M Expenses, the Commission has already separately considered the impact of GST in Regulation 35(2) of the 2019 Tariff Regulations in respect of Hydro Generating Stations. However, due to the disallowance of GST and its impact on O&M expenses for the period 2017-18 and 2018-19 in the impugned order, the Review Petitioner is not able to recover the same.

- n. In view of the same, the Commission has erred in disallowing the GST impact, other than the impact on security services, for the period 2017-18 and 2018-19 as additional O&M, as was prayed by the Review Petitioner, which was not factored into O&M expenses for the period 2014-19 under the 2014 Tariff Regulation. As such, the Commission ought to review the same and allow reimbursement of the impact of GST, other than the impact on security services, for the period 2017-18 and 2018-19 to the Review Petitioner as prayed for in the Petition.

Replies of the Respondents

11. The Respondents RUVNL, BRPL and UPPCL have submitted as under:
 - a. The Commission has correctly decided the impact of GST for the period 2017-18 and 2018-19 in the present case. The Commission has allowed an amount of Rs. 567.97 lakh against the claim of the Review Petitioner of Rs. 719.76 lakh only after a detailed prudence check of all the documents, which was provided by the Review Petitioner as can be observed on a perusal of Paragraph 62, 63 and 64 of the impugned order.
 - b. In the determination of O&M expense norms, the Commission considers the O&M expenses of the past five years, which include tax components also, and escalation rates determined accordingly. Average O&M expense normalized for past years is escalated for subsequent five years covered under the next control period. In this manner, the tax component embedded in past O&M expenses has also been escalated at the rate irrespective of the fact whether there was any variation in the then existing tax rates or there is any variation in the tax rates of the next control period. As such, the Commission has rightly not considered allowing the impact of GST as an additional O&M expense in the order dated 13.2.2023.
 - c. The Review Petitioner has quoted the MOP, GPO communication to the Commission. In this communication, MOP had directed that any change in duties, levies, cess, and taxes imposed by the Central Government may be treated as change in law in PPA, unless provided otherwise, and may be allowed as pass through. This quoted direction is in respect of PPAs but not in respect of Regulations made by the Commission.



- d. In the 2014 Tariff Regulations, the Commission, while determining the escalation rates for arriving at O&M expenses, has already created ample room for the absorption of increases in taxes, duties, levies, and cess imposed by the appropriate Governments. As such, there was no need to approve the excess claim sought by the Review Petitioner on account of the imposition of GST. Hence, the Commission has rightly rejected the claim of the Review Petitioner.
- e. In light of the above, the Commission has rightly disallowed the GST claim on account of a change in law as additional O&M expenses because the Commission had already created an advance provision for absorption of positive change in tax & duties while determining the escalation rate for computation of O&M expense norms for the next control period, which in this case is the period 2014-19. There was nothing with the Commission to allow relaxation under Regulation 29 (4) read with Regulations 54 and 55, because Regulation 29 had already made a provision for absorption of any impact like GST. The Commission is prayed to reject the Review sought on this ground.

Rejoinder of the Review Petitioner

12. The Review Petitioner has submitted that:

- a) The GST laws were enacted in the year 2017 w.e.f. 1.7.2017. Therefore, the additional tax implications due to implementation of GST were not factored and could not have been factored into by the Commission while allowing O&M expenses for the period of 2014-19 in terms of the 2014 Tariff Regulations.
- b) The 2014 Tariff Regulations do not provide for reimbursement of the additional tax implications arising due to the implementation of GST. In this regard, it is stated that the Commission under Regulations 54 and 55 of the 2014 Tariff Regulations, is empowered to remove difficulty in implementation of the provisions of said regulations.
- c) The Commission, while rendering the finding that the Review Petitioner is not entitled to additional O&M expenses on account of the implementation of GST, failed to appreciate that although under Regulation 8(1) of the 2014 Tariff Regulation, the Commission has the power to scrutinize and make a prudence check, but in terms of Regulation 8(3) of the 2014 Tariff Regulations, the Commission is bound to consider the uncontrollable parameters which include 'change in law' events while carrying out the true up exercise of a generating station.
- d) In addition to the above, from a perusal of Regulation 8(7) of the 2014 Tariff Regulations, it is evident that the financial gain and losses by a generating



company on account of uncontrollable parameters are to be passed on to the beneficiaries.

- e) In view of the above, the e Commission ought to have allowed the Review Petitioner's claim for additional O&M expenses on account of the impact of GST as the Review Petitioner is bound to be placed in the same financial position as it would have been had the GST Act would not have been implemented.
- f) The overall impact due to change in tax regime has cast an additional financial impact on Review Petitioner as the expenditure which the Review Petitioner incurred in running the plant has substantially increased after the advent of GST.

Analysis and Decision

13. We have considered the submissions of the parties. The Review Petitioner has claimed the reimbursement of the impact of GST, other than the impact on security services, for the period 2017-18 and 2018-19, in respect of generating station as additional O&M expenses, by praying for relaxation of the provisions of Regulation 29(3) of the 2014 Tariff Regulations, in the exercise of the powers under Regulation 54 and Regulation 55 of the 2014 Tariff Regulations. However, the Review Petitioner is not aggrieved by the impact of GST on the security services which was allowed in the impugned order. The main grievance of the Review Petitioner is that the additional tax implications due to the implementation of GST were not factored/could not have been factored into by the Commission while allowing O&M expenses for the period of 2014-19. These submissions were considered by the Commission while passing the impugned order, and the Review Petitioner cannot be permitted to reargue the case on merits. Also, the submission of the Review Petitioner that the MOP, GOI letter dated 27.8.2018 issued under Section 107 of the Act is also not acceptable as the tariff determination of the project of the Review Petitioner is in accordance with the provisions of the 2014 Tariff Regulations and not otherwise. It is pertinent to mention that the Commission, while specifying the O&M expense norms for the period 2014-



19, 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...”

14. Also, the escalation rates considered in the O&M expense norms under the 2014 Tariff Regulations, are only after accounting for the variations during the past five years of the period 2014-19, 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. Accordingly, we hold that there is no error apparent on the face of the impugned order dated 13.2.2023 and review on the count is not maintainable. The prayer of the Review Petitioner for review of the impugned order dated 13.2.2023 is therefore rejected.

B) Error in grossing up of Return on Equity with the MAT Rate in place of Effective Tax rate.

Submissions of the Review Petitioner

15. The Review Petitioner, in the Review Petition, has submitted the following:
- a. The Commission has grossed up Return on Equity (ROE) with the MAT rate (which was the applicable tax rate for the Review Petitioner’s company during 2014-19) and not with the effective Tax Rate, and the same is not in accordance with Regulation 25 (3) of the 2014 Tariff Regulations.
 - b. The concept of effective tax rate was introduced to allow the pre-tax ROE of 15.5%/16.5% for the period 2014-19 and considering the applicable tax rate, instead of the effective tax rate, is not in line with the provisions of the said Regulations. By using the applicable tax rate for grossing up the base rate of ROE, the Commission has moved back to the 2009 Tariff Regulations.
 - c. ROE has been grossed up with the effective Tax Rate as per Regulation 25(3) of the 2014 Tariff Regulations, based on the actual tax paid together with any



additional tax demand, including the interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the period 2014-15 to 2018-19, on the actual gross income of any financial year.

- d. The actual tax paid excludes the tax on other income streams and penalty, if any, arising on account of delay in deposit or short deposit of tax amount by the generating company, which is as per Regulation 25(3) of the 2014 Tariff Regulations. Although the Review Petitioner's company falls under the MAT regime, as the effective Tax Rate is calculated as per provisions of said Regulation for grossing up of ROE for truing up purposes, the effective Tax may be higher or lower as compared to MAT rate.
- e. By claiming the effective tax rate in place of the MAT rate, the Review Petitioner is adopting the tax-neutral approach, which is the basic intention of the Tariff Regulations.
- f. In view of the above, the Commission, while grossing up the ROE, has considered the MAT rate in place of the effective Tax Rate, which is a gross error.

Reply of the Respondents

Respondent Rajasthan Discoms

16. The Respondent Rajasthan Discoms have submitted the issue raised by the Review Petitioner had already been decided and disposed of by the Commission in its order dated 16.7.2023 in Petition No. 42/RP/2022 (Dhauliganga HEP), Order dated 5.1.2023 in Petition No. 19/RP/2022 (Loktak HEP) and order dated 12.1.2023 in Petition No.24/RP/2022 (Dulhasti HEP). The relevant portion of one of the orders is as under:

*'It is noticed that Tax on ROE, has been defined in Regulation 25 of the 2014 Tariff Regulations. It is also noticed that in case the generating station is paying MAT (Minimum Alternate Tax), the rate of ROE is required to be grossed up with MAT rate only and the MAT rate does include surcharge and cess. Further, as per observations in the SOR to the 2014 Tariff Regulations (as quoted above), it is evident that in order to pass on the benefits and concessions available in income tax, the income tax rate to be considered for the purpose of grossing up shall be the MAT rate, if the generating company, generating station or the transmission licensee is paying MAT. On perusal of the documents and the submissions of the Review Petitioner, it was observed that the Review Petitioner is covered under MAT regime and since the Review Petitioner was paying MAT (Minimum Alternate Tax), the grossing up of ROE is required to be done based on the MAT rate. **Since***



the provisions of the aforesaid regulations, mandates the grossing up ROE with the MAT rate, if the generating company is paying MAT, the Commission in impugned order dated had considered the same, while working out the ROE and grossing up the ROE based on MAT rate. As the ROE had been worked out and allowed in terms of the aforesaid regulations read with the SOR to the said regulations, we find no force in the submissions of the Review Petitioner, to review the impugned order. Accordingly, we hold that there is no error apparent on the face of the impugned order and review on this ground is not maintainable. The prayer of the Review Petitioner for review, is therefore rejected."

- a) In view of this, there is no error in the impugned order, in grossing up equity with the MAT rate. The Commission may reject the claim of the Review Petitioner in view of above in the interest of justice.

Respondent BRPL

17. The Respondent BRPL has submitted that the Commission has taken a view on this issue, which is consistent with a view that has been taken in several petitions filed by the Review Petitioner earlier.

Respondent UPPCL

18. The Respondent UPPCL has submitted that the Review Petitioner is covered under MAT regime and as such, it cannot seek the review of ROE grossed up, at the rates considered by the Review Petitioner in Petition No.145/GT/2020. It has submitted that the Commission has rightly allowed the ROE grossed up at the MAT rate, as submitted by the Review Petitioner in the main petition.

Rejoinder of the Review Petitioner

19. The Review Petitioner in its rejoinder to the replies of the Respondents, has submitted as under:

- a) Grossing up of RoE based on MAT instead of effective tax rate was in the contravention of Regulation 25(3) of the 2014 Tariff Regulations which provides that base rate on the RoE as allowed by the Commission under Regulation 24 of the 2014 Tariff Regulations, wherein the same shall be grossed up with the effective tax rate of the respective financial year.
- b) In terms of Regulation 25(3) of the 2014 Tariff Regulations read with Regulation 8(8) of the 2014 Tariff Regulations, the Commission had to gross



up the RoE with the effective tax rate as prayed by the Review Petitioner in its Tariff Petition which is based on actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from income tax authorities pertaining to the period 2014-15 to 2018-19 on actual gross income of any financial year.

- c) Further, as per Regulation 25(3) of the 2014 Tariff Regulations, the actual tax paid excludes the tax on other income streams and penalty, if any, arising on account of delay in deposit or short deposit of tax amount by the generating company.
- d) e The Commission erred in truing-up the grossed-up rate of RoE based on MAT rate instead of effective tax rate.
- e) It is further submitted that the Commission in the impugned order failed to consider that MAT tax is not different than the regular tax, and hence, the Commission should have allowed the claim of the Review Petitioner.

Analysis and Decision

20. We have examined the matter. Regulation 24 of the 2014 Tariff Regulations, relating to ROE, is extracted below:

“24. Return on Equity: (1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with regulation 19.

(2) Return on equity shall be computed at the base rate of 15.50% for thermal generating stations, transmission system including communication system and run of the river hydro generating station, and at the base rate of 16.50% for the storage type hydro generating stations including pumped storage hydro generating stations and run of river generating station with pondage:

Provided that:

i. in case of projects commissioned on or after 1st April, 2014, an additional return of 0.50 % shall be allowed, if such projects are completed within the timeline specified in Appendix-I:

ii. the additional return of 0.5% shall not be admissible if the project is not completed within the timeline specified above for reasons whatsoever:

iii. additional RoE of 0.50% may be allowed if any element of the transmission project is completed within the specified timeline and it is certified by the Regional Power Committee/National Power Committee that commissioning of the particular element will benefit the system operation in the regional/national grid:

iv. the rate of return of a new project shall be reduced by 1% for such period as may be decided by the Commission, if the generating station or transmission system is found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO)/ Free Governor Mode Operation (FGMO), data telemetry, communication system up to load dispatch centre or protection system:



v. as and when any of the above requirements are found lacking in a generating station based on the report submitted by the respective RLDC, RoE shall be reduced by 1% for the period for which the deficiency continues:

vi. additional RoE shall not be admissible for transmission line having length of less than 50 kilometers.”

21. Also, Regulation 25 of the 2014 Tariff Regulations provides as under:

“Tax on Return on Equity: (1) The base rate of return on equity as allowed by the Commission under Regulation 24 shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid in the respect of the financial year in line with the provisions of the relevant Finance Acts by the concerned generating company or the transmission licensee, as the case may be. The actual tax income on other income stream (i.e., income of non-generation or non-transmission business, as the case may be) shall not be considered for the calculation of “effective tax rate”

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

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

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

(3) The generating company or the transmission licensee, as the case may be, shall true up the grossed-up rate of return on equity at the end of every financial year based on actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2014-15 to 2018-19 on actual gross income of any financial year. However, penalty, if any, arising on account of delay in deposit or short deposit of tax amount shall not be claimed by the generating company or the transmission licensee as the case may be. Any under- recovery or over recovery of grossed up rate on return on equity after truing up, shall be recovered or refunded to beneficiaries or the long-term transmission customers/DICs as the case may be on year to year basis.”

22. Further, the observations of the Commission, in the Statement of Objects and Reason (SOR) to the 2014 Tariff Regulations, are as follows:

“25.6 The Commission observed that various stakeholders have suggested to retain the existing pre-tax return on equity approach. On the other hand, beneficiaries have suggested that utilities should recover income tax from their profit and not separately from the beneficiaries. The Commission has analysed the suggestions and observations received from various stakeholders and observed that both the approaches have their own merits and demerits. However, the major disadvantage, which the Commission envisages in implementation of post-tax approach is the incremental effect of income tax liability, which will arise as the reimbursement of



*income tax shall again be considered as income in the hands of the generator/licensee and the same will defeat the entire purpose of adopting this approach. Thus, with due regard to the suggestions of the stakeholders and the complexities involved in computing income tax liability, it will be appropriate to retain the existing pre-tax rate of return approach. **In order to pass on the benefits and concessions available in income tax, the income tax rate to be considered for grossing up purpose shall be Minimum Alternate Tax (MAT) rate, if the generating company, generating station or the transmission licensee is paying MAT, or the effective Tax Rate, if the generating company or the transmission licensee is paying income tax at corporate tax rate. Accordingly, the Commission has decided to allow pre-tax rate of return on equity which shall be grossed up with the effective tax rate of the financial year or MAT rate and the tax on other income stream will not be considered for the calculation of the effective tax rate.***

23. It is noticed that tax on ROE has been defined in Regulation 25 of the 2014 Tariff Regulations. It is also noticed that in case the generating station is paying MAT (Minimum Alternate Tax), the rate of ROE is required to be grossed up with MAT rate. Further, as per observations in the SOR to the 2014 Tariff Regulations (as quoted above), it is evident that in order to pass on the benefits and concessions available in income tax, the income tax rate to be considered for the purpose of grossing up shall be the MAT rate, if the generating company, generating station or the transmission licensee is paying MAT. On perusal of the documents and the submissions of the Review Petitioner, it was observed that the Review Petitioner is covered under the MAT regime and since the Review Petitioner was paying MAT (Minimum Alternate Tax), the grossing up of ROE is required to be done based on the MAT rate. Since the provisions of the aforesaid regulations, mandate the grossing up ROE with the MAT rate, if the generating company is paying MAT, the Commission in the impugned order had considered the same, while working out the ROE and grossing up the ROE based on MAT rate. As the ROE had been worked out and allowed in terms of the aforesaid regulations read with the SOR to the said regulations, we find no force in the submissions of the Review Petitioner, to review the impugned order. As submitted by the Respondents, similar issue raised by the Review Petitioner in Review Petition No.42/RP/2022 was rejected by the Commission vide order dated 16.7.2023. In light



of the above, there is no error apparent on the face of the impugned order and review on this ground is not maintainable. Hence, the prayer of the Review Petitioner for review of the impugned order dated 13.2.2023 on this count, is rejected.

C) Error in disallowing the additional capital expenditure on few items for the periods 2014-19 and 2019-24.

Submissions of the Review Petitioner

24. The Review Petitioner has submitted that the Commission had disallowed the total additional capital expenditure of Rs.48.43 lakh in the impugned order in respect of the assets/items like (i) Wireless intelligent fire detection and alarm system admin 1,2 Zorawar Hospital, fire station 103/719, (ii) Tata Tipper LPK-1613/36 BS4, 8.5 CUM, (iii) Toilet for CISF at Dhayngarh and (iv) Construction of Boundary Wall at NHPC land in the area of Gadal Nai Basti Road. Accordingly, the asset/item-wise submissions of the Review Petitioner are as under:

i) Disallowance of Wireless intelligent fire detection and alarm system admin 1,2 Zorawar hospital, fire station 103/719.

25. The Review Petitioner has submitted that the Commission had disallowed the claim of Rs. 7.75 lakh towards Wireless Intelligent Fire Detection and Alarm System in the year 2016-17, observing that the said claim cannot be allowed in view of the first proviso of Regulation 14(3) of the 2014 Tariff Regulations. The Review Petitioner has also submitted that in terms of the guidelines laid down in the National Building Code, 2005, considering the occupancy and the fire load of the buildings, the installation of the Wireless Intelligent Fire Detection and Alarm System was necessitated for automatic detection and early communication of any fire hazard so that quick action can be taken for extinguishment of any fire. The relevant extracts of the National Building Code, 2005, as supporting documents, were submitted vide affidavit dated 30.6.2021 in Petition No. 229/GT/2020 before the Commission at Appendix-7 to



Annexure-IVA (Page 1038 to 1043 of the Tariff Petition). The Review Petitioner also submitted that the said additional capital expenditure was claimed by the Review Petitioner under Regulation 14(3)(viii) of the 2014 Tariff Regulations. The Review Petitioner has referred to the first proviso to Regulation 14(3) of the 2014 Tariff Regulations and has pointed out that on a bare perusal of the same, it emerges that only minor items such as tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, computers, fans, washing machines, heat convectors, mattresses, carpets, etc. brought after the cut-off date, shall not be considered for additional capitalization for determination of tariff. It has however submitted that the 'Wireless Intelligent Fire Detection and Alarm system' does not qualify as a minor item, since it is necessary for the safe functioning of the Project. Accordingly, the Review Petitioner has submitted that the treatment accorded to the aforementioned additional capital expenditure in the impugned order, is an error apparent on the face of the record and is liable to be reviewed.

(b) Tata Tipper LPK-1613/36 BS4, 8.5 CUM

26. The Review Petitioner submitted that the Commission has disallowed an amount of Rs. 20.52 lakh towards Tata Tipper LPK-1613/36 BS4, 8.5 CUM in 2016-17, observing that the additional capital expenditure incurred by the Review Petitioner does not directly relate to the operation of the generating station. The Review Petitioner has submitted that 'Tipper' is used for carrying out urgent Civil works which is required for the efficient functioning of the generating station, i.e., the clearing up of blockages during landslides which occur during the monsoon season. In addition to the same, the Review Petitioner stated that it is also used for transportation of boulders, gabions, and other aggregate for departmental works for damaged portion of roads, reservoir, aprons of TRT outlet etc. The Review Petitioner has pointed out



that the generating station is situated in a heavy rainfall area that is prone to landslides during monsoon, making this expenditure essential for the efficient and hindrance-free functioning of the Project. The Review Petitioner has further submitted that if blockages are not cleared on time, it will hamper the operations of the power station. Accordingly, the Review Petitioner has stated that the observation of the Commission in the impugned order, that the additional capital expenditure incurred is not directly related to the operation of the generating station is incorrect and is liable to be reviewed, since the effectiveness of power house operation is achieved only when all inter-related activities are performed without any hindrance. Accordingly, the Review Petitioner has prayed that the disallowance of the additional capital expenditure on account of Tata Tipper LPK-1613/36 BS4, 8.5 CUM may be reviewed, and the same may be allowed.

(c) Toilet for CISF at Dhyangarh

27. The Review Petitioner has submitted that the additional capital expenditure for Rs. 7.75 lakh incurred on account of the Construction of the Toilet for CISF at Dhyangarh in 2017-18, was disallowed on the ground that the claim is in the nature of Operation and Maintenance (O&M) expenses. The Review Petitioner has submitted that it had claimed the said expenditure for the Construction of toilet for CISF at Dhyangarh under Regulation 14(3)(viii) of the 2014 Tariff Regulations on the basis of the requirement of CISF, as conveyed to the Review Petitioner by CISF's letter dated 8.6.2016. It has also stated that the letter dated 8.6.2016 issued by CISF to the Review Petitioner was submitted *vide* affidavit dated 30.6.2021 in Petition No. 229/GT/2020 at Appendix-10 to Annexure-IVA (*Page 1052 of the Tariff Petition*). Accordingly, the Review Petitioner has prayed that the Commission may review the impugned order and allow the additional capital expenditure claimed on this count.



(d) Construction of Boundary Wall at NHPC land in the area of Gadal Nai Basti Road.

28. The Review Petitioner has submitted that the Commission had disallowed an amount of Rs. 12.41 lakh incurred on account of the Construction of Boundary Wall at the Review Petitioner's land in the area of Gadal Nai Basti Road in 2018-19, on the ground that the expenditure incurred on the same is in the nature of O&M expenses. The Review Petitioner has submitted that it had claimed the aforesaid expenditure under Regulation 14(3)(viii) of the 2019 Tariff Regulations, on the basis of the report of the Intelligence Bureau (IB) dated 28/29.5.2014 and a copy of the said report was also submitted *vide* affidavit dated 30.6.2021 in Petition No. 229/GT/2020 at Appendix-1 to Annexure-IVA (*page 992 to 997 of the Tariff Petition*). The Review Petitioner has added that Regulation 14(3)(iii) of the 2019 Tariff Regulations, provides for the admissibility of the additional capital expenditure incurred on account of the 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. Accordingly, the Review Petitioner has submitted that since the construction of the boundary wall constitutes an expense for higher safety and security of the generating station as advised by IB, the expenditure incurred by it is of a capital nature and the same has been capitalized in the books of accounts as per the accounting standards. The Review Petitioner has, therefore, prayed that the Commission may consider the above claim under Regulation 14(3)(iii) of the 2014 Tariff Regulations.

Reply of the Respondents.

Respondent BRPL



29. Respondent BRPL has submitted that the Fire detection alarm/fire station is an essential feature in all generating stations and therefore, it cannot be allowed under the head, as claimed by the Review Petitioner and the same would also be covered under the O&M expenses and not through additional capital expenditure. Therefore, the Respondent has submitted that the disallowance of this claim is in order. As regard the additional capital expenditure claim for Tata Tipper LPK-1613/36 BS4, 8.5 CUM and Toilet for CISF at Dhyangarh, the Respondent has submitted that the additional capital expenditure is in no way connected to the direct functioning of the plant for the generation of electricity. As regards the additional capital expenditure claim for the Construction of Boundary wall at the Review Petitioner's land in the area of Gadai Nai Basti Road, the Respondent has submitted that the Review Petitioner has submitted no cogent evidence for allowance of this claim either under in the tariff petition or in the present review. Accordingly, the Respondent has submitted that the review on these counts may be rejected.

Respondent UPPCL

30. Respondent, UPPCL has submitted that Section 61(g) of the Electricity Act, 2003 provides that the tariff should reflect the costs incidental to supply of electricity and the additional costs sought by the Review Petitioner for capitalization on account of 1) wireless intelligent fire detection and alarm admin 1.2 Zorawar Hospital fire station, 2) Tata Tipper LPK, 3) Toilet for CISF at Dhayngarh and, 4) construction of boundary wall at Review Petitioner's land in the area of Godal Nai Basti Road, are not incidental to generation of electricity in the plant. Accordingly, the Respondent has stated that these costs may not be allowed. The Respondent has further submitted that these costs are also not covered under Regulation 14(3)(iii) of the 2014 Tariff Regulations, which is in



the context of the generating station and not in the context of hospital, land slide/road, toilet or security of land elsewhere.

Respondent Rajasthan Discoms

31. Respondents Rajasthan Discoms, have submitted that the installation of fire safety equipment is a necessary requirement during the construction period in order to minimize the chance of fire to any extent and to upgrade the basic system as per the technology upgradation should be covered under O&M expenses and not through additional capital expenditure. Respondents have further submitted that the claim for the Construction of toilet for CISF at Dhyangarh has been rightly disallowed, after considering it as O&M expenses, since the definition of O&M clearly indicate that any necessary requirement for the welfare of manpower/staff during the operational stage will be covered under O&M expenses. As regards the expenditure claimed for the Construction of boundary wall at the Review Petitioner's land in the area of Gadal Nai Basti Road, the Respondents have submitted that as per the 2014 Tariff Regulations, for any construction during the operational stage is covered under Repair & Maintenance expense of the project.

Rejoinder of the Review Petitioner

32. The Review Petitioner in its rejoinder has submitted as under:

- a) The Commission, while disallowing the said claim of the Review Petitioner has failed to consider that as per the First Proviso of Regulation 14(3) of the 2014 Tariff Regulations, only minor items such as tools and tackles, furniture, air conditioners, voltage stabilizers, refrigerators, coolers, computers, fans, washing machines, heat convectors, mattresses, carpets etc. bought after the cut-off date shall not be considered for additional capital expenditure for determination of tariff. In this regard, the Review Petitioner has reiterated that the wireless intelligent fire detection and alarm system does not qualify as a minor item since it is necessary for the safe functioning of the Review Petitioner's power station. Further, the contention of UPPCL that the costs sought for by the Review Petitioner are not covered under Regulation 14(3)(iii) of the 2014 Tariff Regulations is also incorrect, inasmuch as the costs sought



for by the Review Petitioner are in terms of the provisions of Regulation 14(3)(iii) of the 2014 Tariff Regulations, intended to meet the need for higher security and safety of the plant and further under Regulation 14(3)(viii) of the 2014 Tariff Regulations, on account of the expenditure incurred by the Review Petitioner for additional works which were necessary for the continued successful and efficient operation of the plant in question.

- b) The Respondent, in an attempt to mislead the Commission, has failed to acknowledge the fact that the Tipper is used for carrying out urgent civil works which is required for the efficient functioning of the generating station, i.e., the clearing up of blockages during landslides which occur during the monsoon season. Additionally, it is submitted that the Tipper is also utilised for the transportation of boulders, gabions and other aggregate for departmental works for damaged portions of roads, reservoir, aprons of TRT outlet etc. of the generating station. It is reiterated that the generating station is situated in an area, which is prone to heavy rainfall and landslides during monsoon, making the expenditure essential for the efficient and hindrance free, efficient functioning of the generating station.
- c) The expenditure for toilet for CISF at Dhyangarh has been incurred as additional capital expenditure due to CISF's requirement as conveyed to the Review Petitioner vide the letter dated 8.6.2016.
- d) As per the report of IB recommendation, the Review Petitioner has been required to have a boundary wall with concertina wire for the safety and security of the plant and its adjacent area. The main thrust of the IB recommendation is to prevent the entry of unauthorised persons in Jayotipuram Township, which is in the vicinity of the generating station. But, the Review Petitioner has its land in Gadal Nai Basti Road, and entry of unauthorised persons to Jayotipuram Township from this location cannot be ruled out. Accordingly, to ensure the safety and security of the plant and the township, the boundary wall at the Review Petitioner's land in Gadal Nai Basti Road was constructed in line with IB's recommendation to prevent any filtration.
- e) All six runners of the generating station have been replaced with modified runners as a part of the R&M carried out for the generating station. Accordingly, the old installed runner as well as the old spare runners are of no use; accordingly, all old runners as well as the old spare runners have to be decapitalized in view of the same having become obsolete. Presently, all six generating units are operating with modified runners, and there is no spare modified runner available at the Review Petitioner's generating station to meet any emergency requiring replacement with a spare runner. It may be considered that the Review Petitioner's generating station is a runoff river plant and is in a Silt prone area therefore, carrying out the maintenance and catering



to any exigency, without any loss of generation during high inflow season, in the absence of spare runner, will not be possible for the Review Petitioner. Thus, in view of the above, two modified spare runners were being claimed on a replacement basis by the Review Petitioner. The Review Petitioner has already put up a detailed justification in the review petition claiming the need for the two spare runners.

- f) Hence, the Commission may review the disallowance of the aforesaid capital expenditure claimed by the Review Petitioner, as there is no other requisite spare runner, i.e., modified runner, available to the Review Petitioner to run the plant, successfully and efficiently. Therefore, the same may be allowed.

Analysis and decision

33. The submissions have been considered. In response to the additional capital expenditure claimed by the Review Petitioner for the aforesaid assets/items for the period 2014-19, the Commission, in the impugned order dated 13.2.2023 had rejected the claims as under:

- i. ***Wireless intelligent fire detection and alarm system admin 1,2 Zorawar Hospital, fire station 103/719:***

Para 22 (b) sl. no. 7

“In terms of the first proviso to Regulation 14(3) of the 2014 Tariff Regulations (as quoted above), the additional capital expenditure claimed are not allowed.”

- ii. ***Tata Tipper LPK-1613/36 BS4, 8.5 CUM:***

Para 22 (b) sl. no. 10

“In our view, the additional capital expenditure incurred by the Review Petitioner does not directly relate to the operation of the generating station. Hence, the additional capital expenditure claimed is not allowed.”

- iii. ***Toilet for CISF at Dhayangarh:***

Para 26 (b) sl. no. 6

“Considering the fact that the expenditure claimed is in the nature of O&M expenses, the claims are not allowed. The corresponding decapitalization on account of the same are also not allowed.”

- iv. ***Construction of Boundary Wall at NHPC land in the area of Gadal Nai Basti Road.***

Para 30 (b) sl. no. 12

“Since the expenditure incurred by the Review Petitioner is in the nature of O&M expenses, the claim of the Review Petitioner is not allowed.”

34. The Commission in the impugned order, had after considering the submissions of the parties, by a conscious decision disallowed the additional capital expenditure



claimed by the Review Petitioner for the aforesaid assets. In our view, the Review Petitioner, in the Review Petition, has sought to reargue the case on merits, by submitting justification in support of its claims for the assets and has prayed for re-consideration of the same. This is not permissible as the Review Petition cannot be an appeal in disguise. It is a settled position in terms of the judgment of Hon'ble Supreme Court in *Parsion Devi v Sumitra Devi* reported in 1997 8 SCC 715 that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC and that the judgment may be open to review, inter alia, if there is a mistake or an error apparent on the face of the record and that an error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent requiring the court to exercise its power of review. These principles of the review have also been enunciated by the Hon'ble Supreme Court in judgment in *Kamlesh Verma v. Mayawati and Ors.* as reported in AIR 2006 SC 75. Against this backdrop, we find no reason to entertain the prayer of the Review Petitioner to review the impugned order on the ground of disallowance of the additional capital expenditure in respect of the aforesaid assets. Accordingly, the prayer of the Review Petitioner for review of the impugned order is not maintainable.

D) Erroneous application for calculating gross value of the assets being de-capitalized under 'assumed deletions':

Submissions of the Review Petitioner

35. The Review Petitioner has submitted the following:

- a) There is no methodology specified for "assumed deletion" in the 2014 Tariff Regulations. However, in the impugned order, the Commission has devised a methodology by calculating the gross value of the asset being de-capitalized for "assumed deletion" by de-escalating the gross value of the new asset @ 5% per annum till the year of capitalization of the old asset.



- b) In the said methodology, the Commission has considered the assumed deletion value of Rs. 3114.40 lakhs for the period 2014-19 in para 40 of the impugned order in place of the Review Petitioner submitted value of Rs. 1611.39 lakhs for the corresponding period in para 40, leading to a substantial reduction in the claimed cost.
- c) In terms of the applicable accounting standards being followed, if the old item is not deleted in the books of accounts during the year when there is an addition of the corresponding new item, the original gross value of the old item available in books of accounts is indicated as assumed deletion in the Tariff Petition.
- d) Assumed deletions are basically the book value of old items, which are not deleted from the books of accounts, and it may be deleted in future years. Accordingly, assumed deletion values are provided duly in Form-9(i) of the Tariff Petition for the period 2014-19. The Commission has calculated the assumed deletion value as per methodology mentioned in Paragraphs 37 & 38 of the impugned order, wherein, *"in absence of the gross value of the asset being decapitalized, the same is calculated by de-escalating the gross value of new asset @5% per annum till the year of capitalization of the old asset."*
- e) While calculating the gross value of the asset being de-capitalized for 'assumed deletion' by de-escalating the gross value of the new asset @ 5% per annum till the year of capitalization of the old asset, the Commission has erred in devising such a methodology. The Commission has used an incorrect methodology for calculating "assumed deletion" as the same is not supported by the Tariff Regulations. Specifically, this Commission appears to have computed the gross value of the asset being de-capitalized for "assumed deletion" by de-escalating the gross value of the new asset at a rate of 5% per annum until the year of capitalization of the old asset.
- f) The methodology adopted by the Commission is erroneous on the following counts:
- i. There is no provision for "assumed deletion" in the Tariff Regulations, 2014, so any methodology used to calculate it would be unsupported by the governing rules.
 - ii. The 5% per annum de-escalation rate used by the Commission appears to be arbitrary and lacks any clear rationale or justification.
 - iii. The methodology itself may not accurately reflect the actual costs associated with replacing old assets and may result in inaccuracies or inconsistencies in the calculation of capital expenditures.
 - iv. The Commission has misinterpreted that assumed deletion values are not the book values and has proceeded to compute assumed deletion values as per arbitrary methodology mentioned in Para 33 of the impugned order.



- v. Further, in the case when assumed deletion values are higher than the actual value of the old assets as per the books of accounts of the Review Petitioner is an error apparent on the face of the record.
 - vi. The Commission ought to have considered the assumed deletion values submitted by the Review Petitioner in the petition. The assumed deletion is the gross value of the old asset and is named 'assumed deletion' since the old assets are not decapitalized in the books of accounts in the same year in which the new asset was capitalized.
 - vii. Further, in the case when assumed deletion value provided the Tariff Petition is higher as compared to assumed deletion calculated by the Commission as per the methodology in paragraphs 37&38 of the impugned order, the Commission has considered the value provided in the Tariff Petition.
 - viii. However, when the deletion value provided the tariff petition is less than the assumed deletion calculated by the Commission, the Commission has considered its own calculation. Therefore, it is evident that the Commission has adopted an inconsistent approach in the case when assumed deletion value provided in petition is higher as compared to assumed deletion calculated by it.
- g) In view of the submissions, the calculation of the gross value of the asset being de-capitalized for "assumed deletion" by de-escalating the gross value of the new asset @ 5% per annum till the year of capitalization of the old asset is an error apparent on the face of the record and is liable to be reviewed.
- h) In para- 39 of the impugned order, the Commission has calculated the assumed deletion for certain claimed additional capital expenditures on the pretext that the de-capitalized value of the old and replaced assets/works was not furnished; this is a completely wrong assumption by the Commission since the Review Petitioner had submitted the deletion values of these assets *vide* its affidavit dated 30.6.2021. These calculated assumed deletions are indicated in para-40 of the impugned order.
- i) These expenditures are either new in nature (incurring for the first time) or claimed against replacement against which the deletions values were already provided in the petition or through subsequent additional information *vide* affidavit dated 30.6.2021 duly filed by the Review Petitioner. The Commission has considered the deletion values provided in revised Form-9B(i) against these items and also calculated assumed deletion by considering that Review Petitioner has not provided the replacement value against these items. Thus, the same has resulted in the deduction of double the replacement value leading to substantial loss to the Review Petitioner. Further, the Commission has also calculated the assumed deletion value against new items, which have been claimed for the first time by considering them as a replacement.



- j) For the period 2019-24, the Commission in para 107 of the impugned order has adopted a similar approach for replacement of flap type gate (in 2019-20) and automation of plant for efficient operation and better control with real time monitoring of auxiliaries' system (SCADA) (in 2021-22).
- k) As regards the claim of the Review Petitioner for flap type gate, the Commission has calculated the assumed deletion as per its own methodology for the items for which replacement values were already provided in revised Form-9B(i) for 2017-18 submitted by the Review Petitioner *vide* its affidavit dated 30.6.2021, with a deletion value amounting to Rs. 62.88 lakhs against expenditure which was already provided at Item No.-1 (*Page 990 of the Tariff Petition*). It is evident from paragraphs 103 of the impugned order that the same deletion value has been considered in the impugned order. This has resulted in the deduction of double the replacement value, leading to substantial loss to the Review Petitioner.
- l) Further, the Commission had allowed Rs. 404.30 lakh in 2017-18 (refer to page 283) for SCADA. As there was no SCADA system installed at the generating station and SCADA being installed for the first time, The Commission allowed the capital expenditure on account of SCADA as a new work and no deletion value was considered in order dated 12.5.2015. The Commission in the impugned order, has erroneously considered the new work with respect to SCADA as a replacement item and has proceeded to compute the assumed deletion value against this expenditure. It is submitted that the same is an error on the face of the record and is liable to be reviewed by the Commission.
- m) With reference to the assumed deletions for the period 2019-24, an expenditure amounting to Rs. 309 lakhs has been claimed in 2021-22, for implementation of SCADA. While claiming this, the Review Petitioner had submitted that the generating station was commissioned in 1995, and the amount of expenditure increased due to the upgradation of seamless integration in the SCADA system, the inclusion of Generator protection relay which was needed to communicate on IEC 61850, installation of LTA controller and common controller. The Commission allowed the expenditure amounting to Rs. 309 lakh for the implementation of SCADA in 2020-21.
- n) However, since SCADA was not installed earlier at the power station, the Review Petitioner provided the replacement cost amounting to Rs. 309 lakh for the old scheme. While allowing the expenditure for implementation of SCADA, the Commission calculated the assumed deletion value amounting to Rs. 82.77 lakh (Para 98 of the impugned order) as per the methodology in Paragraph 107 of the impugned order. As per the Commission, in the absence of the original value of the asset being de-capitalized, the assumed deletion value of old asset is calculated by de-escalating the original value of new asset (i.e., Rs. 309 lakh) @ 5% per annum till the year of capitalization of the old asset considering the



gross value of new asset. Such assumed deletion value calculated by the Commission is on the higher side as compared to the assumed deletion value of the old asset/scheme.

36. Accordingly, the Review Petitioner has submitted that the Commission may reconsider its methodology for calculating the "assumed deletion" and ensure that it is consistent with the Tariff Regulations and grounded in sound economic principles.

Replies of the Respondents

Respondent BRPL

37. The Respondent BRPL has submitted as under:

- a) The Review Petitioner did not submit the value of certain gross assets etc. of certain items and submitted its own assessed value.
- b) The responsibility to maintain a correct history of the costs of assets rests with the Review Petitioner. In the absence of the actual cost, the Commission has rightly de-escalated the cost of new asset @5% as per the methodology.
- c) Having failed to submit actual data, the Review Petitioner is raising the issue of the de-escalating factor being arbitrary and on the higher side. The Review Petitioner is pleading that the Commission should have considered deletion of Rs. nil as submitted by the Review Petitioner instead of Rs. 82.77 lakh computed by the Commission.
- d) The argument of the Review Petitioner at (d) above does not sustain for Review because (i) the methodology adopted by the Commission is applied squarely in all cases. (ii) It is not the case that the Commission invented it for the present case of the Review Petitioner (iii)The Review Petitioner cannot subject beneficiaries to loss for its failure of not maintaining historical data of cost of assets.
- e) Similarly, in the case of SCADA installed at the cost of Rs. 309 lakhs, the Review Petitioner submitted the cost for the new asset on a replacement as Rs. 309 lakhs (which has been allowed by the Commission) and decapitalization on the value of the old asset as claimed by the Review Petitioner is 'nil'. In Para 37 & 38, as well as 107 of the impugned order, the Commission has made explicitly clear that the de-capitalization factor of 5% shall be applied in cases where the gross value of the asset under de-capitalization is absent. This assumed deletion value allowed by the Commission is Rs. 82.77 lakh.



- f) The Review Petitioner is raising the same pleas for review for the purpose that were raised for the control period 2014-19. Besides, those pleas, the Review Petitioner is also arguing that the old asset was commissioned in 1995 and was implemented using the upgradation of seamless integration in the SCADA system, the inclusion of Generator protection relay which was needed to communicate on IEC 61850, installation of LTA controller and common controller.
- g) The argument of the Review Petitioner is not sustainable because the point of consideration at this moment is that the old asset is being replaced by SCADA to execute all the functions that the old system of old technology was performing. The important aspect is that, SCADA is replacing the old asset and for capitalization of new asset and determination of tariff, gross value of the old asset was required.
- h) The Review Petitioner appears to have not been able to keep historical gross value of the old asset and computed its value of Rs. 309.00 lakh based on its own assumption. In such circumstances, the case of de-capitalization falls under the provisions of the methodology that requires de-escalation of the gross value of new asset @ 5% per annum till the year of capitalization of the old asset.
- i) Further, this Commission has considered the deletion values provided in revised Form-9B(i) against some of the items and also calculated assumed deletion by considering that Review Petitioner has not provided the replacement value against these items. Thus, the same has resulted in the deduction of double the replacement value, leading to substantial loss to the Review Petitioner. In addition to the above, this Commission has also calculated the assumed deletion value against new items, which have been claimed for the first time.

Respondent Rajasthan Discoms

38. The Respondent, Rajasthan Discoms have submitted that the Commission has adopted a liberal view while determining the aforesaid issue in absence of the adequate details furnished by the Review Petitioner. The Respondents have also submitted that Regulation 7 (5) of 2014 Tariff Regulations and Regulation 10 (2) of the 2019 Tariff Regulations, clearly provides that the tariff petition which are inadequate in any respect shall be returned to the generating company for rectifying the deficiencies. They have further submitted that the Commission, instead of returning



the same for supplying the gross value of the decapitalized items, proceeded to determine the tariff which is in favour of the Review Petitioner and therefore, the Review Petitioner ought not to be aggrieved by the same. They have argued that if the Review Petitioner would have filed the gross value of the entire decapitalized items in the tariff Petition, then the Commission would not have been proceeded to adopt aforesaid methodology and further, if the Review Petitioner is aggrieved with methodology, then review is not an appropriate remedy. Accordingly, the Respondents have submitted that review sought by the Review Petitioner on this ground, is liable to be rejected.

Rejoinder of the Review Petitioner

39. The Review Petitioner has submitted that it had provided the book values of the old assets, which were duly certified by the Statutory Auditor for calculation of assumed deletion. It has also pointed out that the Commission had erred in adopting the methodology for calculation of the assumed deletion, instead of the book values duly audited by the statutory auditors, provided by the Review Petitioner and as a result of the same, the said methodology led to inconsistency in the calculation of the capital expenditure of the generating station, which is arbitrary in nature. The Review Petitioner has added that the values of the old items available in the books of accounts which were duly certified by the statutory auditor, were indicated as assumed deletion in the Tariff Petition in Form-9(i) for the period 2014-19. The Review Petitioner has furnished the value of Rs. 1611.39 lakh for the assumed deletion value of old items, which were not deleted from the book of accounts in the same year of additional capitalization of the corresponding item. However, the Commission, instead of considering the values provided by the Review Petitioner, used an incorrect methodology and erred while calculating the assumed deletion to be Rs. 3114.40 lakh.



With reference to the expenditure for implementation of SCADA in 2021-22, the Review Petitioner has submitted that the book value of Rs. 309.00 lakh for the calculation of assumed deletion, but the Commission erred while calculating the assumed deletion as per its methodology and valued it at Rs.82.77 lakh. The decapitalization value on replacement of old asset as claimed by the Review Petitioner is 'nil'. In addition, the Review Petitioner has pointed out that the error is patently evident as the Commission considered the book values provided in the tariff petition, in case the same is higher as compared to the value derived from the methodology of the Commission for assumed deletion. Conversely, if the value as per the methodology of the Commission is higher as compared to the book values provided in the Tariff Petition, then the former is considered for the purposes of calculating assumed deletion. Accordingly, the Review Petitioner has argued that it is appropriate for the Commission to review and reconsider the assumed deletion value of the old assets, by considering the book values provided by the Review Petitioner in its tariff petition, instead of the incorrect methodology adopted by the Commission.

Analysis and decision

40. We have considered the submissions of the parties. It is pertinent to mention that the expenditure on the replacement of assets, if found justified, is to be allowed for the purpose of tariff, provided that the capitalization of the said asset is followed by the de-capitalization of the original value of the old asset. However, in certain cases, where the decapitalization is affected in books during the following years, to the year of capitalization of the new asset, the de-capitalization of the old asset for the purpose of tariff is shifted to the very same year in which the capitalization of the new asset is allowed. Such de-capitalization, which is not a book entry in the year of capitalization, is termed, as an "Assumed deletion". Further, in the absence of the gross value of the



asset being de-capitalized, as per the consistent methodology adopted by the Commission, the same is calculated by de-escalating the gross value of the new asset @ 5% per annum till the year of capitalization of the old asset. The same methodology is also being applied in the other petitions of the Review Petitioner from the period 2014-15 onwards. Though the Review Petitioner, in the review Petition, had submitted that the methodology adopted by the Commission is erroneous as it has not been specified under the tariff regulations, it has, during the oral hearing of the Review Petition, made it clear that it has not challenged the methodology adopted by the Commission as regards assumed deletion, but has only pointed out that the assumed deletion values as furnished by it have not been considered by the Commission, while passing the impugned order. Accordingly, we per se find no error in the methodology adopted for 'assumed deletion' in the absence of the relevant information from the Review Petitioner. However, we note that in the present case, the Review Petitioner had submitted that the amounts indicated under the column of assumed deletions in Petition No. 229/GT/2020 are the gross value of the assets being de-capitalized. This submission of the Review Petitioner was inadvertently not considered by the Commission while passing the impugned order. Thus, the non-consideration of the de-capitalization values furnished by the Review Petitioner is in our view, an error apparent on the face of the impugned order, and review on this count is maintainable. Accordingly, the prayer of the Review Petitioner to review the impugned order on this ground is allowed, and the tariff of the generating station for the period 2014-19, is accordingly revised in this order.

Double deduction on account of assumed deletions for the period 2014-19

41. The Review Petitioner has also submitted that the Commission in the impugned order, had calculated the assumed deletion for certain items, by observing that the



Review Petitioner had not furnished the replacement/de-capitalization value of those items. We notice that though the Review Petitioner in the main petition had submitted the details of the old item/work decapitalized, the same was inadvertently not considered by the Commission, but the corresponding decapitalization of the said assets were considered in the impugned order. This, according to us, is an error apparent on the face of the order and review on this count is allowable. Accordingly, we rectify the errors in this order.

42. Based on the above discussion, the table under paragraph 40 of the impugned order dated 13.2.2023 and other relevant paragraphs of the impugned order are modified as stated below:

<i>(Rs. in lakh)</i>				
Sl. No.		Additions claimed for new asset on replacement	De-capitalization on value of old asset claimed	Assumed Deletions for old asset allowed
2014-15				
1	Purchase of Two Nos. of Fire Tender	59.84	6.27	6.27
2	Purchase of 08 Nos. VT Pumps.	100.40	15.84	15.84
3	Escorts C-8000 Hyd. Mobile Crane	14.41	8.96	8.96
4	Aluminum Boat with Accessories Fittings (Extra Band)-10 Persons Capacity (500 Kg	11.77	0.84	0.84
5	Replacement of Old Buses No. JK 02B 2338 & JK 02B 2397	41.63	11.92	11.92
6	11 KV Generator CT of better accuracy Class (0.2) in phases	10.47	0.87	0.87
7	Servo motor DRG no. 51021000 (2 nos.)	57.63	8.44	8.44
8	Manual gate valve (350mm) confirm to class -150 (6 no)	23.92	3.50	3.50
9	Trash rack for penstock intake gate at salal	29.60	1.68	1.68
10	Horizontal multistage pump 75HP, maxflow, 98HPB6	10.65	5.38	5.38
11	Horizontal Split Casing centrifugal pump	1.09	0.26	0.26
12	Hydraulic power pack for jacking	19.65	0.23	0.23
	Total	381.06	64.18	64.18
2015-16				
1	Purchase of 10 no. 02 HP submersible pumps.	3.67	3.43	3.43
2	Tata JK 14 -3061& 3062 Ambulance	19.29	10.50	10.50



Sl. No.		Additions claimed for new asset on replacement	De-capitalization on value of old asset claimed	Assumed Deletions for old asset allowed
3	Terex Rear Dumper/Tipper JKR 4335 Dhyangarh	14.51	29.78	29.78
4	Stage II CO2 firefighting system	55.08	20.96	20.96
5	Event logger for Powerhouse	30.98	20.76	20.76
6	TB collar bhel drawing no. 33/1-255-01-77002 with TB disc, outer ring, locking ring, other accessories	116.14	15.10	15.10
7	Slip ring assembly drawing no. 5555.023-c	6.67	1.21	1.21
8	Manual gate valve (125mm) confirm to class -150 (18 nos)	31.24	4.53	4.53
9	Screw pump t3st 60/46 with tefc motor, pressure 40 kg/cm2, capacity 540 lpm,2900 rpm with couplings	47.80	6.81	6.81
10	Modified brake jack assembly along with panel	42.65	4.10	4.10
11	220V, 1000AH Battery Bank for Stage-1	30.17	12.53	12.53
12	Guide vanes drawing No.-02030154104 along with the templates (one set)	316.43	46.35	46.35
	Total	714.64	176.06	176.06
2016-17				
1	Telephone Exchange 512 C-Dot	58.09	32.37	32.37
2	LP Compressor	25.80	0.06	0.06
3	TATA SUMO	13.54	4.02	4.02
4	Online UPS for powerhouse min els2007200160 dt 04/12/2 es2001 & es2003	6.34	1.01	1.01
5	245 kv ct 5-core (current transformer)	95.50	14.91	14.91
6	Microprocessor based digital voltage regulation panel along with thyristor panel for excitation system	344.53	24.96	24.96
7	Micom relay p343, p343/p442/p746	13.03	10.91	10.91
	Total	556.82	88.24	88.24
2017-18				
1	One runner against Restoration of Installed Capacity	1679.20	121.43	121.43
2	One runner against Restoration of Installed Capacity		176.75	176.75
3	One runner against Restoration of Installed Capacity	910.72	108.66	108.66
4	Hero Honda splendor plus, jk-14a-4808 (col. black)" ch.06 b16c17514, en.06b15	2.83	0.48	0.48
5	Modified brake jack assembly along with panel	42.65	4.12	4.12
6	Digital Governing System	535.90	247.42	247.42
7	Trash rack screen size 4360x2450 bottom non-interchangeable section for penstock intake d.no. 21.1/3	51.96	3.36	3.36
8	(8 nos.)1600-amp, 415 v acb	27.65	2.71	2.71



Sl. No.		Additions claimed for new asset on replacement	De-capitalization on value of old asset claimed	Assumed Deletions for old asset allowed
	Total	3472.54	664.93	664.93
2018-19				
1	One runner against Restoration of Installed Capacity	2518.85	105.57	105.57
2	One runner against Restoration of Installed Capacity		182.28	182.28
3	One runner against restoration of Installed Capacity		197.76	197.76
4	Supply, installation & commissioning of 1 No. Goods cum passenger Lift (2000Kg) at Dam top	84.96	10.68	10.68
5	Drinking Water System	257.93	18.77	18.77
6	STP (Drinking water system)	10.72	2.06	2.06
7	11KV DG set (2 Nos.) 875KVA	304.68	49.50	49.50
8	(2nos.) MAIN 220V DC Distribution Board - ABB make, dimensions: 2850 x 2300 x 500 with accessories	36.05	5.27	5.27
9	198 kv, disc. cl-iii poly. housed metal oxide surge arr. with accs (45nos.)	35.63	23.46	23.46
10	Generator standstill space heater	50.01	4.66	4.66
11	Fire Fighting system	66.23	17.97	17.97
	Total	3365.06	617.98	617.98

43. Based on the above, the additional capital expenditure (in the table under para 46 of the impugned order) is modified as under:

(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Capitalization against works projected and allowed for additional capital expenditure	324.40	460.55	554.43	3928.78	4185.23
Not projected/not allowed but capitalized due to actual site requirements	118.62	617.62	569.89	309.38	897.56
Total additions allowed(a)	443.02	1078.17	1124.32	4238.16	5082.79
Deletions allowed (b)	(-)77.99	(-)43.91	(-)68.15	(-)158.91	(-)88.41
Assumed deletions considered (c)	(-)64.18	(-)176.06	(-)88.24	(-)664.93	(-)617.98
Total additional capital expenditure allowed (d)=(a)+(b)+(c)	300.84	858.20	967.93	3414.32	4376.40
Exclusions adjustment(e)	0.00	(-)505.09	0.00	0.00	0.00
Additional Liability discharged during the year (f)	0.00	0.00	20.14	0.00	0.00
Additional capital expenditure allowed(g)=(d)+(e)+(f)	300.84	353.11	988.07	3414.32	4376.40



Capital cost allowed for the period 2014-19

44. Accordingly, the capital cost allowed for the period 2014-19 (in the table under para 47 of the impugned order) is modified as under:

(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Opening capital cost (a)	92085.17	92386.01	92739.12	93727.19	97141.51
Net additional capital expenditure allowed during the year/ period (b)	300.84	353.11	988.07	3414.32	4376.39
Closing Capital Cost (c)=(a)+(b)	92386.01	92739.12	93727.19	97141.51	101517.90

Debt Equity Ratio

45. The debt-equity ratio (in the table under para 49 of the impugned order) is modified as under:

(Rs. in lakh)

	Capital cost as on 1.4.2014		Additional capital expenditure		Decapitalization		Capital cost as on 31.3.2019	
	Amount	(%)	Amount	(%)	Amount	(%)	Amount	(%)
Debt (A)	43405.03	47.14	8390.62	70.00	1272.62	49.83	50523.04	49.77
Equity (B)	48680.14	52.86	3595.98	30.00	1281.24	50.17	50994.87	50.23
Total (C)=(A)+(B)	92085.17	100.00	11986.60	100.00	2553.86	100.00	101517.90	100.00

Return on Equity

46. Return on Equity (in the table under para 52 of the impugned order) is modified as under:

(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Opening Equity (A)	48680.14	48741.02	48701.06	48964.70	49823.24
Addition of Equity due to additional capital expenditure (B)	60.88	(-)39.96	263.64	858.53	1171.64
Normative Equity- Closing (C) =(A) + (B)	48741.02	48701.06	48964.70	49823.24	50994.87
Average Equity (G)=(A+F)/2	48710.58	48721.04	48832.88	49393.97	50409.06
Base Rate (%) (H)	15.500%	15.500%	15.500%	15.500%	15.500%
Effective Tax Rate (%) (I)	20.961%	21.342%	21.342%	21.342%	21.549%
Effective ROE Rate (%) (J)	19.610%	19.705%	19.705%	19.705%	19.758%
Return on Equity (K)= (G)*(J)	9552.15	9600.48	9622.52	9733.08	9959.82

Interest on Loan

47. The Interest on loan (in the table under para 54 of the impugned order) is modified as under:



(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Gross opening loan(A)	43405.04	43644.99	44038.07	44762.50	47318.29
Cumulative repayment of loan upto previous year(B)	43405.04	43644.99	44038.07	44762.50	46542.18
Net Loan Opening(C)=(A-B)	0.00	0.00	0.00	0.00	776.10
Net Addition due to additional capital expenditure(D)	239.95	393.07	724.43	2555.79	3204.75
Repayment of loan during the year(E)	319.55	811.49	817.08	2272.92	2606.18
Less: Repayment adjustment on account of de-capitalization(F)	79.60	418.41	92.65	493.24	420.44
Net Repayment of loan during the year(G)=(E-F)	239.95	393.07	724.43	1779.68	2185.74
Net Loan Closing(H)=(C+D-G)	0.00	0.00	0.00	776.10	1795.12
Average Loan(I)=(C+H)/2	0.00	0.00	0.00	388.05	1285.61
Weighted Average Rate of Interest on loan(J)	7.42%	7.42%	7.42%	7.42%	7.42%
Interest on Loan(K=I*J)	0.00	0.00	0.00	28.79	95.39

Depreciation

48. The deprecation allowed (in the table under para 56 of the impugned order) is modified as under:

(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Opening gross block (A)	92085.17	92386.01	92739.12	93727.19	97141.51
Net additional capital expenditure during 2014-19 (B)	300.84	353.11	988.07	3414.32	4376.39
Closing gross block (C=A+B)	92386.01	92739.12	93727.19	97141.51	101517.90
Average gross block (D)=(A+C)/2	92235.59	92562.56	93233.15	95434.35	99329.71
Value of Free Hold Land	106.35	106.35	106.35	106.35	106.35
Depreciable value (E= (D *90%))	82916.32	83210.59	83814.12	85795.20	89301.02
Remaining Depreciable value at the beginning of the year (F=E-Cum Dep at 'L' at the end of previous year)	32247.75	30606.13	29587.67	29547.99	31274.13
Balance useful Life (H)	16.00	15.00	14.00	13.00	12.00
Depreciation (I=D/H)	2015.48	2040.41	2113.41	2272.92	2606.18
Cumulative Depreciation at the end of the year (J=I+ Cum Dep at 'L' at the end of previous year)	52684.05	54644.87	56339.86	58520.13	60633.07
Less: Depreciation adjustment on account of de-capitalization (K)	79.60	418.41	92.65	493.24	420.44
Cumulative Depreciation at the end of the year (L)	52604.46	54226.45	56247.21	58026.89	60212.63

Working Capital for Receivables

49. The Receivable component of working capital worked out based on two months of fixed cost (in the table under para 72 of the impugned order) is modified as under:



(Rs. in lakh)

2014-15	2015-16	2016-17	2017-18	2018-19
4510.10	4691.20	4890.73	5172.35	5500.47

50. Accordingly, interest on working capital worked out and allowed (in the table under para 76 of the impugned order) is modified as under:

(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Working capital for O&M expenses (one month of O&M expenses)	1202.47	1282.36	1369.22	1478.51	1583.36
Working capital for Maintenance Spares (15% of operation and maintenance expense)	2164.44	2308.24	2464.60	2661.32	2850.06
Working capital for Receivables (two months of fixed cost)	4510.10	4691.20	4890.73	5172.35	5500.47
Total working capital	7877.00	8281.80	8724.55	9312.18	9933.89
Rate of Working Capital (%)	13.50%	13.50%	13.50%	13.50%	13.50%
Interest on Working Capital	1063.40	1118.04	1177.81	1257.14	1341.08

Annual Fixed Charges approved for the period 2014-19

51. Accordingly, the annual fixed charges approved for the period 2014-19 (in the table under para 77 of the impugned order) stand modified as under:

(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation	2015.48	2040.41	2113.41	2272.92	2606.18
Interest on Loan	0.00	0.00	0.00	28.79	95.39
Return on Equity	9552.15	9600.48	9622.52	9733.08	9959.82
O&M Expenses	14429.58	15388.29	16430.64	17742.14	19000.37
Interest on Working Capital	1063.40	1118.04	1177.81	1257.14	1341.08
Total	27060.60	28147.22	29344.38	31034.08	33002.83

Period 2019-24

E) Disallowance of additional capital expenditure amounting to Rs. 1400 lakh towards the purchase of two (2) modified Spare runners on a replacement basis during 2021-22 for the period 2019-24.

Submissions of the Review Petitioner

52. The Review Petitioner had claimed the additional capital expenditure amounting to Rs. 1400 lakh towards the purchase of two (2) modified Spare runners on a replacement basis in 2021-22 with the following justification:



“The generating station have six Generating units of 115 MW each. The Commission vide its order dated 12.05.2015 in Petition No. 236/GT/2014 has approved replacement of old Runners with Modified Runners for restoration of Installed Capacity, all Runners are been replaced during 2017-18& 2018-19 and has achieved Installed Capacity of 690 MW. Further, as per the Commission’s order dated 30.05.2011 in petition no 60/2010, one spare Runner was allowed for capitalization as one runner is sufficient for 3-4 units, as there are 06 units in Salal Power Station two runners are proposed to be purchased during 2019-24. Old runners available at Salal PS are of no use and no modified spare runner is available at site. Salal is a run-off river plant and is in Silt prone area, so in order to carry out the maintenance and to cater any exigency during monsoon season, two modified spare runners are required to be purchased against replacement of the existing ones, so that there shall be no loss of generation during high inflow season in case Runner gets damaged due to high silt or any other reasons beyond control of Generator.”

53. While disallowing the claim of the Review Petitioner, the Commission in the impugned order dated 13.2.2023 had observed the following:

*“It is noticed that the additional capital expenditure for the asset/ work was allowed vide order dated 12.5.2015 in Petition No. 236/GT/2014 during the period. It is further noticed that the Commission had approved the capitalization of a spare runner during the period 2009-14. Further, the Commission had already allowed one spare runner as additional capital expenditure in its order dated 30.5.2011 in Petition No 60/2010. Therefore, the claimed asset is as additional spare. **As per Regulation 35(2)(c) of the 2019 Tariff Regulations, capital spares are to be allowed separately, on actual consumption basis, as part of the O&M expenses. Accordingly, the asset claimed by the Review Petitioner under this head, is not allowed.** However, the Review Petitioner is granted liberty to analyze and claim the assets along with proper details/ justification at the time of truing up of tariff. In case, these assets forms part of the additional capital expenditure, then the same may be claimed under Regulation 25 or Regulation 26 of the 2019 Tariff Regulations. In case, the asset is actually consumed as capital spares, then the same may be claimed under Regulation 35(2)(c) of the 2019 Tariff Regulations, as part of the O&M expenses. In view of the above, the corresponding decapitalization is also not allowed.”*

54. The Review Petitioner, in the Review Petition, has submitted the following:

- a) All six runners of the generating station have been replaced with modified runners. Since old installed runners, as well as spare runners are of no use, therefore all old runner as well as spares has to be decapitalized in view of the same.
- b) Presently, all six units’ machines are operating with a modified runner, and there is no spare modified runner available at power station to meet any emergency requiring replacement with a spare runner.
- c) Further, the generating station is a run-off river plant and is in a Silt prone area, so in order to carry out the maintenance and to cater any exigency during monsoon season, modified spare runners are required, so that there shall be no loss of generation during high inflow season in absence of spare runner. Accordingly, two modified spare runners were being claimed on replacement basis by the Review Petitioner.



- d) While disallowing the claim of the Review Petitioner the Commission had observed that it had already approved the capitalization of a spare runner during the period 2009-14. However, the order dated 30.5.2011 in Petition No. 60 of 2010 pertains to Dulhasti Power Station and that a spare runner was allowed in the case of Dulhasti and not in case of Salal. In para-22 of the order dated 30.5.2021 in Petition No. 60 of 2010, the Commission had noted that *“Under normal circumstances, only one runner set is used as a spare for three or four units of the generating station.....”*. Therefore, the spare runner available as initial spares are of no use to the Review Petitioner as modified runners have now been installed in units. Therefore, the old spares available as initial spares at the generating station are of no use to the Review Petitioner and, thus, have to be deleted, and there are no modified spare runner(s) available at the generating station. Accordingly, two modified spare runners have been claimed on a replacement basis by the Review Petitioner.
- e) Further, as per Regulation 35(2)(c) of the 2019 Tariff Regulations, capital spares are to be allowed separately, on actual consumption basis, as part of the O&M expenses. Modified spare runners are claimed against initial spare runners allowed as initial spares on a replacement basis.
- f) Also, the Commission had granted liberty to the Review Petitioner to analyze and claim the assets along with proper details/ justification at the time of truing up of tariff.
- g) In light of the above, the Commission had allowed the replacement of all six runner in the process of restoration of installed capacity for the period 2014-19. Pertinently, for restoration of the installed capacity of the generating station, all six installed runners and two spare runners needed to be replaced. Accordingly, the installed six runners were replaced during the period 2014-19 and two spare runners were proposed to be purchased in 2021-22 falling under the period 2019-24, since the Commission had already approved the capitalization of two (2) spare runner during the period 2009-14, keeping in view the necessity of the spare runner as there is no other requisite spare runner, i.e., modified runner available to the Review Petitioner to run the plant successfully and efficiently.

55. Accordingly, the Review Petitioner has prayed that the Commission may review the impugned order by considering the aforesaid capital expenditure claimed by the Review Petitioner as prayed for in the tariff petition.

Reply of the Respondents

Respondent BRPL



56. The Respondent BRPL has submitted that the Commission has correctly disallowed the claim relating to spare runners, since no justification has been put forth by the Review Petitioner, regarding the claim for spare runners.

Respondent UPPCL

57. The Respondent UPPCL has contended that the Commission has correctly disallowed the claim relating to the spare runners for the period 2019-24, since the Review Petitioner has mathematically calculated the requirement of 02 no. spare runners for the generating station, which is not based upon technical considerations and requirements. The Respondent has further submitted that the Commission has rightly directed the Petitioner in para-38 of the impugned order dated 13.2.2023 to analyze the requirement of the spare runner and put up the claim of the assets at the time of true up of tariff with proper details and justification.

Respondent Rajasthan Discoms

58. The Respondent, Rajasthan Discoms have submitted that while passing the impugned order, the Commission had granted liberty to the Review Petitioner to claim the replacement of the old spare runners at the time of truing-up of tariff. The have also submitted that the requirement of the spare runners may be deferred and the Review Petitioner may find possible ways to augment the old spare runners to avoid the said liability.

Rejoinder of the Review Petitioner

59. In response to above, the Review Petitioner has clarified that all six runners of the Review Petitioner's generating station have been replaced with modified runners as a part of the R&M carried out for the present station. It has accordingly submitted that old installed runner, as well the old spare runners are of no use, and all the old



runners, as well as the old spare runners, have to be decapitalized in view of the same having become obsolete. The Review Petitioner has further submitted that at present, all six generating units are operating with modified runners, and there is no spare modified runner available at the Review Petitioner's generating station to meet any emergency requiring replacement with a spare runner. It has further stated that it may be considered that the generating station is a runoff river plant and is in a Silt prone area therefore, carrying out the maintenance and catering to any exigency, without any loss of generation during high inflow season, in the absence of spare runner, will not be possible for the Review Petitioner to meet the objective of uninterrupted power supply. Thus, the Review Petitioner has claimed two modified spare runners on a replacement basis. The Review Petitioner has clarified that it has already put up a detailed justification in the review petition claiming the need for the two spare runners.

Analysis and decision

60. The matter has been examined. It is pertinent to mention that the claim of the Review Petitioner is for capitalization of capital spares beyond the cut-off date, which is not permissible in terms of the Tariff Regulations. However, capital spares are allowed beyond the cut-off date as additional O&M expenses once they are consumed. Accordingly, the Commission in the impugned order has not allowed the additional capitalization claim with respect to spare rotors. Having said so, we notice that the Commission had granted liberty to the Review Petitioner to analyze and approach the Commission for claiming the assets, along with proper details/ justification at the time of truing up of tariff. In view of this, we find no reason to consider the prayer/submissions of the Review Petitioner in this order. The Review Petitioner is at liberty to claim the same as per the directions contained in the impugned order (as quoted above).



Review of Assumed Deletions for the period 2019-24

61. As regards the 'assumed deletions considered for the period 2019-24, and double deduction on account of assumed deletions for Flap Type Gate in 2019-20 and SCADA system in 2021-22, we have in this order noted that there is no error in the methodology adopted by the Commission for arriving at the decapitalized value of old assets and that the Review Petitioner is only aggrieved by the non-consideration of the de-capitalized value furnished by it in the main petition. However, considering the fact that the tariff of the generating station is to be trued-up for the period 2019-24, we grant liberty to the Review Petitioner to furnish the gross value of old assets that are decapitalized/claimed under replacement at the time of truing-up for the period 2019-24. In view of this, the issues raised by the Review Petitioner on these counts, have not been considered in this order. The Review on this ground is disposed of accordingly. Consequent upon this, the tariff approved for the generating station for the period 2019-24, vide the impugned order dated 13.3.2023 has not been revised. However, as the revised closing capital cost of Rs.101517.90 lakh, as on 31.3.2019, has been approved in para 44 of this order, the same shall be considered as the opening capital cost as on 1.4.2019, at the time of truing-up of the tariff of the generating station for the period 2019-24. We direct accordingly

62. Accordingly, Review Petition No. 11/RP/2023 in Petition No. 229/GT/2020 is disposed of in terms of the above.

Sd/-
(Ramesh Babu V)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(Jishnu Barua)
Chairperson

