

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.39/RP/2023

in

Petition No.366/GT/2020

Coram:

Shri Jishnu Barua, Chairperson

Shri Ramesh Babu V., Member

Shri Harish Dudani, Member

Date of Order: 25th November, 2024

In the matter of:

Review of the Commission's order dated 6.10.2023 in Petition No. 366/GT/2020 with respect to truing up of tariff of Barsingsar Thermal Power Station (250 MW) for the period 2014-19.

And

In the matter of:

NLC India Limited,
135/73, EVR Periyar High Road, Kilpauk,
Chennai – 600 010, Tamil Nadu

.....Review Petitioner

Vs

1. Rajasthan Urja Vikas and IT Services Limited
(formerly: Rajasthan Urja Vikas Nigam Limited)
Vidyut Bhawan, Janpath, Jyoti Nagar
Jaipur, Rajasthan- 302005.
2. Jodhpur Vidyut Vitaran Nigam Ltd,
New Power House, Heavy Industrial Area, Jodhpur,
Rajasthan - 342003
3. Jaipur Vidyut Vitaran Nigam Ltd,
Vidyut Bhavan, I floor, Janpath, Jaipur,
Rajasthan - 302005
4. Ajmer Vidyut Vitaran Nigam Ltd,
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer, Rajasthan – 305004

.... Respondents

Parties Present:

Shri Rakesh Pandey, Advocate, NLCIL

Shri Vinay Sobti, NLCIL

Ms. Shivani Verma, Advocate, Rajasthan Discoms



ORDER

Petition No. 366/GT/2020 was filed by the Review Petitioner, NLC India Limited, for truing-up of the tariff of Barsingsar Thermal Power Station (2 x 125 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 6.10.2023 (*in short the ‘impugned order’*) disposed of the said petition. Aggrieved by the impugned order dated 6.10.2023, the Review Petitioner has filed this Review Petition on the ground that there is an error apparent on the face of the record on the following issues:

- (A) *Disallowance of additional capital expenditure on certain assets for the period 2014-19 amounting to Rs. 134.61 crores;*
- (B) *Adjustment of the LD amount claimed under exclusions amounting to Rs. 24.78 crores;*
- (C) *Disallowance of liabilities discharged amounting to Rs. 9.49 crores and*
- (D) *Disallowance of Personnel charges in the water charges.*

Hearing dated 18.6.2024

2. The Review Petition was heard on 'admission' on 18.6.2024, and the Commission 'admitted' the Review Petition on the above issues and directed the parties to complete the pleadings in the matter. Reply has been filed by the Respondents vide affidavit dated 23.4.2024, and the Review Petitioner vide affidavit dated 10.5.2024, has filed its rejoinder to the said reply.

Hearing dated 8.8.2024

3. During the hearing on 8.8.2024, the learned counsel for the Review Petitioner made detailed oral submissions seeking a review of the impugned order on the above issues and also submitted that no proper reasons/justifications have been provided by the Commission while disallowing the amounts in the impugned order.



in response, the learned counsel for the Respondents submitted that there is no infirmity in the impugned order dated 6.10.2023. He also pointed out that the present review petition is an appeal in disguise and is, therefore, not maintainable. Accordingly, the Commission reserved its order in the Review Petition.

4. Based on the submissions of the parties and the documents available on record, we proceed to examine the issues raised in the Review Petition as stated in the subsequent paragraphs:

A. Disallowance of additional capital expenditure on certain assets for the period 2014-19 amounting to Rs. 134.61 crores

5. The Commission, in the impugned order dated 6.10.2023, disallowed the additional capitalization claims of the Review Petitioner for the respective years as under:

SI No	Name of asset	Year	Amount (Rs in lakhs)
1	DC Lighting system at Ash handling system	2014-15	1.18
2	Maruti Omni Ambulance	2014-15	3.10
3	Construction of boundary wall at Silo area of BTPP	2015-16	6.28
4	Supply, Install and commissioning of Silo lighting in AHS	2015-16	4.98
5	New Fire hydrant line including hydro test in warehouse	2016-17	11.55
6	ABT Energy meter for feeder (4 nos.),	2016-17	4.28
7	Providing concrete flooring and paver block in Silo	2017-18	30.89
8	Supply, formation of 11 kV Ring Main system at BP	2017-18	61.64
9	Supply, Installation and Commissioning of IP based CCTV surveillance.	2018-19	10.71

Submissions of the Review Petitioner

6. The Review Petitioner has submitted that it has claimed the lighting system, Surveillance camera, Boundary wall, lighting of Silo, Fire hydrant lines, etc., for the safety, security, and efficient operation of the plant, as envisaged in the relevant regulations and the Commission erred in not considering the requirement of safety



of the plant. Accordingly, the asset-wise submissions of the Review Petitioner are as under:

(a) The DC lighting system at the Ash handling system was installed to ensure uninterrupted lighting at such a critical area, which is in addition to the A.C. lighting and is a standard design criterion adopted in the BoP area. Generally, lighting requirements are carried out as per the statutory requirements, and therefore, the expenditure claimed under Regulation 14(1)(v) amounts to compliance with existing law. Though the said asset was disallowed based on non-submission of the documentary evidence, the Commission had not considered the justification furnished in the truing-up petition as this procedure has been specified in the design criteria of a power plant, and hence, the statutory authority recommendation is not required.

(b) The expenditure towards Maruti Omni ambulance is in compliance with Rule 65-TT of the Rajasthan Factories Rules 1951, and the said asset was purchased and stationed at the Occupational Health Centre, BTPS, and therefore, the Commission may allow the additional expenditure.

(c) The expenditure for the construction of the Boundary wall at the Silo area of BTPS is for the initial installation, and thereafter, the routine maintenance expenses can only be covered under O&M. Already, the station is having under-recovery in O&M expenses. The boundary wall was constructed to reduce the safety hazard and restrict un-authorized access to the Silo area while ensuring systematic traffic. Being a safety requirement to prevent accidents, the observation of the Commission that the expenditure has to be covered under O&M expenses may be reviewed and the additional expenditure may be allowed.

(d) As regards the expenditure claimed for the supply, installation, and commissioning of Silo lighting in AHS, the ash generated from boilers of BTPS has to be transported to silos, and adequate illumination is essential for the safe operation of AHS and minimizing any risk of safety hazards associated with ash handling. Though the said asset was disallowed on the ground that the expenditure has to be covered under O&M expenses, the Commission had not considered the justification furnished in the truing-up petition as this procedure has been specified in the design criteria of a power plant, and hence the statutory authority recommendation is not required.

(e) With regard to the expenditure for the New hydrant line, including the hydro test in Warehouse, the fire hydrant system is installed throughout the plant to handle any fire hazard, thus ensuring fire safety inside the plant. In the BTPS warehouse area, fire hydrant lines were not installed during the construction of the warehouse, and the Unit level committee has recommended erecting fire hydrant lines with sufficient hydrant points to meet any undue fire emergency, which is in compliance with Section 58 of the Rajasthan Factories Rules, 1951. In order to comply with the safety committee recommendation and to mitigate the



emergency that may arise due to undue fire accidents, 500 meters of pipelines were erected above ground level with sufficient numbers of fire hydrant points around the warehouse area. The Commission has not considered the justification furnished at the time of truing up of the tariff. Though the documentary evidence was not submitted, the Commission may take cognizance of the safety requirement and allow the additional expenditure claimed.

(f) As regards the expenditure claimed for the ABT energy meter for Feeder (4) Nos, the Commission has opined that the said expenditure has to be covered under O&M expenses. The said expenditure was incurred due to amendments in the Grid operation as per the Rajasthan Electricity Regulatory Commission (DSM) Regulations, 2017, and in compliance with this, ABT meters were installed in BTPS feeders, which are necessary for accurate billing of energy exported to the grid and accounting of DSM charges. Accordingly, the Review Petitioner has prayed that the Commission may take cognizance of the statutory requirement and allow the additional expenditure.

(g) With regard to the expenditure claimed for providing concrete flooring and paver block in Silo, the same has been laid at a cost of Rs 30.89 lakh so that in case of fire, the fire engines are able to approach the area near the silo immediately. This road is essentially required to be kept operational for attending any fire accidents in time, and Regulation 14(3) is a special provision dealing with the specific nature of additional capital expenditure.

(h) As regards the expenditure on the 11kV Ring main system, the same was included in the original scope of work and the same has been allowed by this Commission. The current expenditure was to interconnect the T-7 location to ITC by overhead line for making an overall ring main system for the peripheral load of BTPS and the same is essential to provide alternate power supply to all locations.

(i) As regards the expenditure for the Supply, installation, and commissioning of IP-based CCTV surveillance, in order to enhance/improve the security system further, it was decided to extend the CCTV camera system to TA, CISF Barracks, and various other locations with the already established at CISF control station for surveillance of men and material movement. The incurrance of expenditure on surveillance cameras is for the safety of the plant and isolated places are monitored round the clock with the help of CCTVs. The Commission had allowed the expenditures on the installation of the surveillance cameras in the order dated 20.9.2022 in Petition No 157/GT/2020 under Regulation 14(3) of the 2014 Tariff Regulations. In the case of the Petitioner, based on an internal safety review, the said expenditure was incurred as a safety requirement, and the same was instated for 24x7 monitoring of the plant by CISF staff to ensure the safety and security inside the premise and, therefore fall under Regulation 14(3)(iii) of the 2014 Tariff Regulations.



Reply of the Respondent Rajasthan Discoms

7. Respondent Rajasthan Discoms vide reply affidavit dated 24.4.2024 have opposed the claims of the Review Petitioner and mainly submitted the following:

(a) The Review Petitioner, under the guise of a review petition, is, in fact, seeking to reargue its case, which is impermissible in review. The review petition is not maintainable, as it does not fall under the provisions of Order 47 Rule 1 of the Code of Civil Procedure, 1908, read with Regulation 52 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023. The power of review is limited to correcting mistakes and cannot be used to substitute a different view. The mere possibility of two views on the subject is not a ground for review. The Petitioner has failed to point out any error apparent on the face of the record. Also, the error must be self-evident and not one that requires a detailed examination or reasoning to be identified. The Hon'ble Supreme Court, in its judgments *Parsion Devi v. Sumitri Devi and Ors*, *Lily Thomas v. Union of India*, and *Kamlesh Verma v. Mayawati & Ors.*, has decided that errors which require long-drawn reasoning are not grounds for review and the scope of review is extremely limited and cannot be used to reargue or rehear the case.

(b) The Review Petitioner's claims for additional capital expenditure do not conform to the provisions of Regulation 14(1)(v) of the 2014 Tariff Regulations, which provides that the additional capital expenditure will only be considered if it has been incurred due to a change in law or for the compliance with the existing law. The Review Petitioner has failed to demonstrate that their claims fall under this clause, as they have not provided any notification from any statutory authority to support their claims. Only items within the original scope of work can be considered, which the Petitioner has not demonstrated. The necessity of the claim for a new fire hydrant line in the warehouse at a later stage, which was not installed during the initial construction, is not clear. Also, while claiming amounts for ABT energy meters, the Review Petitioner had not mentioned the relevant regulations in their original petition, only to bring it up on review, which is not permissible. Further, the claim for concrete flooring and paver blocks in the Silo is in the nature of O&M, and the fact that the Review Petitioner has also not provided any documentary evidence in support of the statutory directions issued for the same may be rejected. The Review Petitioner's claim for the supply, installation, and commissioning of IP-based CCTV surveillance is also not supported by any evidence indicating the directions issued by the statutory authority for claiming the expenditure. Further, the adjustment of liquidated damages and the discharge of undischarged liabilities are also required to be rejected.



Rejoinder of the Review Petitioner

8. In response, the Review Petitioner, in its rejoinder affidavit dated 10.5.2024, has argued that the expenditures on the various installations and procurements, such as the D.C. lighting system at AHS, the Maruti Omni Ambulance, the Construction of a boundary wall at the Silo area, and the installation of Silo lighting in AHS, are all mandatory requirements under the existing laws and regulations. It has contended that these expenditures were claimed under Regulation 14 (1) (v) of the 2014 Tariff Regulations on the ground that the said expenditures are essential for compliance with the statutory design criteria and safety standards.

Analysis and Decision

9. We have examined the above submissions of the parties and documents available on record. It is noticed from the impugned order that the additional capital expenditure claimed in respect of the aforesaid assets was disallowed by the Commission after considering the justification furnished by the Review Petitioner and also keeping in view that some of the claims were not supported by any documentary evidence. As regards the submission of the Review Petitioner that the expenditure for Rs 10.71 lakhs towards the Supply, installation, and commissioning of IP-based CCTV surveillance had been disallowed in 2018-19, despite the same being allowed in order dated 20.9.2022 in Petition No. 157/GT/2020 (relating to the tariff of IGSTPS, Stage-I of Aravalli Power Company Private Limited for the period 2014-19) is concerned, we note that in the case of APCPL, the said expenditure was allowed based on the recommendations of the CISF, while in the present case, the expenditure incurred by the Review Petitioner was based on an internal safety review. In our considered view, the Review Petitioner has not demonstrated any error in the impugned order justifying the review of the impugned order but has only attempted to re-argue the case on merits, by reiterating/making additional



submissions, which is not permissible in review. Accordingly, we hold that the review sought by the Review Petitioner on the said grounds is not maintainable.

B. Adjustment of the LD amount claimed under exclusion amounting to Rs. 24.78 crores;

10. The Commission vide order dated 6.10.2023 in Petition No. 366/GT/2020 has disallowed Rs. 24.78 crore in Capital Cost under exclusion with the following observations:

“27. It is observed that the Commission vide order dated 24.4.2017 in Petition No. 130/GT/2016 has observed that the petitioner has recovered Liquidated Damages amounting to Rs 111.89 crore and Accordingly, the Commission has considered 50% of the LD amount of Rs111.89 crore towards adjustment in capital cost of the generating station. Owing to the above observation, the Commission in the said order had disallowed the total LD of Rs 55.94 cr. The Petitioner in Form 9Bi has claimed total decapitalization of Rs 8084.56 lakh during the period 2014-19 of which Rs 2689.86 has been recovered as depreciation till date of decapitalization. Further, the Petitioner has claimed total amount of Rs 55.94 Cr under exclusion i.e. Rs 524.35 lakh during 2016-17 and Rs 5070.15 lakh during 2018-19, which is the amount disallowed by the Commission in the said order dated 24.4.2017. Accordingly, the value of exclusion claimed of Rs 55.94 lakh during 2016-17 and 2018-19 has been considered for the purpose of exclusion.”

28. Accordingly, the exclusions allowed are as under:

	(Rs. in lakh)				
	2014-15	2015-16	2016-17	2017-18	2018-19
Claimed	0.00	0.00	524.35	0.00	7548.56
Allowed	0.00	0.00	524.35	0.00	5070.15
Not Allowed	0.00	0.00	0.00	0.00	2478.41

Submissions of the Review Petitioner

11. The Petitioner, in the Review Petition, has submitted that the Commission has already adjusted liquidated damages (LD) of Rs 55.94 crore in the order dated 25.4.2017 in Petition No. 130/GT/2016 and that a further reduction of Rs. 24.78 crore in the capital cost has been carried out erroneously in the impugned order dated 6.10.2023. In justification of the above, the Review Petitioner has submitted the following:

- (a) The Commission, in its order dated 10.7.2015 in Petition No.197/GT/2013, stated that the impact of time and cost overrun of 37 months for Unit I and 31 months for Unit II of the generating station along with LD and Insurance proceeds are required to be shared equally by the Petitioner and the



Respondents. Accordingly, the Commission vide order dated 25.4.2017 in Petition No. 130/GT/2016 had adjusted the LD amount of Rs. 5594.50 lakhs (50% of Rs.11189 lakhs in proportion to IDC disallowance) by way of deduction from capital cost.

- (b) The LD amount of Rs 55.94 crore was adjusted by way of a reduction in the capital cost (50% of LD) for the period 2009-14 and therefore, a further capital adjustment shall not be done by the Commission.
- (c) The 50% LD allowed is compensation for the disallowance of IDC due to the time overrun of the project from the date of first synchronization till the station COD was achieved. Further, if any LD is released on a subsequent date based on the final decision in the arbitration proceedings or Court, the Petitioner is entitled to adjust the 50% of the amount released.
- (d) The Commission has firmed up the capital cost by way of deduction of LD in the Order dated 25.4.2017 in Petition No. 130/GT/2016 (for the period 2009-14) by disallowing the amount of Rs 55.94 crore. Any further reduction based on the details submitted from the Asset master is erroneous. This would once again impact the capital cost during the period 2014-19, which is against the Commission's order dated 10.7.2015 in Petition No. 197/GT/2013.
- (e) The Commission is requested to allow the amount of Rs 24.78 crore in the capital cost, which was erroneously reduced in the impugned order, as the Commission had already adjusted the LD amount of Rs 55.94 crore in the impugned order (i.e., 50% of Rs 111.89 crore in proportion to the disallowed IDC).

Reply of the Respondent Rajasthan Discoms

12. Respondents Rajasthan Discoms have submitted that the Commission vide its order dated 25.4.2017 in Petition No. 130/GT/2016 had observed that the Review Petitioner had recovered LD amounting to Rs. 111.89 crore and, accordingly, the Commission had considered 50% of the LD amount of Rs. 111.89 crore towards adjustment in capital cost of the generating station.

Rejoinder of the Review Petitioner

13. In response, the Petitioner, in its rejoinder, has submitted that the power of review can be exercised for the correction of a mistake in the order, which has a huge financial impact on the Review Petitioner. The Review Petitioner has reiterated its submissions made in the review petition.



Analysis and Decision

14. We have examined the aforesaid submissions of the parties and the documents available on record. The Commission, vide its order dated 25.4.2017 in Petition No. 130/GT/2016, has adjusted the LD amount of Rs. 5594.50 lakhs (50% of Rs.11189 lakhs in proportion to IDC disallowance) by deduction from the capital cost as follows:

“It is noticed that as on date of COD of generating station the petitioner has recovered Liquidated Damages amounting to Rs 111.89 crore (Rs 108.39 Cr + Rs 3.50 Cr) and the petitioner is still in possession of the same amount. Accordingly, we are inclined to consider 50% of the LD amount of Rs 111.89 crore towards adjustment in capital cost of the generating station. However, if any amount is released by the petitioner on a subsequent date based on the final decision in Arbitration proceedings or Court, liberty is granted to the petitioner to claim the said amount.”

15. It is observed that the Review Petitioner in Petition No. 197/GT/2013 had submitted that the LD amount to be recovered from M/s BHEL was Rs. 129.88 crore. Accordingly, 50% of the LD amount, i.e., Rs. 64.97 crore, was to be adjusted. However, in Petition No. 130/GT/2016, the Review Petitioner submitted that the actual LD amount is Rs. 111.89 crores, and therefore, 50% of the LD amount, i.e., Rs. 55.94 crores was adjusted, but the Review Petitioner was given liberty to furnish proper details at the time of truing up. Thereafter, the Review Petitioner, in Petition No. 366/GT/2020, claimed the LD amount as Rs. 80.73 crores in deviation from the auditor-certified figure of Rs. 111.89 crores. However, the Commission adjusted the amount of Rs. 55.94 crore only as per the order dated 25.4.2017 in Petition No.130/GT/2016. Therefore, the disallowed amount of Rs. 24.78 crores, which pertains to the exclusion of the assets decapitalized, form part of the capital cost, and the same cannot be allowed under exclusion. Accordingly, this amount was not allowed as an exclusion in the impugned order. We, therefore, find no error apparent on the face of the impugned order, warranting review of the impugned order. The review on this ground is not maintainable.



C. Disallowance of the liabilities discharged amounting to Rs. 9.49 crores

16. The Commission, in paragraph 31 of the impugned order dated 6.10.2023, had disallowed the undischarged liability claimed by the Review Petitioner with the following observations:

“The matter has been considered. It is observed that the Commission vide order dated 10.7.2015 in Petition No. 197/GT/2013 had considered the total undischarged liability of Rs. 12011 lakh at the time of COD of the generating station (20.1.2012). Further, the Commission vide order dated 25.4.2017 in Petition No. 130/GT/2016 had allowed the discharges of Rs. 1500.80 lakh and Rs. 6465.63 lakh in 2012-13 and 2013-14 respectively. Accordingly, the undischarged liability as on 1.4.2014, works out as Rs. 4044.57 lakh. However, the Petitioner has claimed discharge of liabilities for Rs. 4994.02 lakh in 2014-15. Hence, these discharges have been restricted to the amount of undischarged liability as on 1.4.2014. Accordingly, the discharges of liabilities, allowed for the period 2014-19 is as under:

(Rs. In lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
<i>Discharges claimed</i>	4994.02	0.00	0.00	0.00	0.00
<i>Discharges allowed</i>	4044.57	0.00	0.00	0.00	0.00

Submissions of the Review Petitioner

17. The Review Petitioner submitted that the discharge of liabilities had been claimed as additional capital expenditure in Form-9A, along with the auditor's certificate. It has pointed out that the Commission vide order dated 10.7.2015 in Petition No. 197/GT/2013 had admitted and allowed an amount of Rs. 12011.00 lakhs towards the discharge of liabilities on a projected basis, as on 20.1.2012 (COD of the generating station), in respect of the balance work which is within the original scope of work, to be completed within the cut-off date of 31.3.2015. The Review Petitioner has also submitted that the Commission, in para 32 of the order dated 25.4.2017 in Petition No.130/GT/2016, observed the following:

“The petitioner is however directed to submit the actual details of un-discharged liabilities as on the COD of the units along with asset-wise and party-wise details, the reconciliation of the un-discharged liabilities claimed vide Form 5B with the balance sheet along with discharge of liabilities duly certified by the Auditor at the time of revision of tariff based on truing up (2014-19)” The amount indicated for the year 2014-15 shall however be considered while determination of tariff of the generating station for the period 2014-19.”



18. The Review Petitioner further submitted that it had furnished the above information in its rejoinder dated 21.12.2022, but the Commission failed to take note of the same in the impugned order. Accordingly, the Review Petitioner submitted that the non-consideration of the aforesaid submissions in its rejoinder and erroneously considering a different figure is an error apparent on the face of the impugned order dated 6.10.2023. The Review Petitioner has added that the Commission has failed to take cognizance of the fact mentioned in its order dated 25.4.2017 in Petition No. 130/GT/2016 and disallowed the liabilities discharged for Rs. 949.45 lakhs (Rs. 4994.02 lakhs – Rs. 4044.57 lakhs), which is an error apparent on the face of the impugned order.

Reply of the Respondent Rajasthan Discoms

19. The Respondents have submitted that the Petitioner's claim for the undischarged liabilities amounting to Rs. 4994.02 lakhs in 2014-15 is incorrect. They have stated that the Commission, in its order dated 10.7.2015, had considered a total undischarged liability of Rs. 12011 lakhs at the time of the COD of the generating station on 20.1.2012 and subsequently, in the order dated 25.4.2017, the Commission allowed the discharge of Rs. 1500.80 lakhs and Rs. 6465.63 lakhs for the years 2012-13 and 2013-14, respectively, thereby leaving an undischarged liability of Rs. 4044.57 lakhs as on 1.4.2014. The Respondents have also stated that the Petitioner's claim for discharging Rs. 4994.02 lakhs in 2014-15 exceeds the undischarged liability as of 1.4.2014, and therefore, the Commission restricted the discharge of liabilities to Rs. 4044.57 lakhs. The Respondents have argued that there is no error apparent on the face of the record in this calculation, and the Petitioner's claim is essentially an appeal in disguise, which is not permissible in a review petition. The Respondents have added that the Commission, in its order dated 25.4.2017, clearly stated that the amount for 2014-15 would be considered,



while determining the tariff for the period 2014-19, and this was subsequently addressed in the order dated 3.5.2017.

Rejoinder of the Review Petitioner

20. The Review Petitioner, in its rejoinder, has clarified that it had claimed the discharge of liabilities as additional capital expenditure in Form-9A, duly supported by the Auditor's certificate. It has pointed out that the Commission, in its provisional tariff order in Petition No.197/GT/2013, allowed an amount of Rs. 12011.00 lakhs towards the discharge of liabilities, on a projected basis, as on the COD of the generating station and additionally, permitted the completion of the balance works within the original scope of work, within the cut-off date of 31.3.2015. The Review Petitioner has added that in para 32 of the order dated 25.4.2017 in Petition No.130/GT/2016, the Commission had directed that the amount indicated for the year 2014-15 should be considered along with the discharge of liabilities, duly certified by the Auditor, at the time of filing the truing-up Petition for the period 2014-19 and despite the information being furnished by the Review Petitioner, in the rejoinder dated 21.12.2022, the Commission failed to consider the said submissions. Accordingly, the Review Petitioner has submitted that the non-consideration of the Review Petitioner's submission and the erroneous consideration of a different figure represents an error apparent in the impugned order and may be reviewed.

Analysis and Decision

21. We have considered the submissions of the parties. It is noticed from records that the Commission, in its order dated 25.4.2017 in Petition No. 130/GT/2016, admitted the discharges for the years 2012-13 and 2013-14. However, as the discharges claimed for the year 2014-15 pertained to the period 2014-19, the same was not considered in the said order dated 25.4.2017. The submission of the Review



Petitioner that the Commission, in its order dated 25.4.2017, had issued directions to the Review Petitioner to submit the details of the undischarged liabilities at the time of truing up of tariff for the period 2014-19 is misconceived, as the said direction was issued vide order dated 10.7.2015 in Petition No.197/GT/2013, which is as under:

“32. The amount of un-discharged liabilities as per Form-5B submitted vide affidavit dated 17.10.2012 is ₹118.08 crore and as per affidavit dated 13.6.2014 is ₹120.11 crore as on COD of the generating station (20.1.2012). The petitioner was directed to furnish the Balance Sheet as on COD of the generating station and the same has not yet been furnished by the petitioner. Accordingly, the amount of ₹120.11 crore as on COD has been considered towards un-discharged liabilities. The petitioner is however directed to submit the actual details of un-discharged liabilities as on the COD of the units along with asset-wise and party-wise details, the reconciliation of the un-discharged liabilities claimed vide Form 5B with the balance sheet along with discharge of liabilities duly certified by the Auditor at the time of revision of tariff based on truing up exercise in terms of Regulation 6(1) of the 2009 Tariff Regulations.”

22. Further, the Commission vide its order dated 25.4.2017 in Petition No. 130/GT/2016 had observed as under:

“32. The Commission vide order dated 10.7.2015 in Petition No.197/GT/2013 had allowed an amount of ₹12011.00 lakh towards discharge of liabilities on projected basis as on 20.1.2012 in respect of the balance work within the original scope of work to be completed within the cut-off date of 31.3.2015. The Commission had also directed the petitioner to submit the asset wise, party-wise and year-wise details of discharge of liabilities at the time of revision of tariff. Accordingly, the petitioner in this petition has submitted such details of amount of liabilities discharged as under:

<i>(Rs in lakh)</i>		
2012-13	2013-14	2014-15
1500.80	6465.63	4994.02

The amount of liabilities discharged for the period 2012-14 has only been considered in this order. The amount indicated for the year 2014-15 shall however be considered while determination of tariff of the generating station for the period 2014-19.”

23. While the Review Petitioner furnished the liability flow statement related to undischarged liabilities and their discharges in Petition No. 130/GT/2016, there were discrepancies between the amounts added under 'undischarged liability' in the 'liability flow statement' and the statement of 'additional capital expenditure.' In the order dated 25.4.2017 in Petition No. 130/GT/2016, the Commission had recognized the undischarged liabilities of Rs.12011 lakh as on the COD (20.1.2012), which was



earlier noted in the order dated 10.7.2015 in Petition No. 197/GT/2013. In Petition No.130/GT/2016, the Review Petitioner claimed discharges of liability for Rs.1500.80 lakhs in 2012-13 and Rs.6465.63 lakhs in 2013-14, both of which were allowed by the Commission, as part of recognized undischarged liability of Rs.12011 lakhs as on the COD, in accordance with the order dated 10.7.2015. Also, against the claimed additional capital expenditure for the years 2011-12 (20.1.2012 to 31.3.2012), 2012-13, and 2013-14 were Rs.176.64 lakhs, Nil, and Rs.377.74 lakhs, respectively, the Commission allowed Rs.137.38 lakh, Nil, and Rs.324.84 lakh respectively with recognition of 'Nil' undischarged liability, based on the reconciliation statement of the actual additional capital expenditure with the Review Petitioner's books of accounts, as submitted in Petition No. 130/GT/2016 vide affidavit dated 24.2.2017 and as discussed in para 31 of the order dated 25.4.2017. Since the said additional capital expenditure was allowed without recognizing any undischarged liability on the basis of submissions of the Petitioner, any further addition in the un-discharge liability could not arise from 20.1.2012 to 31.3.2014. The closing balance of the recognized undischarged liabilities as of 31.3.2014 stood at Rs.4044.57 lakhs (i.e., Rs 12011 lakhs – allowed discharges, i.e.Rs.1500.80 lakhs – Rs.6465.63 lakhs).

24. As regards the Review Petitioner's submission that the Commission failed to take note of the rejoinder affidavit dated 21.12.2022, we note that at the time of truing -up of tariff for the period 2014-19, the discharge of liabilities for Rs.4994.02 lakhs claimed in 2014-15, was duly examined and the same was restricted to the balance undischarged liabilities of Rs.4044.57 lakhs and allowed as per the order dated 25.4.2017 in Petition No. 130/GT/2016. Thus, the Review Petitioner's contention that the Commission failed to consider the rejoinder submissions vide



affidavit dated 21.12.2022 is not tenable. In this regard, the relevant portion of the impugned order dated 6.10.2023 is extracted below:

“31. It is observed that the Commission vide order dated 10.7.2015 in Petition No. 197/GT/2013 had considered the total undischarged liability of Rs. 12011 lakh at the time of COD of the generating station (20.1.2012). Further, the Commission vide order dated 25.4.2017 in Petition No. 130/GT/2014 had allowed the discharges of Rs. 1500.80 lakh and Rs. 6465.63 lakh in 2012-13 and 2013-14 respectively. Accordingly, the undischarged liability as on 1.4.2014, works out as Rs. 4044.57 lakh. However, the Petitioner has claimed discharge of liabilities for Rs. 4994.02 lakh in 2014-15. Hence, these discharges have been restricted to the amount of undischarged liability as on 1.4.2014.”

25. In light of the above discussions, we find no reason to entertain the prayer of the Review Petitioner to review the impugned order on this count. Thus, there is no error apparent on the face of the impugned order and review on this count fails.

D. Disallowance of Personnel charges in Water charges

26. The Commission, in the impugned order dated 6.10.2023, had disallowed the Personnel charges claimed in Water charges as under:

“As regards Personnel charges claimed, it is observed that the Petitioner, apart from basic pay, DA, common allowances of employees, have also included ‘Other allowances’ for which no justification has been submitted. The Petitioner in the Personnel charges have submitted the abstract of Manpower cost which constitutes of its own employees. Further, the Petitioner has also considered PRP of the employees in the Personnel charges. We are of the considered view that the said details of its own employees are already covered under the normative O&M expenses allowed to the generating station. Further, the Petitioner has not made out a point that the Normative O&M expenses allowed to the generating station is less than the actual O&M incurred by the generating station. Accordingly, the Personnel charges (Basic pay, DA, Common allowance, Superannuation fund and PRP etc.) in case of Barsingsar Thermal Power Station is not allowed. As regards the water charges of the Barsingsar Thermal Power station, the Petitioner has admitted that the only source of water of the generating station is Indira Gandhi Nahar Pariyojana, and for the expenditure pertaining to the contracts for patrolling, security & safety and O&M expenses, it has separately claimed O&M cost of water carrier system, Spares consumption in water carrier system and pumping charges also.”

Submissions of the Review Petitioner

27. The Review Petitioner has mainly submitted that Regulation 29(1)(a) of the 2014 Tariff Regulations provides for the normative O&M expenses for thermal and hydro generating stations, which exclude the water charges., which are to be allowed separately. It has also been submitted that the Explanatory Memorandum



to the draft Regulations discussed the approach for arriving at the O&M expenses, which states that since the water charges are to be approved and allowed separately, the same has not been considered as a part of the O&M expenses for thermal and hydro generating stations. Further, the Review Petitioner, vide its affidavit dated 10.5.2024, has further submitted the following for consideration:

a. Petitioner has claimed the water charges in accordance with the provisions of Regulation 29(2) of the 2014 Tariff Regulations, along with Auditor certificate as a supportive document for the claim in the truing up Petition.

b. The personnel charges claimed are expenditures incurred towards the personnel deployed in the Raw Water Group to monitor the water requirements of the generating station. The Petitioner has submitted that these expenditures are specifically incurred towards water facilitation for a distance of approximately 50KM. and claimed in terms of Regulation 29(2) of the 2014 Tariff Regulations and the Personnel charges claimed have not been included or covered under O&M expenses of the generating stations.

Reply of the Respondent Rajasthan Discoms

28. The Respondents have contended that the Review Petitioner's claim for Personnel charges in Water charges is unjustified, and the same has been rightly rejected by the Commission. They have also submitted that the Personnel charges claimed by the Review Petitioner include basic pay, dearness allowance (DA), common allowances, and other unspecified allowances for its employees, and the Review Petitioner has failed to provide adequate justification in respect of the "other allowances." The Respondents have added that the Review Petitioner had included the Performance Related Pay (PRP) in the Personnel charges, which the Commission had held to be already covered under the normative O&M expenses allowed to the generating station. They have further submitted that since the Review Petitioner had not demonstrated that the normative O&M expenses allowed were lesser than the actual O&M expenses incurred, the personnel charges, including basic pay, DA, common allowances, superannuation fund, and PRP for the generating station were not allowed. The Respondents have pointed out that there cannot be double accounting for personnel expenses, as the employees in question



are already on the Petitioner's payroll, and their costs are covered under the existing O&M expenses. Further, the Respondents have argued that the Review Petitioner's claim does not involve the interpretation of Regulation 29(1)(a) and Regulation 29(2) of the 2014 Tariff Regulations. Accordingly, the Respondents have prayed that the Review Petitioner's claim may be rejected.

Rejoinder of the Review Petitioner

29. The Review Petitioner has clarified that the Commission had directed the Review Petitioner to furnish certain additional information on the capitalization/ decapitalization of the asset, etc, including certification to the effect that Personnel charges are not included elsewhere, and in response, it had vide letter dated 29.9.2022 furnished the certificate issued by the Project Head of the Barsingsar Project. The Petitioner has further submitted that in the impugned order dated 6.10.2023, the Commission has not deliberated on this aspect while disallowing the claim of the review Petitioner for Personnel charges in water charges, which amounts to an error on the face of the record. The Review Petitioner has added that the Review Petition was filed after taking note of the errors in the impugned order and is duly supported by the relevant documents.

Analysis and Decision

30. The above submissions of the parties have been examined. Regulation 29(1)(A) of the 2014 Tariff Regulations provides as follows:

“Normative Operation and Maintenance expenses of thermal generating stations shall be as follows: (a) Coal based and lignite fired (including those based on Circulating Fluidized Bed Combustion (CFBC) technology) generating stations, other than the generating stations/units referred to in clauses (b) and (d)”

(Rs. in lakhs per MW)

Year	125 MW Sets
2014-15	29.10
2015-16	30.94
2016-17	32.88
2017-18	34.95
2018-19	37.15



The above norms of O&M expenses for thermal and hydro generating stations are excluding Water Charges. Water charges as applicable shall be allowed separately. Para 10 of the Explanatory Memorandum to the draft Regulation discussed the approach for arriving at O&M expenses states as follows:

“Further, since water charges are to be approved and allowed separately the same has not been considered as a part of O&M expenses for thermal and Hydro Generating Stations”.

31. Para 29.31 of the Statement of Reasons and Objects (SOR) to the 2014 Tariff Regulations, provide as under:

“As regards the comment that the O&M expenses have been approved on the basis of escalating past years expenses though water charges are now being allowed separately, the Commission would like to clarify that the water charges for 2008-09 to 2012-13 have not been considered as a part of O&M expenses while determining the norms for O&M expenses for 2014-19.”

32. It is observed that the Review Petitioner had claimed an amount of Rs. 2745.87 lakh towards water charges, which includes an amount of Rs. 522.15 lakh on account of Personnel charges. It is observed that the Personnel charges claimed as a part of the Water charges specifically pertain to the Review Petitioner’s own employees. Also, the Review Petitioner, in the Personnel charges, has included basic pay, DA, common allowance, other allowance, and superannuation benefits along with the performance-related pay of the employees. The Review Petitioner has clarified that the Personnel charges claimed are the expenditures incurred towards the Personnel of the Review Petitioner, deployed in the Raw Water Group, to monitor the water requirements of different generating stations of the Review Petitioner. According to us, the generating stations regulated by the Commission are located in different States and the rate of Water charges and policies of water allocation are different in different States. To negate the anomaly arising out of this situation, the Commission in the 2014 Tariff Regulations, allowed Water charges separately. Accordingly, the Water charges to be allowed are for the contracted quantum and actual water consumption for the generating station only. It is also not the case of the Review Petitioner that for the employees working in the Raw Water Group the salaries are undertaken from a separate account. The wages and salaries



of own employees working in Raw Water Group, including performance-related pay, cannot, in our view, be included in the Water charges. In light of the above, we find no reason to entertain the prayer of the Review Petitioner to include the Personnel charges in the Water charges. Accordingly, the review of the impugned order on this count is not allowed. A similar prayer of the Review Petitioner in Petition No.33/RP/2022 was rejected by the Commission vide its order dated 29.4.2024. Accordingly, the review on this count is not allowed.

33. Thus, the issues (A) to (D), as in para 1 above, are disposed of in terms of the above.

34. Accordingly, Review Petition No. 39/RP/2024 in Petition No. 366/GT/2020 is disposed of.

Sd/-
(Harish Dudani)
Member

Sd/-
(Ramesh Babu V)
Member

Sd/-
(Jishnu Barua)
Chairperson

