

2014-15, FY 2015-16 and FY 2016-17 for RWPL's 1080 MW Lignite based thermal generating station along with the stay application.

2. The matter was heard on 11.07.2017. Sh. Aman Anand, Advocate appeared for Petitioner and submitted that the direction of the Commission issued in para 4.71 of the order dt. 19.06.2017 is contradictory to the directions issued by Commission in its earlier interim orders. Therefore, Discoms may be restrained from making any unilateral adjustments, pursuant to the direction in para 4.71 of the order from the monthly tariff bills raised/to be raised by the Petitioner.
3. Sh. P.N. Bhandari, Advocate for Discoms in original petition, appeared and submitted that no written direction needs to be passed deferring adjustment arising out of final tariff. He assured that Discoms will not make adjustments as per the order till next date of hearing. Commission directed to issue notice to the Respondent(s) on the petition.
4. Accordingly, notices were issued to Respondent(s) on 12.07.2017 for filing the reply to the review petition. Respondent Discoms have filed its submissions on the petition on 27.07.2017. On which Petitioner has filed rejoinder on 31.07.2017.
5. The matter was finally heard on 03.08.2017. Sh. Aman Anand, Advocate appeared for Petitioner. Sh. P.N. Bhandari, Advocate appeared for Discoms.
6. Sh. Aman Anand, Advocate on behalf of Petitioner, submitted that perusal of order dt. 19.06.2017 reveals that it suffers from certain mistakes and errors apparent on the face of the record more particularly in relation to the following issues:

(i) Direction for adjustments of the difference in tariff.

- (a) Commission in paragraph 4.71 has erroneously directed RWPL to bill/adjust the difference in tariff approved by the Commission in this order and the

tariff charged by RWPL as provisionally approved by the Commission for the period FY 2014-15 to FY 2016-17.

- (b) Direction contained in paragraph 4.71 for adjustments of tariff runs contrary to directions issued in the interim tariff orders for FY 2014-15 to FY 2016-17.
- (c) Earlier, Commission in its interim orders issued on 31.03.2014, 31.03.2015 and 31.03.2017 had decided that the interim tariff would be subject to adjustment based on final orders. Since this Commission is yet to determine the final tariff, any direction for adjustment of amounts at the present stage is premature.
- (d) There is no reason, rationale or basis for this Commission to deviate from the well settled legal principle of adjustments in tariff, which principle is duly recognized in the present case under the Tariff Regulations as well as through the various orders of this Commission passed in the case of the Petitioner. As such, the direction contained in paragraph 4.71 deserves to be reviewed by this Commission and modified to directing the Petitioner to make adjustments between the interim tariffs recovered and the final tariff determined, only once the final tariff, including transfer price of lignite, is finally determined by this Commission.
- (e) The submission of the Respondents that adjustments on the fixed cost component should be made today and the variable component can be adjusted later, is not only based on a complete misunderstanding of the order under review, but is also contrary to the Regulations as well as earlier orders of this Commission. It is elementary that tariff includes both fixed cost and variable cost, and tariff cannot be split only for the purposes of making partial/piecemeal adjustments.
- (f) Even assuming the fixed charges are finally determined than also variable charges remain to be provisional and could be adjusted only after variable charges are determined finally.

(g) As per RERC orders, around Rs. 87 crore is outstanding dues payable by Discoms to Petitioner and Rs. 195 crore is also payable by Discoms on account of reimbursement of Income Tax. Therefore, it is requested to first adjust these amounts before making any directions for adjustment.

(ii) Determination of Station Heat Rate

- (a) Commission in the impugned order has taken a view that the Commission vide its order dated 13.11.2009 has already approved the design heat rate of 2300 kcal/ kWh and design parameters of a plant cannot be changed from time to time, therefore the same has been considered by the Commission in this order also and thereafter the moisture correction factor has been taken in accordance with Regulation 45 (3) (b) of RERC Tariff Regulations, 2014.
- (b) Commission has misapplied Regulation 45(3)(b) of the Tariff Regulations 2014 to the case of the Petitioner. Petitioner has always claimed the Design Heat Rate as 2333.97 kcal/kWh but Commission in the order 13.11.2009 had considered as 2300 kcal/ kWh only because of the ceiling contained in the Tariff Regulations, 2009.
- (c) As per the first proviso of Regulation 45(3)(b) of RERC Tariff Regulations, 2014, Design Heat Rate of the station would work out as 2333.97 kcal/kWh. Further, if the said Design Heat Rate is duly adjusted with the prescribed multiplier of 1.045, the SHR would work out to 2439 kcal/kWh against 2403.50 kcal/kWh (2300×1.045) as determined by the Commission in the order.
- (d) This Commission, while calculating the SHR of Giral Power Plant, in its order dated 07.12.2016 passed in petition no. RERC/760/2016 has calculated and applied the SHR as claimed by the Petitioner. As such there appears to be no reason or justification for this Commission not applying the relevant Regulation in the case of the Petitioner as it has been applied by the Commission in the case of Giral Power Plant.

(iii) Non consideration of additional capitalization for FY 2015-16 and FY 2016-17 beyond cut-off date.

- (a) Commission in the order dt. 19.06.2017 has not approved any additional capitalisation for FY 2015-16 and FY 2016-17 as additional capitalisation claimed by the Petitioner were falling after the cut-off date which was 31.03.2015.
- (b) In the order dt. 19.06.2017, it was observed by the Commission that as per Regulation 2(17) of RERC Tariff Regulations, 2014, the cut-off date may be extended by the Commission if it is proved on the basis of documentary evidence that the capitalisation could not be made within the cut-off-date for reasons beyond the project developer. The Petitioner in its petition has not made any request for extension of cutoff date supported with documentary evidence that the capitalization could not be made within cut-off date for the reasons beyond the control of Project Developer, Commission has not approved any additional capitalisation for FY 2015-16 and FY 2016-17.
- (c) From perusal of Regulation 2(17) reveals that no procedure for filing an application/making a prayer/request for extension of the Cut-off Date is prescribed or mandated. Commission through the impugned order, owing to a misapplication of Regulation 2(17), has disallowed all additional capitalization beyond 31.03.2015, without even considering the justifications put forth by the Petitioner, along with documentary evidence which clearly demonstrates that the cut-off date deserves to be extended for reasons beyond control of the Petitioner, in all cases where capitalization has been done beyond 31.03.2015.
- (d) The said approach has caused grave injustice and severe financial hardship to the Petitioner, which deserves to be reviewed and modified by the Commission.

(iv) Non consideration of capitalization for 33 KV transmission line for FY 2014-15 and 2015-16

- (a) In the order dt. 19.06.2017, Commission has erroneously not considered capitalization for 33 kV transmission line to the tune of Rs. 14.73 for FY 2014-15 and Rs. 11.67 Crore for FY 2015-16 as Commission in the order dt. 24.02.2016 allowed the entire expenditure of Rs. 27.38 cr. claimed on account of 33 kV transmission line. It was also observed by Commission that the expected expenditure claimed by the Petitioner was also nil on this head.
- (b) Commission in order dt. 19.06.2017 completely ignored the fact that in the order dated 24.2.2016, though the entire expenditure of the 33 KV transmission line was allowed at paragraph 3.278, a deduction of approximately Rs. 36 crore on account Capital Works in Progress (CWIP) was made in the very same order at paragraph 3.339-40.
- (c) As such there is no reason for disallowance of this capital expenditure, which was incurred in FY 2010-11 and capitalized on completion by JdVVNL in FY 2014-15 and the same has not been recovered before and execution of work was beyond the control of Petitioner.

(v) Disallowance of capital expenditure incurred on land for R & R colony.

- (a) Commission in the impugned order dt. 19.06.2017 has disallowed the claim of Rs. 2.96 crore as capital expenditure incurred on land for R & R colony in FY 2015-16 and Rs. 1.16 crore to be incurred towards stamp duty in FY 2016-17 by observing that the land for which Petitioner has claimed is not for R&R colony but for an additional colony. Further it was also observed that in its order dated 24.02.2016, Commission has already approved the permissible land cost for colony and also the claim of Rs. 2.96 Crore for FY 2015-16 is falling after the cut-off date.
- (b) The said sum has been incurred on land to be utilized only for the purposes of R & R colony and not for any other purpose. Commission has never

raised any query or sought any clarification from the Petitioner in the above respect. In this regard a letter dated 24.06.2014, referred to in the Collector's order, is enclosed with the petition, to show the fact that the land was allotted only for the purposes of R & R colony and not any additional colony as concluded by this Commission.

- (c) As such the decision of this Commission in respect of cost of land of R & R colony deserves to be reviewed and the claim for the Petitioner in this respect deserves to be allowed.

(vi) Disallowance of capital expenditure incurred on civil works of Raw Water Reservoir in FY 2014-15.

- (a) Commission While dealing the aforesaid issue erroneously has held that it had already approved the total admissible cost towards the RW reservoir in its order dated 24.02.2016 and no, further construction was required towards RW reservoir. It was also observed by the Commission that the contract for Raw Water Reservoir was for the extension of reservoir and Petitioner has not taken any approval of the same from the Commission. Commission, therefore disallowed the capital expenditure incurred on civil works of Raw Water Reservoir with the observation
- (b) It is submitted that Commission in the order dated 24.02.2016 had not approved expenditure which was yet to be incurred and the expenditure on capital works in progress (CWIP). This is apparent from the paragraph 3.339 of the order dated 24.02.2016. The basket of capital expenditure yet to be incurred and that of CWIP at the relevant stage included a sum of Rs. 11 Crore and Rs. 5.5 Crore respectively towards RW Reservoir. This is clear from Annexure C filed by the Petitioner along with its affidavit dated 28.01.2017, in response to the data gaps raised by this Commission. As such the finding that no further construction was required towards the RW Reservoir is patently erroneous.

(c) Regarding the extension of the RW Reservoir, It is submitted that the work order issued to J.R. Construction was for work which was within the original scope; and the Petitioner has not made any extensions of the Raw Water Reservoir. Earlier, Commission has approved the provision of two water reservoirs. Initially temporary arrangement was made in first reservoir for storage of water for first two units of Plant and this temporary arrangement was finally merged into first reservoir in the interest of saving the cost of complete structure of first reservoir. As such, there was no additional capacity added or extension made beyond the two reservoirs for 60 days storage capacity approved by the Commission. The finding of the Commission in this regard is patently erroneous and deserves to be reviewed.

(vii) Disallowance of O & M expenses of the Raw Water pipeline and pumping stations, beyond 50 Kms.

(a) Commission in the order dt. 19.06.2017 erroneously held that in the absence of actual expenses incurred for the pipeline that is beyond 50 km range, Commission is unable to carry out the prudence check of actual O&M expenses incurred against this pipeline beyond 50 Km. It was further held that allowing the special O&M on pro-rata basis will not be a correct approach because many overheads may be common for pipeline beyond the range of 50 km and within the range of 50 km, therefore, in line with the approach adopted by the Commission in its previous Orders, Commission has not approved any special O&M expenses other than electricity charges for FY 2014-15 to FY 2016-17.

(b) In this regard it is submitted that the Petitioner has awarded a single O&M contract for operations and maintenance of the entire pipeline and pumping stations. As a result, segregation of O&M expenses for the pipeline and pumping stations up to 50 Kms and those beyond 50 Kms is highly impractical and unwarranted. Awarding two separate contracts for

different portions of the pipeline would not only be administratively cumbersome but also financially imprudent. In the absence of two separate contracts there is no scientific way to segregate the O&M expenses up to 50 Kms and those beyond 50 Kms. Therefore, it is requested to approve special O&M expenses on proportionate basis to the distance of water pumped by each station for 135 Kms of pipeline. It is also submitted that the only logical way for determining the O&M expenses for pipeline beyond 50 kms would be to apportion the total amount on a pro rata basis. As such, the decision of the Commission in the Order on this aspect deserves to be reviewed and modified.

(viii) Disallowance of overheads at the rate of the approved additional capital cost.

- (a) Commission in the order dt. 19.06.2017, while disallowing the claim of Rs. 0.39 Crore for FY 2014-15 towards overheads has erroneously held that the aforesaid claim is more than the CWIP approved by the Commission in order dt. 19.06.2017, therefore, the Commission has capped the approved additional capitalisation to Rs. 0.15 Crore i.e. CWIP approved by the Commission in this order against the claim of Rs. 0.39 Crore.
- (b) It is submitted that Commission should have followed the approach adopted by it in the previous tariff order dated 24.02.2016 in respect of overheads; and granted 5% of the additional approved hard cost as overheads. By not following its own earlier approach the Commission has committed a serious error which deserves to be reviewed.
- (c) Commission has incorrectly recorded that the claim of the Petitioner for overheads was restricted to Rs. 0.39 Crore. It is submitted that the claim of the Petitioner for overheads has been correctly recorded in paragraph 3.14 (j)(i) of the order dt. 19.06.2017 and anything stated to the contrary is a patent error which deserves to be reviewed.

(ix) Taxes and Duties on additional capitalization approved in the Order.

- (a) Commission in its order dt. 19.06.2017, while dealing the issue of Taxes and Duties on additional capitalization, has held that it has approved the taxes and duties in the same proportion as was claimed by the Petitioner and approved in its order dated 24.02.2016.
- (b) In this regard it is submitted that the Commission in the previous tariff order dated 24.02.2016 had followed the approach of granting 9.95% of the approved hard cost as taxes and duties. This approach has not been questioned by any of the parties/stakeholders. However, in the impugned order, Commission appears to have adopted a different approach and not allowed 9.95% of additional capitalization allowed in the order as taxes and duties, which is an error apparent on the face of the record.

7. In view of the aforesaid facts and circumstances, Petitioner prayed to allow the Review petition and to grant stay in relation to the directions contained in paragraph 4.71 of the order dt. 19.06.2017.

8. Sh. P.N. Bhandari, Advocate appeared on behalf of the Discoms and submitted as under:

- (i) The scope of review is very limited under order 47 of the Civil Procedure Code, as incorporated in Section 94(1) (f) of the Electricity Act, 2003.
- (ii) Courts and Commissions can act in a review petition only if there is any “patent error” which can be proved on the face of it. It does not require an elaborate debate on the merits of the case. A review petition cannot be allowed to be an “appeal in disguise”. Whereas every issue raised by the Petitioner in the present review petition goes into the merits of the case.
- (iii) Petitioner can and would raise these issues in appeal before the Hon’ble APTEL but in a review petition the Commission is not expected to reopen the entire petition and start fresh hearing on merits of the case. For this,

Commission's order dated 21.2.2017, issued in petitions no. 891/16 to 918/16 may be relied upon wherein Commission has very elaborately dealt with the scope of review an order.

- (iv) Petitioner has already filed an appeal before the Hon'ble Tribunal. Petitioner cannot be allowed to agitate the same issue before two forums. Hence mere filing of the appeal is a sufficient ground to summarily dismiss the review petition.
- (v) Regarding the Petitioner's contention that tariff cannot be revised more than once in a year it is submitted that as per Section 62(4) of the Act this argument has no legal basis. Commission, in its order dated 30.5.2014 issued in petition No.445/14 & 446/14, has held that Section 62 (4) does not prohibit amendment of tariff more than once in a year. This provision has no application on determination of interim tariff pending.
- (vi) Commission in the year 2011 had concluded that the tariff were higher by more than 80% and in its latest order of 5.4.2017, once again the Commission has highlighted the high rates enjoyed by the Petitioner for a long time. If huge excess payment has already been made, then in the light of the latest order, that excess amount has to be adjusted.
- (vii) In every provisional tariff determination, it was made clear by the Commission that it was subject to final determination. But now when final determination has taken place, the Petitioner is resisting the excess recovery.
- (viii) As and when the transfer price is finally determined in pursuance of fresh bidding, further adjustment can always be made for excess or deficit payment. The fixed component of the tariff for the years 2014-15, 2015-16 and 2016-17 stands finally determined. Even the final determination of transfer price is not going to affect the fixed cost as determined. The transfer price will only affect the variable cost. The option of adjustment is

still open but that is no justification to keep in abeyance the final tariff for these three years and adhoc interim tariff determined earlier should continue to operate.

- (ix) The latest order dated 19.6.2017 is the product of elaborate scrutiny of the claims and counter claims. Adhoc determination cannot be a substitute for detailed scrutiny of the claims. Therefore allowing the earlier adhoc interim orders to operate and not implementing the latest order dated 19.6.2017 would be a travesty.
- (x) Even on merits, to take just a single example Petitioner in review petition has raised the issue of special O&M charges, permissible beyond 50 km. The RERC Regulations are very clear in this regard. In spite of repeated directions of the Commission to give segregated figures of first 50 km and beyond 50 km, Petitioner has refused to comply with the regulatory requirements. The sole purpose of the Petitioner is to create confusion and defer the implementation of the latest order.
- (xi) In the light of the above preliminary submissions, the review petition deserves to be summarily dismissed. The issues raised by the Petitioner are totally beyond the scope of a review petition. There is no patent error. The various issues, raised on merits cannot be considered and decided in a review petition. The petitioner has failed to point out any patent error. Therefore the issues which can be raised in an appeal, cannot be raised a review petition.

Commission's Analysis

9. Commission observes that RWPL has filed the present petition seeking review of the order dt. 19.06.2017 on the following issues:

- i) Disallowance of additional capitalisation towards 33 kV transmission line, claimed for FY 2014-15 and FY 2015-16.

- ii) Disallowance of additional capitalisation towards land for R&R colony in FY 2015-16 and FY 2016-17.
- iii) Disallowance of additional capitalisation towards civil works of Raw Water Reservoir.
- iv) Approach adopted by the Commission in approving the overheads.
- v) Approach adopted by the Commission in approving the taxes and duties.
- vi) Disallowance of additional capitalisation claimed, within the original scope of work, beyond the cut-off date of 31.03.2015.
- vii) Disallowance of special O&M expenses other than electricity expenses for the Raw Water pipeline and pumping stations beyond 50 km.
- viii) The Gross Station Heat Rate (GSHR) (before adjustment for moisture content in lignite) approved by the Commission as 2403.50 kcal/kWh as against 2439 kcal/kWh claimed by RWPL.
- ix) Commission's direction to make adjustments of the difference between the interim tariff and the tariff approved in the impugned order, for FY 2014-15, FY 2015-16 and FY 2016-17.

10. Under Order XLVII Rule 1 of Civil Procedure Code (CPC), any person considering himself aggrieved by an order against which no appeal has been preferred, may apply for review for the order to the court, which passed such order on any of the following grounds:

- (i) Discovery by the applicant of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or
- (ii) On account of some mistake or error apparent on the face of the record, or

(iii) For any other sufficient reason.

11. This Commission also in its order dt. 21.02.2017 in review petitions RERC/891/16 to 918/16, 921/16 and 922/16 has recapitulated the points on which review should be taken up.
12. We have considered the submission of Petitioner and Respondents in the backdrop of the above provision of CPC and the observation of this Commission.

Re: Non consideration of capitalization for 33 KV transmission line for FY 2014-15 and 2015-16

13. Petitioner submitted that the additional capitalisation claimed towards 33 kV transmission line amounting to Rs. 14.73 Crore and Rs. 11.67 Crore for FY 2014-15 and FY 2015-16 was disallowed by the Commission stating that the entire cost of Rs. 27.38 Crore towards the same was approved in the Commission's order dated 24.02.2016.
14. Petitioner also argued that the Commission, in its order dated 24.02.2016, had approved the cost of Rs. 27.38 Crore towards the 33 kV transmission line and at the same time deducted the CWIP amounting to Rs. 36 Crore from the capital cost. The CWIP deducted was inclusive of the amounts claimed now towards the 33 kV transmission line. Further, the expenditure of Rs. 14.73 Crore and Rs. 11.67 Crore claimed for FY 2014-15 and FY 2015-16 was actually incurred in FY 2010-11 and capitalised in FY 2014-15 and FY 2015-16.
15. It is observed that the Commission, in the impugned order, had approved the additional capitalisation in accordance with the Tariff Regulations based on the submissions of RWPL.

16. Petitioner in the review petition has not furnished new material/information which warrants the review of Commissions' decision. Therefore, Commission does not accept the plea of review in this regard.

Re: Disallowance of capital expenditure incurred on land for R & R colony.

17. Petitioner submitted that the Commission in the impugned order, after perusal of the District Collector's order ruled that the cost of land claimed by the Petitioner was towards land for additional colony and hence disallowed the additional capitalisation of Rs. 2.96 Crore and Rs. 1.16 Crore claimed for FY 2015-16 and FY 2016-17. The Commission also ruled that the additional capitalisation claimed beyond the cut-off date is not allowable.

18. It is also submitted by the Petitioner that the cost of land claimed by the Petitioner was towards the land for R&R colony and not for any other purpose. The Collector's order only makes a reference to land being allotted for residential purposes and is not conclusively indicative of whether the residential colony to be constructed on the land is an additional colony or an R&R colony.

19. Commission observes that in its orders dated 30.08.2013 and 24.02.2016 it had dealt at length regarding the cost of land allowable to RWPL and had disallowed additional capitalisation claimed by RWPL for FY 2015-16 and FY 2016-17 as the same was beyond the cut-off date of 31.03.2015.

20. In the review petition, Petitioner has not made available any new material/information in this regard which warrants the review of Commission's decision. Therefore, in the Commission's view there is no patent error that has to be corrected. Accordingly, the claim made is rejected.

Re: Disallowance of capital expenditure incurred on civil works of Raw Water Reservoir in FY 2014-15.

21. Petitioner submitted that the Commission, in the impugned order, while disallowing the additional capitalisation of Rs. 11.12 Crore towards the civil works of Raw Water Reservoir in FY 2014-15, ruled that the said works claimed by the Petitioner had not been approved by the Commission and hence not allowed.
22. In the capital cost disallowed by the Commission in its order dated 24.02.2016, the cost towards RW Reservoir was amounting to Rs. 11 Crore and Rs. 5.5 Crore under the heads of capital expenditure yet to be incurred and CWIP respectively. The expenditure towards the works claimed by the Petitioner were within the original scope of work
23. Commission observes that in its order dated 24.02.2016 it has considered at length the cost of civil works for Raw Water Reservoir that can be allowed and the same has been followed in the order dt. 19.06.2017 which is sought to be recovered.
24. Petitioner in the review petition has not furnished new material/information which warrants the review of Commissions' decision. Therefore, Commission does not accept the plea of review in this regard.

Re: Disallowance of overheads at the rate of the approved additional capital cost.

25. Petitioner has submitted that the Commission in its order dated 24.02.2016 approved the overheads as 5% of the approved hard cost.
26. Petitioner has also contended that the Commission in the impugned order has restricted the overheads to Rs. 0.15 Crore as against Rs. 0.39 Crore claimed by the Petitioner based on CWIP approved by the Commission. According to it the overheads have to be approved in accordance with the Commission's approach in its order dated 24.02.2016.

27. It is observed that the Commission has dealt with the overheads in the impugned order in detail. In the Commission's view, there is no error apparent in the impugned order nor the Petitioner has made available new information in this regard which warrants the review of Commissions' decision. Accordingly, this plea for review cannot be accepted.

Re: Taxes and Duties on additional capitalization approved in the Order.

28. Petitioner submitted that the Commission in the impugned order had approved the taxes and duties in proportion to the approved and claimed amounts in the order dated 24.02.2016.

29. Petitioner also submitted that the Commission in the order dated 24.02.2016 had approved the taxes and duties as 9.95% of the approved hard cost. The taxes and duties have to be approved in accordance with the Commission's approach in its order dated 24.02.2016.

30. It is observed that Commission has considered the taxes and duties allowable in the impugned order in detail. Therefore, no error apparent in the impugned order is found nor the Petitioner has made out any case by producing new information in this regard which warrants the review of Commissions' decision.

Re: Non consideration of additional capitalization for FY 2015-16 and FY 2016-17 beyond cut-off date.

31. Petitioner submitted that the Commission, by applying Regulation 2(17) of the RERC Tariff Regulations, 2014 has disallowed the additional capitalisation claimed, which is within the original scope of work as beyond the cut-off date of 31.03.2015.

32. Petitioner has also submitted that the Regulation 2(17) of the RERC Tariff Regulations, 2014 does not mandate for filing an application/making a prayer/request for extension of cut-off date to allow the claims.

33. It is also contended by the Petitioner that the submissions made by it sufficiently which demonstrate that the cut-off date deserves to be extended for reasons beyond its control and therefore the Commission could have allowed the claim.
34. It is observed that Commission while disallowing the additional capitalisation beyond the cut-off date of 31.03.2015 has held that the Petitioner, in its petition, since had not made any request for extension of cut-off date in accordance with the Regulations, the same cannot be considered.
35. The interpretation of RWPL regarding Regulation 2(17) of the RERC Tariff Regulations, 2014 that there was no requirement of making a prayer for extension of cut-off date cannot be accepted as it amount to re-arguing its case. Hence, the prayer of the Petitioner to review the Commission's decision on disallowing the additional capitalisation beyond the cut-off date is not maintainable.

Re: Disallowance of O & M expenses of the Raw Water pipeline and pumping stations, beyond 50 Kms.

36. Petitioner submitted that the Commission in the impugned order has ruled that in the absence of actual expenses incurred beyond 50 km range, it was unable to carry out the prudence check of the same.
37. Petitioner also contended that Commission has also observed that allowing the special O&M expenses on pro-rata basis would not be a correct approach as many overheads might be common for pipeline beyond the range of 50 km and within the range of 50 km.
38. Petitioner also submitted that segregation of O&M expenses for the pipeline and pumping stations up to 50 km and beyond 50 km is highly impractical and unwarranted. Awarding two separate contracts for different portions of the

pipeline would administratively not only be cumbersome but also financially imprudent. In the absence of two separate contracts, the only logical way for determining the O&M expenses for pipeline beyond 50 km would be to apportion the total amount on pro-rata basis.

39. It is observed that Commission had in detail dealt with the issue of allowing special O&M expenses other than electricity expenses in the impugned order. The Commission had also dealt with the merits and demerits in the proposed methodology of the Petitioner for allowing the special O&M expenses.
40. In the Commission's view there is no patent error in the impugned order nor the Petitioner has made available any new information in this regard which warrants the review of Commissions' decision. Accordingly, the contention of the Petitioner that the view taken in the order need to be corrected, is rejected.

Re: Determination of Station Heat Rate

41. Petitioner submitted that the GSHR of 2439 kcal/kWh claimed by RWPL was in accordance with Regulation 45 of the RERC Tariff Regulations, 2014. Regulation 45 of the RERC Tariff Regulations, 2014 has not been adhered by the Commission while approving the GSHR for RWPL in the impugned order.
42. It is also submitted that the approach adopted by the Commission in approving the GSHR for RWPL in the impugned order is not consistent with the approach adopted in its order dated 07.12.2016 in Case No. 760/16 for GLPL and Commission shall therefore has to rework the SHR in the same way as done in GLPL to be in accordance with the Regulations.
43. It is observed that Commission had in detail dealt with the issue of SHR in the impugned order and allowed as per Regulations.

44. Petitioner in the review petition has not furnished new material/information which warrants the review of Commissions' decision. Therefore, Commission does not accept the plea of review in this regard.

Re: Direction for adjustments of the difference in tariff.

45. Petitioner submitted that the Commission, in the interim tariff orders for FY 2014-15, FY 2015-16 and FY 2016-17 ruled that the interim tariff approved in the respective orders is subject to final determination of RWPL tariff including transfer price of BLMCL and adjustments if any, thereafter.

46. Petitioner submitted that the directions of the Commission are not in accordance with the Regulation 42 (6) of the RERC Tariff Regulations, 2014 as the final tariff as defined in Regulation 43 which includes both fixed and variable charges is yet to be determined by the Commission.

47. It is further submitted during the course of arguments that even assuming the fixed charges are finally determined then also variable charges remain to be provisional and not final and cannot be adjusted till variable charges are finally determined.

48. Further, it is submitted that the Respondents owe a sum of around Rs. 195 crore towards reimbursement of Income Tax as per the order dt. 19.06.2017 of the Commission and another sum of Rs. 87 crore is also outstanding from Respondents as per the other orders of Commission and these amounts have to be adjusted before any recovery is effected.

49. Per contra Sh. P.N. Bhandari, Advocate for Discoms submitted that recovery of fixed charges ordered is in accordance with Regulation as this Commission vide order dt. 19.06.2017 has already made final determination of fixed charges based on finally approved capital cost. He further submitted that the transfer price is yet to be finalized and will not affect the fixed charges. The

final determination of transfer price is not going to affect the fixed cost as determined.

50. The Commission has considered the above submissions in the light of Regulation 42 (6) and 43 of Tariff Regulations, 2014. Commission is of the considered view that as submitted on behalf of the Respondents that fixed charges determined are final and not provisional and therefore needs to be adjusted as provided in Regulation 42 (6). Commission, therefore, reiterates the order of recovery made in its impugned order subject to the observations made under each head by Commission.

51. So far as adjustment of the variable charge is concerned, it is observed that variable charges determined vide order dt. 19.06.2017 are based on adhoc transfer price. Further, Commission observes that a separate proceeding in petition no. 593/2015 for determination of final transfer price is pending on account of non-finalisation of mining cost. Petitioner and Respondents in the said proceeding have submitted that they are making efforts to arrive at the mining cost by a fresh bidding process and may need some time.

52. Therefore, considering Regulation 42 (6) of Tariff Regulations, 2014, the submissions made by the Petitioner and Respondents and pending proceedings for determination of final variable charges, it will be just and proper to defer the recovery of variable charges worked out in the order dt. 19.06.2017 for a period of four months within which time both the parties shall make sincere efforts to complete the process, so that this Commission may finalise the variable charges payable.

53. Accordingly, Commission directs as follows:

- (i) The difference in fixed charges worked out in order dt. 19.06.2017 may be adjusted by Respondents in future bills of Petitioner after giving due deduction for the amount payable to Petitioner.
- (ii) Considering the fact that the recovery of fixed charges is of three year period and to balance the interest of both the parties it will be just and proper to recover the excess fixed charges after giving due adjustment, in twelve months equal installments along with interest as per law.
- (iii) Recovery of difference in variable charges may be deferred for a period of four months or till final determination of transfer price is made by this Commission, whichever is earlier.

54. This review petition stand disposed of in the above terms.

(S.C. Dinkar)
Member

(R.P. Barwar)
Member

(Vishvanath Hiremath)
Chairman