

approval of Annual Performance Review (True-up) for FY 2016-17 and determination of Aggregate Revenue Requirement (ARR) and Tariff for sale of electricity from its existing power stations to distribution companies for FY 2018-19.

2. The Notices for filing the reply were issued to the Respondents on 05.07.2018, accordingly JVVNL filed its reply on 19.07.2018. RVUN also filed a Rejoinder vide its letter dated 16.08.2018.
3. The matter was heard on 12.09.2018. Sh. Ankit Sharma, Authorised Representative appeared for RVUN and Sh. S. T. Hussain, Ex. En. appeared for JVVNL.
4. RVUN submitted that it had filed the petition seeking review of the said order on the following issues:
 - (i) Additional Contribution towards Pension and Gratuity for FY 2016-17
 - (ii) Additional Capitalisation for FY 2016-17.
5. JVVNL submitted that a review of an order may be considered by the Commission under section 94 (1) (f) of the Electricity Act, 2003 read with Order No. XL VII Rule 1 of Civil Procedure Code, on the following grounds:
 - a) Discovery of new and important matter or evidence which after exercise of due diligence was not in the knowledge of the applicant and could not be produced by him at the time when the decree or order was passed.
 - b) Some mistake or error apparent on the face of the record, and
 - c) For any other sufficient reason.
6. We have considered the submissions of the Petitioner and Respondents in light of the section 94(1)(f) of Electricity Act, 2003 read with relevant

provisions of CPC.

Issue No. (i): Additional Contribution towards Pension and Gratuity for FY 2016-17

Petitioner's Submissions

7. The Commission in its MYT Order for FY 2009-10 to FY 2013-14 dated 31.08.2009 allowed 50% of liability towards pension and gratuity fund through tariff, as reproduced below:

"2.18.10. The Commission is of the view that there may be some variation in final actuarial valuation against the amount indicated in interim actuarial valuation report but there should be sufficient provisioning for additional contribution to pension and gratuity fund so that there should not be sudden tariff rise if final figures are significantly higher than that indicated under Interim Report or currently allowed by the Commission. Therefore, the Commission allows Rs 40 Crore per annum i.e., 50% of the amount claimed by RVUN for each year of MYT period and the balance may be got reimbursed by the Govt. of Rajasthan or by increase in regular contribution to the fund of through the sharing of savings in O&M expenses so that the entire burden which has now become heavy enough is not passed on to consumers."

8. Further, the Commission in its Order dated 27.04.2011 on truing up for FY 2004-05 to FY 2008-09 ruled as under:

"122. RVUN has included an amount of Rs. 100 crores in the O&M expenses in the year 2008-09 out of Rs. 400 crores estimated as additional liability towards pension and gratuity. The balance of Rs. 300 crores has been taken in prior period expenses on the ground that they relate to the previous years. The Commission observes that the liability of RVUN towards pension and gratuity contribution for its employees arises only after 19.07.2000(unbundling date) prior to which it is being borne by RVPN. RVUN has produced a document whereby the coordination committee of the electricity companies have taken a decision to distribute the estimated shortfall of Rs. 5000 crores in pension and gratuity trusts between the five companies and the share of RVUN has been determined as Rs. 400 crores which RVUN has now booked in its account for the year 2008-09. The Commission apprehends that the shortfall possibility includes the shortfall to be borne by RVPN for the period before 19.07.2000 which they are claiming regularly in their tariff. In the MYT petition also RVUN had projected this liability and the Commission in absence of a final valuation had considered liquidation of this liability @ Rs. 40

crores per year only during the control period w.e.f. FY 2009-10 as against Rs. 80 crores per year claimed. In absence of clear determination of liability of RVUN after 19.07.2000 for its employees and to avoid any tariff shock by allowing such a large amount, the Commission is allowing additional provision of Rs. 40 crores only, in prior period expenses for the year 2008-09 also. RVUN is directed to determine the liability for its employees towards pension and gratuity contribution after 19.07.2000 for further consideration.

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131. RVUN has indicated some income/expenditure pertaining to prior period. These being unavoidable adjustments have been allowed in the true up. For the year 2008-09 RVUN has taken Rs. 314.5675 crores as prior period expenses which include Rs. 300 crores towards additional contribution for pension and gratuity relating to previous years. Pending final valuation of this liability an amount of Rs. 40 crores is allowed in the year 2008-09."

9. The Commission has allowed Rs. 40 Crore in FY 2008-09 and Rs. 200 Crore as additional contribution towards Pension & Gratuity Fund from FY 2009-10 to FY 2013-14. Therefore, the Commission had allowed the total amount of Rs. 240 Crore up to FY 2013-14.
10. RVUN recovered the total amount of Rs. 113.21 Crore through tariff in FY 2009-10, FY 2010-11 and FY 2011-12 and claimed the same in true-up for the respective years. However, due to non-deposition of the above amount into the fund during the said period, the Commission had disallowed the claimed amount. In FY 2012-13, RVUN had deposited Rs. 113.21 Crore against the additional liability of terminal benefit and this amount of Rs. 113.21 Crore includes Rs. 40 Crore for FY 2008-09. Therefore, the total claim for FY 2009-10, FY 2010-11 and FY 2011-12 works out to Rs. 73.21 Crore. As against the same, RVUN had claimed the amount of Rs. 68.96 Crore in the true-up for FY 2012-13 after excluding the amounts allocated to GLTPP Unit 2 and MMH and the same was approved by the Commission.
11. Considering Rs. 113.21 Crore upto FY 2013-14 and Rs. 42.11 Crore for FY 2013-14, the Petitioner has claimed Rs. 44.68 Crore against Pension and Gratuity

Fund in the ARR of FY 2015-16 and same was approved by the Commission in its Order dated 07.09.2015 for ARR of FY 2015-16 as reproduced below:

"Commission's Analysis:

The Commission has gone through the submissions of the Petitioner and observes that the Petitioner is yet to recover and deposit Rs. 44.68 Crore against Rs. 200 Crore allowed by the Commission. The Commission hence approves Rs. 44.68 Crore on account of contribution towards pension and gratuity in FY 2015-16. The Commission for the purpose of this Order has approved the station wise allocation based on the installed capacity of each station."

12. RVUN recovered this amount through billing in FY 2015-16 and deposited Rs. 44.65 Crore in FY 2016-17. RVUN submitted the documentary evidences for the same.
13. The Commission had disallowed the said amount in the true-up of FY 2015-16 as the amount was not deposited by RVUN. RVUN requested the Commission to allow Rs. 44.65 Crore deposited in FY 2016-17, out of the total amount of Rs. 200 Crore, separately instead of including in O&M expenses. According to the Commission's Order dated 31.08.2009, Rs. 200 Crore was to be recovered through tariff and balance amount of Rs. 200 Crore may be got reimbursed by the Government of Rajasthan or by increase in regular contribution to the fund through sharing of gains in O&M expenses so that the entire burden is not passed on to consumers. RVUN requested the Commission to allow the amount of Rs. 44.65 Crore separately as it is a part of Rs. 200 Crore to be recovered through tariff.

Respondents' Submissions

14. The Petitioner has not conducted actuarial variation of its terminal liability citing the same to be under progress. The actuarial valuation report should have been submitted before claiming any amount on account of the additional contribution towards pension and gratuity. The Petitioner had

deposited only Rs. 5 Crore in FY 2014-15 and had not deposited any amount in FY 2015-16 towards additional contribution towards pension and gratuity. The amount of Rs. 44.65 Crore claimed towards additional contribution towards pension and gratuity for FY 2016-17 should not be allowed separately as the terminal benefits are already being allowed to the Petitioner and any additional allowance would lead to additional burden on the Discoms and the consumers.

Commission's Analysis

15. The Commission has dealt with in detail the issue of additional Contribution towards Pension and Gratuity for FY 2016-17 and has given following ruling:

"Further, the Commission observes that RVUN has claimed Rs. 44.65 Crore towards the additional contribution towards pension and gratuity, in FY 2016-17. These expenses are typically of the nature of O&M expenses. However, the Commission had allowed the additional contribution towards pension and gratuity as a separate item in Annual Fixed Charges in the tariff determination for the previous years, considering the weak financial position of RVUN. The Commission finds it prudent to discontinue this approach henceforth as RVUN has achieved significant financial gains in O&M expenses for FY 2016-17. Therefore, the Commission has considered the additional contribution towards pension and gratuity claimed by RVUN for FY 2016-17 as a part of the actual O&M expenses. The Commission has not separately allowed any amount on account of additional contribution towards pension and gratuity in true up of FY 2016-17."

16. RVUN has neither pointed out any error apparent nor provided any new information which satisfies the conditions for review of the impugned order.

Issue No. (ii): Additional Capitalisation for FY 2016-17

Petitioner's Submissions

17. As against the additional capitalisation of Rs. 4.85 Crore claimed by RVUN in the true-up for FY 2016-17, the Commission had approved the additional capitalisation of Rs. 3.11 Crore.

18. KTPS (Units 1-7), STPS (Units 1-6), CTPP (Units 1 & 2) and DCCPP have incurred expenditure against fixed assets which are essential and necessary for smooth operation of the plant. For STPS (Units 1-6), the Commission had approved the additional capitalisation of Rs. 3.11 Crore as against the claimed amount of Rs. 4.30 Crore towards the Commission approved schemes. RVUN requested the Commission to allow the claimed expenditure as the same had been actually incurred.
19. For CTPP (Units 1-2) and DCCPP, the Commission had disallowed the additional capitalisation of Rs. 0.17 Crore and Rs. 0.12 Crore respectively applying the provisions of Tariff Regulations, 2014. It was submitted in the Petition as well as the replies to datagaps that such additional capitalisation had been incurred as per Regulation 19(a) of the Tariff Regulations, 2009 wherein all the expenditures were within the original scope of work. The capital cost of the said units was determined by the Commission taking into account, the original scope of work and the actual expenditure incurred till COD and therefore, the condition of prior approval for the claimed additional capitalization did not arise. The Tariff Regulations provide for claiming the expenditure incurred towards deferred liabilities within the original scope of work. The decision of the Commission to disallow the additional capitalization claimed beyond the cut-off date for the respective Units citing the provisions of additional capitalization after cut-off date in the Tariff Regulations, 2014 was not correct and the absence of prior approval for the claimed additional capitalization is against natural justice. Therefore, RVUN requested the Commission to allow the claimed additional capitalisation.
20. The minor assets transferred to O&M expenses are not covered under the O&M expenses as defined in Regulation 2(42) of the Tariff Regulations, 2014 and are purely of capital asset nature. Therefore, RVUN requested the

Commission allow such minor assets under the GFA for the respective station.

Respondents' Submissions

21. The additional capitalisation approved by the Commission in the true-up for FY 2016-17 is in line with its previous orders. The additional capitalisation incurred in FY 2016-17 falls under the ambit of RERC Tariff Regulations, 2014 and Petitioner's justification that the same are the deferred liabilities within the original scope of work does not hold good. Hence, the additional capitalisation claimed by the Petitioner in the Review Petition should not be allowed.

Commission's Analysis

22. The approach adopted by the Commission in disallowance of additional capitalisation incurred after the cut-off date is in line with the approach adopted in the true-up for previous years for RVUN as well as the approach adopted for carrying out the true-up of other Generating Companies.

Commission's View

23. Commission observes that under Section 94 (1) (f) of the Electricity Act, 2003 read with Order XL VII Rule 1 of Civil Procedure Code (CPC), a review of an order can be undertaken only on 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.

24. Hon'ble APTEL in its judgement dated 17.04.2013 has culled out various decisions of Hon'ble Supreme Court regarding scope of reviewing of an order. Hon'ble APTEL has noted that review proceedings are not by way of an Appeal and have to be strictly confined to the scope and ambit of Order XL VII Rule 1 of CPC.
25. In view of judgement dated 17.04.2013 of Hon'ble APTEL and Order XL VII Rule 1 of CPC the Petitioner is not entitled to seek a review of an order passed by the Commission merely for the purpose of re-hearing of the matter and to obtain a fresh decision on the case.
26. The Petitioner could neither point out any error apparent nor provide any new information which satisfies the conditions for review of the impugned order. Further, the arguments on the above aspects now submitted by the Petitioner in the review petition are the same as submitted during the earlier proceedings. The Commission has already considered the submissions now being made and passed its order. Therefore, the review sought by the Petitioner is not admissible.
27. The review petition stand disposed of in the above terms.

(Prithvi Raj)
Member

(S.C.Dinkar)
Member

(Shreemat Pandey)
Chairman