

of Commission's order dated 28.05.2018 issued in the matter of approval of Annual Performance Review (True-up) for FY 2014-15 to FY 2016-17 and determination of Aggregate Revenue Requirement (ARR) and tariff for FY 2018-19.

2. The Notices for filing the reply were issued to the Respondents on 12.07.2018, accordingly JVVNL filed its reply on 19.07.2018. GLPL also filed a Rejoinder vide its letter dated 06.08.2018.
3. The matter was heard on 12.09.2018. Sh. Ankit Sharma, Authorised Representative appeared for GLPL and Sh. S. T. Hussain, Ex. En. appeared for JVVNL.
4. GLPL submitted that it had filed the petition seeking review of the said order on the following issues:
 - (i) Additional Capitalisation for FY 2014-15 to FY 2016-17.
 - (ii) Special O&M expenses for FY 2014-15 to FY 2016-17.
 - (iii) ARR and Tariff Petition Fees for FY 2014-15 to FY 2016-17.
5. JVVNL submitted that a review of an order may only 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. Commission has 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 Capitalisation for FY 2014-15 to FY 2016-17

Petitioner's Submissions

7. The Commission had disallowed the additional capitalization claimed by the Petitioner for FY 2014-15 to FY 2016-17 applying the provisions of the Tariff Regulations, 2014. GLTPP Units 1 & 2 achieved COD during the Control Period from FY 2009-10 to FY 2013-14. Tariff Regulations, 2009 did not distinguish between the additional capitalization upto the cut-off date and beyond the cut-off date. Further, the additional capitalization claimed by the Petitioner towards the works was 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.
8. 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 is against natural justice.
9. Therefore, Commission is requested to allow the additional capitalization as claimed as the subject Units had achieved the CODs during the Control Period from FY 2009-10 to FY 2013-14 and the cut-off date provisions should not be applied on old Units which have achieved COD prior to 01.04.2014.

Respondents' Submissions

10. The Commission has disallowed additional capitalisation claimed for FY 2014-15 to FY 2016-17 in accordance with the provisions of the RERC Tariff Regulations, 2014. The Petitioner has sought approval of additional capitalisation citing that station had achieved COD during the period when RERC Tariff Regulations, 2009 were in force. The additional capitalisation incurred for FY 2014-15 to FY 2016-17 falls under the ambit of RERC Tariff Regulations, 2014 wherein the deferred liabilities within the original scope of work as claimed by the Petitioner after the cut-off date are not allowable. Hence, the additional capitalisation should not be allowed as decided in the Commission's order dated 28.05.2018.

Commission's Analysis

11. The approach adopted by the Commission in disallowance of additional capitalisation incurred after the cut-off date is in accordance with RERC tariff Regulation, 2014. The approach is also in line with orders of true-up for previous years for GLPL as well as the approach adopted for carrying out the truing up of other Generating Companies.

Issue No. (ii): Special O&M Expenses for FY 2014-15 to FY 2016-17

Petitioner's Submissions

12. Special O&M expenses are allowed in case the process water is required to be transported over a distance more than 50 km as per Regulation 47(4) of RERC Tariff Regulations, 2014. The Petitioner has awarded an O&M contract for the entire pipeline of 170 km and the O&M expenses for the pipeline beyond the 50 km range has been claimed on pro-rata basis which is the best possible method. The Commission has disallowed the O&M expenses of the pipeline excluding the electricity charges.

13. The Petitioner requested the Commission to allow the disallowed special O&M expenses in the true-up for FY 2014-15 to FY 2016-17. The Petitioner submitted that it shall adopt the desired practice with regards to the O&M expenses incurred on pipeline beyond 50 km for coming years.

Respondents' Submissions

14. The Commission has already mentioned in its order dated 28.05.2018 that Petitioner had not provided adequate justification along with supporting documents to justify the costs and in absence of actual expenses incurred in beyond 50km pipe line Commission was unable to carry out the prudence check of actual expenses. Further, allowing the special O&M expenses on pro-rata basis may not provide the exact picture because many overheads tend to be common for the pipeline beyond and within the range of 50 km, hence such costs should not be allowed.

Commission's Analysis

15. The Commission had dealt with in detail the issue of special O&M expenses in its order and the approach adopted by the Commission in disallowance of special O&M expenses is line with the approach adopted in the true-up for previous years for GLPL and also in line with the orders issued for other generating companies.

Issue No. (iii): ARR and Tariff Petition Fee for FY 2014-15 to FY 2016-17

Petitioner's Submissions

16. The Commission vide its orders dated 12.08.2015 on approval of final capital cost and tariff for Units 1 & 2 had approved the ARR & Tariff Petition fees of Rs. 0.13 Crore for each year from FY 2010-11 to FY 2013-14 for each unit.

17. In the true-up for FY 2014-15 to FY 2016-17, the ARR & Tariff Petition fees was claimed as per the actual expenses booked in the audited accounts for the

respective years. The actual expenses booked on this account in FY 2014-15 was higher than allowable as per the Regulations as the expenses pertaining to FY 2010-11 to FY 2013-14 were booked in FY 2014-15. Such expenses had been considered based on the Commission's orders dated 12.08.2015 on approval of final capital cost and tariff for Units 1 & 2 for FY 2010-11 to FY 2013-14.

18. The details of ARR and Tariff Petition Fees allowed by the commission in its order dated 28.05.2018 for GLPL Units 1 & 2 are as shown below:

| Particulars | FY 2014-15 | | FY 2015-16 | | FY 2016-17 | |
|--|------------|--------|------------|--------|------------|--------|
| | Unit-1 | Unit-2 | Unit-1 | Unit-2 | Unit-1 | Unit-2 |
| ARR and Tariff Petition Fee Claimed (Rs. Cr.) | 0.31 | 0.38 | 0.06 | 0.06 | 0.13 | 0.06 |
| ARR and Tariff Petition Fee Approved (Rs. Cr.) | 0.06 | 0.06 | 0.06 | 0.06 | 0.06 | 0.06 |

19. The Petitioner requested the Commission to approve actual ARR and Tariff Petition Fee as booked in the audited accounts for FY 2014-15 to FY 2016-17.

Respondents' Submissions

20. The ARR & Tariff Petition fees claimed for FY 2014-15 to FY 2016-17 was based on the actual expenses as per the audited accounts for the respective years as submitted by the Petitioner. The Petitioner has been requesting the Commission to allow the ARR & Tariff Petition fees for Units 1 & 2 for FY 2010-11 to FY 2013-14, in the true-up for FY 2014-15 to FY 2016-17. The Commission had already approved the said expenses in the true-up for FY 2010-11 to FY 2013-14. The Commission had approved the ARR & Tariff Petition fees in the true-up for FY 2014-15 to FY 2016-17 in accordance with the applicable Regulations and anything over and above the same may be disallowed.

Commission's Analysis

21. The ARR & Tariff Petition Fees is allowable at the rate as specified in RERC (Fees for Petitions) Regulations, 2005. The ARR & Tariff Petition fees was approved in the final true-up for FY 2014-15 to FY 2016-17 as per the provisions of above stated Regulations. The additional expenses on account of ARR & Tariff Petition fees pertaining to previous years are not allowable in the true-up for FY 2014-15 to FY 2016-17.

Commission's View

22. 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.

23. 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.

24. 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.

25. 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 aspect 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.

26. The review petition stand disposed of in the above terms.

(Prithvi Raj)
Member

(S.C. Dinkar)
Member

(Shreemat Pandey)
Chairman