

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No.: 12 of 2017

In the matter of:

Review Petition filed under Regulation 54 of UERC (Conduct of Business) Regulations, 2014 for review of the order dated 30th November, 2016 passed by the Commission in the matter of Re-determination of generic tariff for Pathri Small Hydro Generating Station (3X6.8 MW) of UJVN Ltd. under Section 62, 86 and 94(1)(f) of the Electricity Act, 2003 read with the relevant Regulations, Orders and Guidelines of the Commission.

AND

In the matter of:

Review Petition filed under Regulation 54 of UERC (Conduct of Business) Regulations, 2014 for review of the order dated 30th November, 2016 passed by the Commission in the matter of Re-determination of generic tariff for Mohammadpur Small Hydro Generating Station (3X3.1 MW) of UJVN Ltd. under Section 62, 86 and 94(1)(f) of the Electricity Act, 2003 read with the relevant Regulations, Orders and Guidelines of the Commission.

In the matter of:

UJVN Ltd. ... Petitioner

In the matter of:

Uttarakhand Power Corporation Ltd. ... Respondent

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: March 10, 2017

Date of Order: May 25, 2017

The Order relates to the Petition dated 30.01.2017 filed by UJVN Ltd., a generating company (hereinafter referred to as "the Petitioner " or "Generator"), for review of the order dated 30th November, 2016 passed by the Commission in the matter of Re-determination of

generic tariff for Pathri Small Hydro Generating Station (3 X 6.8 MW) and Mohammadpur Small Hydro Generating Station (3 X 3.1 MW) of UJVN Ltd. under Section 62, 86 and 94(1)(f) of the Electricity Act, 2003 read with the relevant Regulations, Orders and Guidelines of the Commission. The Petitioner in the above Petition had prayed the following:

- a. Review its order dated 30.11.2016 and determine the tariff of Pathri and Mohammadpur SHP on the basis of Generic Tariff, as provided under RE Regulation 2013.
- b. In alternative, if the Commission is not inclined to determine the tariff on the basis of Generic Tariff, the Commission may determine the Project Specific Tariff in accordance with the Review sought in the instant petition and fix appropriate Project Specific Tariff.
- c. To allow the Petitioner to make revision to the current Petition and submit additional and relevant information that may emerge or become available subsequent to this filing.
- d. Grant suitable opportunity to the Petitioner within a reasonable time frame to file additional material information that may be subsequently available.
- e. Condone any inadvertent omission/errors/shortcomings and permit the Petitioner to add/change/modify this filing and make further submission as may be required at a future date.
- f. Consider and approve the Petitioner's application including all requested regulatory treatment in the filing.
- g. Consider the submissions of the Petitioner that could be at variance with the orders and regulations of the Commission, but are nevertheless fully justified from a practical viewpoint.
- h. Pass any such further order(s) as the Commission may deem fit and proper keeping in mind the facts and circumstances of the case.

1. Background

- 1.1 UJVN Ltd. had subsequent to completion of RMU works filed Petitions for re-fixation of final tariff for 20.40 MW Pathri SHP and 9.30 MW Mohammadpur SHPs. The Commission vide its Order dated 30.11.2016 re-determined the project specific tariff for the Pathri and Mohammadpur SHP.

- 1.2 The Petitioner on 30.01.2017 made Petition seeking review of the above referred Order dated 30.11.2016. Copy of the petition was forwarded to UPCL (Respondent) for submission of comments. In response, UPCL vide its letter dated 09.03.2017 submitted its comments. A hearing was also held in the matter on 10.03.2017. The Commission vide its daily order dated 15.03.2017 asked the Petitioner for submission of certain information.
- 1.3 The Commission has considered the replies/information submitted by the Petitioner as well as contentions raised by the Respondent and the same has been discussed at appropriate places in the Order alongwith the Commission's views on the same.

2. Petitioner's Submissions

- 2.1 The Petitioner submitted that it had filed a Petition dated 10.11.2014 for approval of generic tariff for Pathri and the Mohammadpur SHPs of UJVN Ltd., however, the Commission vide its order dated 30.11.2016 rejected the plea for determination of tariff as Generic Tariff and determined the project Specific Tariff for the generator, for the following reasons:
 - a. Date of Commercial Operation (COD) of these plants was much prior to the notification of RE Regulation 2013.
 - b. Works were carried out towards Electromechanical and Hydro mechanical activities and civil works were negligible. While the capital cost under RE Regulations 2013 comprise of land, rehabilitation, civil works, E & M and H & M works, and, therefore, Generic Tariff cannot be fixed under RE Regulation 2013.
- 2.2 The Petitioner further submitted that the findings of the Commission suffers from errors on the face of record, emanating from the reading of the Regulations and non-consideration of vital aspects of the matter while determination of project specific tariff as detailed below.
 - a. The Petitioner submitted that the Commercial Date of Operation (COD), i.e. the date of completion of RMU was post notification of RE Regulations, 2013 as the Pathri and Mohammadpur SHPs were originally commissioned in the year 1955 & 1952 respectively, and the life of SHPs are usually 25-35 years, thus, the plants had lived its life. RMU was carried out and the Pathri and Mohammadpur SHPs again became

operational from 31.08.2014 and 21.07.2013 respectively. Consequently, a new normative life of the generating plants was achieved after the RMU and, therefore, the plants in question are nothing but deemed to be a new plant commissioned after RE Regulations, 2013. CEA in its report has also mentioned the cost corresponds to the project wherein all HEP components including E&M Works, HM works and Civil Works are new. Further, the Petitioner also submitted that the Commission erred in not noticing the definition of COD as stipulated under Regulation 3(l) of the RE Regulation 2013, which do not distinguish between the Date of Commercial Operation of a new plant or a plant which has entirely been renovated and set up after RMU. It was also submitted that the Commission has erred in not considering Regulation 24 of the RE Regulation 2008, which prescribes that the normative life of a Small Hydro Generation Plant will be 35 years.

The Petitioner submitted that since the SHPs had lived their normative life and the Renovation and Modernisation has helped in the life extension of the plants by another 25-35 years, i.e. their normative life, therefore these plants need to be treated as new plants for determination of Generic Tariff under the RE Regulation 2013.

The Petitioner also submitted that the Commission also erred in not considering the factor that cost of RMU is similar to the normative capital cost of a new SHP as prescribed under RE Regulation 2013. The cost of Renovation and Modernisation of Pathri and Mohammadpur SHPs, excluding IDC is Rs. 105.40 Crore (now revised cost is Rs. 111.13 Crore) and Rs 73.32 Crore respectively. The Petitioner submitted that the impugned order further observed that the essential parts required for the generation of electricity got deteriorated and were leading to frequent breakdowns, which ultimately led to the RMU of Pathri and Mohammadpur SHPs. It was submitted that the SHPs have been freshly started for generation, post-RMU, and therefore, the same needs to be treated as new plants under the RE Regulation 2013, for determination of its Generic Tariff.

The Petitioner submitted that the second error apparent on the face of record is that the Land, Rehabilitation and Major Civil Works are not mandated under Capital Cost, as per RE Regulation 2013 and consequent determination of

tariff based on principal of Generic Tariff under the RE Regulation, 2013 do not incorporate major civil work and land rehabilitation, as its component as it was denied by the Commission on the account that the norms of capital cost comprises of land, rehabilitation and civil works as well; whereas in the RMU activity carried out by the Petitioner the works are almost limited to Electromechanical and hydro mechanical activities. In this regard, it was submitted that Regulation 15(1) of RE Regulation 2013, nowhere requires any such condition. The Petitioner submitted that this Commission, in its wisdom, while repealing the RE Regulation 2010, has specifically excluded the element of civil works from the capital cost as defined under Regulation 15(1). The Petitioner submitted that the element of land, rehabilitation and civil works are not the pre-requisites of capital cost under the RE Regulation 2013, and the Commission has specifically excluded such elements from the capital cost defined under the RE Regulations 2013, as was there in RE Regulation 2010. Therefore, the same could not be a basis of rejection of application of RE Regulation 2013, for determining Generic Tariff of Pathri and Mohammadpur SHPs.

- b. The Petitioner also submitted that there is an error apparent while determining the **Operation and Maintenance Cost** for the project. The Petitioner submitted that the Commission, vide the impugned Order has approved project specific tariff by taking O&M expenses as Rs. 22.73 Lakh/MW for Mohammadpur SHP and Rs. 19.03 Lakh/MW for Pathri SHP in their first year of operation which has been escalated for the ensuing years @ 5.72% per annum up to the life of the project, which is for new projects as per UERC RE Regulations 2013,. There is error on face of record as on one hand the Commission is approving O&M Expenses on normative/generic basis applicable as per regulations for new projects whereas on the other hand the Commission is denying Generic Tariff by not considering it as new projects as requested by the Petitioner. These two different treatments, hand on hand seems to be contradictory.

- 2.3 Further, the Petitioner submitted that there has been an error on the face of record in not considering the materials on record while determining the Project Specific Tariff for Pathri and Mohammadpur SHP, which are as detailed below.

- a. The Petitioner on the clause of **Design Energy** submitted that the Commission while determining tariff observed the following:

“Accordingly, for the purpose of tariff determination, in accordance with the Regulations and recommendations of CEA, design energy of Pathri & Mohammadpur SHPs have been considered as 155.60 MU and 64.92 MU respectively. Accordingly, saleable energy for these two SHPs have been determined based on the normative.”

The Petitioner submitted, that in the DPR of Renovation and Modernisation of Pathri and Mohammadpur, the Potential Energy was estimated on the basis of average discharge of the year 2007, 2008 and 2009 post commissioning of Tehri Dam which is not only insufficient for determining the design energy but inconsistent also in view of definition of design energy which is otherwise a factor dependent on 90% dependable year. Whereas the actual generation, in the case in hand, is based upon the availability of water for the power plant. Since UJVN Ltd. is not getting sufficient water supply for achieving potential energy as envisaged in DPR, it has made an impact on actual generation of the Plant after Renovation and Modernisation. The actual generation achieved in last financial year after R&M is approximately 127.11 MU and 54.73 MU for Pathri and Mohammadpur SHP's respectively whereas the Design Energy approved by the Commission as per the DPR is 155.60 MU and 64.92 MU for Pathri and Mohammadpur SHP's respectively.

Further, it was submitted that the actual generation of the Pathri and Mohammadpur SHPs, post-RMU, for the year 2014-15, was communicated to the Commission vide letter no. 182 dated 28.04.2015. Further, it submitted that for the preparation of DPR in 2009, the average discharge of 2007, 2008 and 2009 only was considered for Energy Potential Estimation. This data was not sufficient for calculation of Design Energy. The Petitioner stated that commissioning of Tehri Dam plays an important role in the energy potential estimation of Pathri & Mohammadpur Power Stations which has been commissioned in 2006-07, therefore, the discharge data for 3 years only was available at the time of preparation of DPRs.

The Petitioner submitted the DPRs with the Tariff Petition in which only the Energy Potential after commissioning of Tehri Project has been calculated on the basis of average discharge of Year 2007, 2008 & 2009. The Petitioner could not find

any point in the submission where the energy potential of the Pathri and Mohammadpur SHPs has been mentioned and calculated as Design Energy. The calculations in DPR are based on average discharge of aforementioned 03 years indicating only the energy potential of the power stations. This in fact is not the design energy. The design energy means the quantum of energy which can be generated in a 90% dependable year with 95% installed capacity of the hydro generating stations. Based on the availability of discharge data for Pathri and Mohammadpur SHPs for past 10 years (after the commissioning of Tehri Project) the calculation of design energy has been made, considering which the Petitioner requested the Commission to consider the design energy post RMU as 129.36 MU for Pathri SHP and 54.292 MU for Mohammadpur SHP while fixing tariff of these SHPs.

The Petitioner submitted, that it had vide its letter no- 68/UJVN/04/D(F)/ UERC dated 05.02.2016 has submitted Maximum available energy of 64.92 MU for Mohammadpur SHP and 155.6 for Pathri SHP. The Petitioner submitted that it had not mentioned that these are design energy for these SHPs.

The Petitioner submitted that in view of the above, there is an error apparent on record in not considering the documents on record of the actual generation of Pathri and Mohammadpur SHPs, while determining the Project Specific Tariff for the plants.

- b. The Petitioner submitted that the entire Capital Cost has not been taken into consideration and the Commission, for the purpose of Tariff calculation, has considered the Capital Cost as Rs. 105.40 Crore for Pathri SHP and Rs. 73.32 Crore for Mohammadpur SHP. The Petitioner submitted that the calculation which was provided to the Central Electricity Authority did not include IDC. It was submitted that after taking into consideration the IDC for the respective plants, the Capital Cost has been considered by the Commission as Rs. 110 Crore and Rs. 76.21 Crore for Pathri and Mohammadpur SHP respectively. It was also submitted that capital cost considered for R & M by the Commission is the actual expenditure, which was provided to CEA, for its recommendation on reasonability of the Capital Expenditure. However, after the DPR was sent to CEA, the capital cost (without IDC) of Pathri SHP had increased to Rs. 111.13 Crore on account of pending

payments which were not paid by the time, when the actual cost was communicated to CEA. The Petitioner also submitted that the final cost of the Pathri SHP was informed to the Commission vide letter dated 21.09.2016. The Petitioner submitted that since the Commission was already apprised of the total cost of the Pathri SHP, there is an error apparent on the face of record in not considering the same, while determining the project specific tariff of Pathri SHP. That the Commission, vide the impugned order, has also recorded the following:

“3.2.6.....since the two projects have already outlived their useful life, it has been considered that the assets have already been fully depreciated, accordingly, the same has not been considered a part of capital cost.”

The Petitioner referring to regulation 17 of the RE Regulation 2013, submitted that there is an error apparent on the face of record in not considering the Original Capital Cost of the old project for determination of tariff. The Petitioner also stated that as per the Regulations the depreciation allowed during the useful life of any power plant, is only till the extent of 90% and the remaining 10% is the Residual Value. Therefore, there is error apparent on record in not considering the 10% residual Value of the Plant for the purpose of capital cost for determination of tariff.

- c. The Petitioner submitted that the Commission had not allowed Return on Equity for the first year of commissioning, i.e. FY 2014-15 and FY 2013-14 for Pathri and Mohammadpur SHPs respectively in the tariff calculations by the Commission. Regulation 18 of the RE Regulation 2013, specifies the rate at which the RoE has to be allowed, and does not stipulate that the same to be allowed for any specific year. The Petitioner claimed that the error is apparent on record in not allowing the RoE for the first year, i.e. 2015, for Pathri and Mohammadpur SHPs, without any conceivable reason for the same.
- d. The Petitioner has submitted that the Interest on Loan Capital has not been computed as per Regulation, as the reduction to extent of 75% of the capital subsidy is not as per Regulation, and there is no provision for the same. Since the actual debt is employed in the project for creating capital assets, therefore, the interest on loan capital should have been allowed on the actual debt, as UJVN Ltd. will be paying the interest on the actual debt.

- e. The Petitioner has submitted that the Actual Employee Cost has not been considered while computing the Operation and Maintenance Expenses, whereas the Commission, has approved project specific tariff by taking O&M expenses as Rs. 22.73 Lakh/MW for Mohammadpur SHP and Rs. 19.03 Lakh/MW for Pathri SHP in their first year of operation which has been escalated for the ensuing years @ 5.72% per annum up to the life of the project, which is for new projects as per UERC RE Regulations 2013.

The O&M cost approved by the Commission includes employee expenses, Repair and Maintenance and Administrative & General Expenses. The Petitioner further submitted that the Pathri and Mohammadpur SHPs, being the old plants, which have been renovated, already have the fixed employee expenses against the employees posted in the said projects. It is not justified for R&M projects as the Petitioner cannot reduce the employee expenses post R&M.

The Petitioner submitted that, there is an error apparent on the face of record, in not considering the actual employee cost of the projects, while calculating the Operation & Maintenance Expenses.

The employee expenses should have been considered on actual basis. Even the actual employee cost for the operation after R&M is much higher than what the Commission has considered for O&M expenses. The Commission in the impugned order has considered Rs. 410 Lakh as O&M Expenses for FY 2015-16 for Pathri SHP whereas only the actual employee expenses for the plant for FY 2015-16 have been Rs. 724 Lakh. It was also submitted that the Commission in the impugned order has considered Rs. 236 Lakh as O&M Expenses for FY 2015-16 for Mohammadpur SHP whereas only actual employee expenses for the plant for FY 2015-16 have been Rs. 268 Lakh. The Petitioner submitted that in view of the aforesaid discussion, it will be financially unviable to run the plant in this meagre O&M expenses considered by the Commission while approving the project specific tariff for the plants.

The Petitioner in view of the above, requested the Commission to re-determine the norms for O&M expenses and allow the actual employee expenses for R&MU projects in exercise of its power vested under Regulation 50 of RE

3. Commission's Views & Decisions

3.1 Before considering the Petitioner's contentions on merits of the case, it is necessary to see the scope of the power of the Commission for review of its order. Review of an Order of the Commission can only be done if the Petitioner fulfils one of the grounds for review in accordance with the provisions of the Code of Civil Procedure, 1908. Section 114 of the Code of Civil Procedure (in short CPC) provides for a substantive power of review by a civil court and consequently by the appellate courts. Section 114 of the code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47, Rule 1 of the CPC.

The grounds on which review can be sought are enumerated in Order 47, Rule 1 of CPC, which reads as under:

"1. Application for review of judgment

(1) Any person considering himself aggrieved:-

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
- (b) by a decree or order from which no appeal is allowed, or*
- (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or 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 on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.*

Hence, the circumstances when review lies are:

- (a) cases in which appeal lies but not preferred,
- (b) cases in which no appeal lies,
- (c) decisions on reference from Court of Small Causes; and

The grounds for review are:-

- (i) discovery of new and important matter or evidence, or
- (ii) mistake or error apparent on the face of the record, or
- (iii) any other sufficient reason.

3.2 The Respondent vide its letter dated 09.03.2017 submitted its comments in the matter claiming that the present review Petition is not maintainable on the grounds stated below:

- a) That the petition has been filed under Sec 94(1)(f) of the Electricity Act, 2003 and Regulation 54 of CBR, 2014 and the same cannot be applied in the present matter.
- b) That the petition does not give any ground of review as permissible under law for reviewing an order, the Petitioner has failed to show any error apparent on the face of the record. The petitioner has only used the words "error apparent on face of the record" to justify the review petition however the errors pointed out are not error apparent on face of the record and are rather findings of the Commission on merits which cannot be challenged by way of a review petition.
- c) That in para D of the petition pertaining to cause of action the Petitioner has not disclosed any cause of action. The statements in the said paragraph do not qualify as statements disclosing cause of action.
- d) There are no grounds of relief as stated in para E and are not the grounds of relief as
- e) That the Petitioner has nowhere in the petition disclosed the error apparent and other essential grounds for filing review petition and has only tried to cleverly mention the word without appreciating the true purport and meaning of the said phrase.
- f) That the present petition is basically an appeal in the form of a review petition and requires application of mind and reassessment of the issues and facts which have already been adjudicated by the Commission. That the Hon'ble Supreme Court of India has in catena of Judgments laid down that the review petition cannot be an appeal in disguise.
- g) That the present petition does not fulfill the criteria of review as per order 47 of Civil Procedure Code, 1908.

- h) That if the Petitioner was dissatisfied with the order dated 30.11.2016 of the Commission, the proper remedy was to file an appeal and not to file the present petition on no ground, it appears that the petitioner just want to reverse the process of law so as to gain limitation for filing an appeal against the impugned order.
- i) That the Petitioner has made submission against the impugned order in para E of the petition, which is not only impermissible and cannot be considered rather justifies that the Petitioner considers the order of the Commission as wrong and the same can only be challenged in an appeal.
- j) That the Petitioner in the petition has stated various facts which are matter of evidence and requires to be considered and appreciated, it is humbly submitted that the same cannot be done in a review petition and the scope of review is very limited, the application of mind to these facts itself entitles dismissal of the review.
- k) That the reliefs prayed for by the petitioner clearly show that the present review petition is rather a petition for determination of tariff, such reliefs cannot be granted in a review petition.

3.3 Several judgments have been cited on this aspect which reiterate the same principles. The principles laid down by the Hon'ble Supreme Court in **Kamlesh Verma Vs. Mayawati & Ors** in this regard are being reproduced hereunder:

"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable: (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him; (ii) Mistake or error apparent on the face of the record; (iii) Any other sufficient reason.

*The words "any other sufficient reason" have been interpreted in **Chhajju Ram v. Neki**, AIR 1922 PC 112 and approved by this Court in **Moran Mar BasseliosCatholicos v. Most Rev. Mar Poulouse Athanasius &Ors. (1955) 1 SCR 520**, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in **Union of India v. Sandur Manganese & Iron Ores Ltd. &Ors.***

20.2. When the review will not be maintainable:

- i. *A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- ii. *Minor mistakes of inconsequential import.*
- iii. *Review proceedings cannot be equated with the original hearing of the case.*
- iv. *Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- v. *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*
- vi. *The mere possibility of two views on the subject cannot be a ground for review.*
- vii. *The error apparent on the face of the record should not be an error which has to be fished out and searched.*
- viii. *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
- ix. *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."*

3.4 While going into the merits of the Petitioner's contentions, the Commission is guided by the principles as aforesaid. It is clear from the nature of issues raised by the Petitioner at this stage in the review petition and also in its submissions before the Commission during the course of the hearing that the Petitioner wants to reopen the entire matter and wants the Commission to re-consider each and every issue. This Commission has given detailed reasons in its Orders dated 30.11.2016 in support of the views on the determination of tariff in accordance with the provisions of the Act/Regulations after taking into consideration the submissions of the Petitioner. Reconsideration of the entire matter cannot be undertaken by the Commission in as much as it is only material error or errors manifest on the face of the record or patent error which can be considered in a review petition. The Petitioner has tried to equate the review proceedings with the original proceedings. Concluded decision on initiation of adjudication proceedings cannot be reopened in this manner. Even if it is assumed for the sake of argument that the judgment of this Commission is erroneous, as held by the Hon'ble Supreme Court in **Kamlesh Verma Vs. Mayawati & Ors**, a review is by no means an appeal in disguise whereby erroneous decision is reheard and corrected. Review lies only for correcting patent error or discovery of new and important matter or evidence which could not be

produced by the parties at the time of the earlier proceedings or mistake or error apparent on the face of the record. Keeping the above discussion in view, the Commission has dealt accordingly with the Petitioners contention as detailed in the following paras.

Date of Commissioning

- 3.5 With regard to Commercial Date of operation, the Petitioner contended that the Mohammadpur & Pathri SHPs have started generation post RMU, therefore, the same needs to be treated as new plants under the Regulations. The Commission has already dealt on the issue in detail in the impugned order, and is of the view that there is no error apparent on the face of law. The Petitioner has wrongly relied on the date of commissioning specified in the Regulations with the date of completion of RMU of the SHPs which is not tenable under the provisions of the Regulations. The same has already been clarified by the Order dated 30.11.2016 of the Commission. The relevant extract of the impugned order is reproduced hereunder;

“2.7 Now, UJVN Ltd. in the instant Petition has sought relaxation under RE Regulations, 2008 and has also referred to the powers of the Commission for reviewing its Orders u/s 94(1)(f) of the Act. In this regard, the Commission had notified its RE Regulations, 2008 wherein it was provided that the tariffs specified in the Regulations would not be applicable for generating stations commissioned before 01.01.2002 and their tariffs shall continue to be applicable till they are decided by the Commission on case to case basis. Accordingly, the Commission vide its Order dated 19.05.2009 determined the tariff of Rs. 1.05/kWh and Rs. 1.20/kWh for the Pathri and Mohammadpur SHP respectively. However, the Commission subsequently notified its RE Regulations, 2010 which repealed its RE Regulations, 2008. Accordingly, relaxation sought by UJVN Ltd. under RE Regulations, 2008 is not maintainable. Further, UJVN Ltd. also referred to the powers of the Commission for reviewing its Orders u/s 94(1)(f) of the Act. This contention of UJVN Ltd. is also not valid as the review sought by UJVN Ltd. is of the Commission’s Order dated 19.05.2009 issued more than 5 years ago, and in accordance with the UERC (Conduct of Business) Regulations, 2004, the review Petition has to be filed within 90 days of the issuance of the Order, accordingly, the review is also time barred now. Moreover, UJVN Ltd. has requested the Commission to treat the date of commissioning of the SHPs as the date when RMU activity is completed and allow generic tariff as per RE Regulations, 2013.”

2.8 The Commission had notified the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2013 effective from 15.04.2013 which superseded the UERC (Tariff and Other Terms for Supply of Electricity from Non-conventional and Renewable Energy Sources) Regulations, 2010. Further, the RE Regulations, 2013 stands applicable for generating stations commissioned after coming into effect of these regulations.

2.9 In this regard, relevant provision of the RE Regulations, 2013 are reproduced hereunder:

2nd Proviso to Regulation 2(1):

“Provided further that Regulations in Chapter 4 & 5, shall not be applicable for generating stations commissioned prior to coming into effect of these Regulations and their present tariffs shall continue to be applicable...”

2.10 Thus, a plain reading of the above referred Regulations clearly states that the two SHPs for which tariff has been sought by UJVN Ltd. can in no way be covered under RE Regulations, 2013 as the date of completion of RMU cannot be considered as the date of commissioning of the projects as the commissioning has already taken place and there cannot be two dates of commissioning.

2.11 RMU of hydro power station is carried out to increase the life of the Project. RMU of old hydro power stations is not only beneficial in enhancing the capacity of the plant but also help in the life extension of the plant by another 25 -35 years depending on the degree of RMU. Renovation (or Rehabilitation or Refurbishment) aims at extending the life while Modernisation aims at enhancing the performance and Upgradation aims at increasing the station capacity. “

In this regard, the Commission denies the contention of the Petitioner as there is no ground of review and there are no errors apparent from the record.

Furthermore, the submission of the Petitioner that the Land, Rehabilitation and Major Civil Works are not mandated under Capital Cost as per RE Regulation 2013 and consequent determination of tariff based on principal of Generic Tariff under the RE Regulation, 2013 do not incorporate major civil work and land rehabilitation, has no basis and is unexpected from the Petitioner company which is engaged in the development of hydro power in the State. The Petitioner has placed reliance on Regulation 15(1) of RE Regulation 2013 wherein capital cost has been dealt and the Petitioner has gone on to submit that the the element of civil works has been excluded from the capital cost as defined under Regulation 15(1). In this regard, it would be

relevant to reproduce Regulation 15(1) of RE Regulations, 2013:

“15. Financial Principles

(1) Capital Cost

(a) The norms for the Capital Cost as specified in the subsequent technology specific provisions in Chapter 5 shall include the expenditure incurred or projected to be incurred, initial spares, interest during construction and financing charges, any gain or loss on account of foreign exchange risk variation during construction on loans arrived in the manner specified in sub Regulation 2 below upto the date of commercial operation or commissioning of the project, as admitted by the Commission after prudence check...”

The sentence clearly reads as Capital Cost as specified in the subsequent technology specific provisions in Chapter 5 shall include the expenditure incurred or projected to be incurred. The Petitioner on its own wisdom has conveniently deciphered that land and civil works has been excluded from the definition of capital cost. Going by the same logic even E&M and hydromechanical works are not covered by this Regulations under capital cost. It is beyond imagination as to how a new project can be constructed without land and civil works. The contention of the Petitioner is totally erroneous and devoid logic. Infact, Regulation 4 of RE Regulations, 2013 specifies the Eligibility Criteria for qualifying as Generating Station based on Non-Conventional/ Renewable Energy Source. Regulation 4(2) specifies as under:

“(2) At present, generation from following sources and technologies shall qualify to be covered under these Regulations:

(a) Small hydro project– Generating Stations being developed in accordance with the prevalent policies of the State Government in this regard and using new plant and machinery with capacity lower than or equal to 25 MW, at single location...”

Thus, from the above reading of the Regulations, it is amply clear that these plants were not even covered under the RE Regulations, however, in the absence of any provision in the Regulations for the revival of stranded projects or the projects which had outlived their lives necessitating RMU activities, the Commission in exercise of its power vested under Regulation 50 of RE Regulations, 2013 decided to relax the Regulations to include those projects which were either stranded or had outlived their life and required

RMU to revive them. The other contention of the Petitioner has already been dealt with by the Commission in its Order dated November 30, 2016.

Hence, the contention of the Petitioner is rejected as there is no ground of review and there are no errors apparent from the record.

Capital Cost and applicable tariff

3.6 With regard to Capital cost, one of the grounds for disallowance by the Commission of generic tariffs (applicable to the new generating stations commissioned after the notification of RE Regulations 2013), for the Petitioner's Mohammadpur and Pathri SHP was that in the RMU activity carried out by the Petitioner the works were almost limited to Electromechanical and hydro mechanical activities with civil works being very negligible, as is also evident from the records and documents earlier submitted by the Petitioner before the Commission and discussed in detail in the impugned order of the Commission. Whereas the norms of capital cost specified in RE Regulations, 2013 comprises of land, rehabilitation, civil works and E&M and H&M works. The Petitioner in this regard has raised the contention that the land, rehabilitation and major civil works are not a part of the capital cost as per Regulation 15(1) of RE Regulations, 2013. The Petitioner claimed, that the Commission, while repealing the RE Regulation, 2010, has specifically excluded these elements of civil works from the capital cost defined in RE Regulations 2013 and therefore, the same could not be a basis of rejection of application for determining Generic Tariff of Pathri and Mohammadpur SHP of the Petitioner, under the RE Regulations, 2013. Relevant definitions mentioned in Regulation 15(1) of the RE Regulation 2013 and Regulation 16(1) of the RE Regulation, 2010, are reproduced herein for the ready reference:

Regulation 15(1) Capital Cost of RE Regulations, 2013

“(a)The norms of the Capital Cost as specified in the subsequent technology specific provisions in Chapter 5 shall include the expenditure incurred or projected to be incurred, initial spares, interest during construction and financing charges, any gain or loss on account of foreign exchange risk variation during construction on loans arrived in the manner specified in sub Regulation 2 below upto the date of commercial operation or commissioning of the project, as admitted by the Commission after prudence check....”

Regulation 16(1) of RE Regulations, 2010

“(a)The norms for the Capital Cost as specified in the subsequent technology specific provision in Chapter 5 shall be inclusive of all capital works including plant and machinery, civil work, and commissioning, financing, interest during construction and evacuation infrastructure upto point of interconnection (i.e. does not include cost of dedicated line and associated equipment from point of interconnection upto the nearest sub-station of transmission or distribution license to which generating station is connected)....”

The Petitioner here, while comparing the definition of Capital cost as laid down in the Regulation 16(1) of Regulation, 2010 and as laid down in the Regulation 15(1) of RE Regulations, 2013 has erred and failed to appreciate the genesis of the Capital Cost definition reproduced under the RE Regulations, 2013 wherein it is stated that the capital cost shall include the *“expenditure incurred or projected to be incurred”* that clearly specifies that all costs necessary for setting up the project is part and parcel of the capital cost subject to prudence check by the Commission. Furthermore, the capital cost defined in the RE Regulations, 2013 is an inclusive definition and not an exhaustive one, hence the contention of the Petitioner that some of the heads of expenditure have not been spelt out in the definition is not tenable and depicts the misinterpretation on the part of the Petitioner. The Petitioner also contended that they had requested for approval of generic tariff for these SHPs, whereas the Commission had allowed project specific tariffs. In this regard, the Commission noted that reason for allowing project specific tariffs had already been elaborated at para 2.12 and para 2.14 in the Order dated 30.11.2016. Relevant extract of the Order is reproduced as under:

“2.12 As already stated by the Petitioner, the projects were generating electricity even prior to the RMU of these projects but were operating at a lower capacity. Hence, in no way the date of commissioning of the project can be construed as the date of completion of the RMU. Furthermore, it would not be out of place to mention that the actual cost excluding IDC after RMU activity as claimed by the Petitioner and validated by CEA for Pathri and Mohammadpur SHP is Rs. 105.04 Crore and Rs. 73.32 Crore. On examination of the same, it is evident that almost all the works carried out are towards Electromechanical and hydro mechanical activities with civil works being very negligible. While the norms of capital cost specified in RE Regulations, 2013 comprise of land, rehabilitation, civil works and E&M and H&M works. Since, in the RMU activity carried out by the Petitioner the works are almost limited to Electromechanical and hydro mechanical activities. Thus, there is no premise due to which the

generic tariffs as per RE Regulations, 2013 applicable to new SHPs commissioned after the notification of these Regulations be made applicable to Pathri and Mohammadpur SHPs."

...

"2.14 While framing the Regulations, the Commission did not foresee such exigencies where stranded projects were to be revived or the projects who had outlived their lives necessitated RMU activities, and accordingly, no provision was made in the Regulations for inclusion of the same. Accordingly, the Commission in exercise of its power vested under Regulation 50 of RE Regulations, 2013 decides to relax the Regulations to include those projects who are either stranded or have outlived their life and require RMU to revive them. The Commission would determine tariffs for such projects after the RMU activity is carried out suitably adjusting for historical costs of the project in accordance with the operational norms specified under RE Regulations, 2013."

Therefore, in view of above discussion, the contention of the Petitioner as to applicability of generic tariff for its Mohammadpur & Pathri SHP on the aforesaid grounds for review of the order is denied.

The Petitioner, further, contended that the Capital Cost of Pathri SHP got increased after the DPR was sent to CEA, on account of pending payment which remained unpaid at the time when the actual cost was communicated to the CEA, whereas the Commission considered the capital cost for Pathri SHP based on the actual expenditure which was provided to the CEA by the Petitioner, without giving any consideration to increase in cost as contended by the Petitioner. It is pertinent to note here, that the capital costs have already been validated by CEA regarding works executed and cost incurred thereon including prudence check of the expenditure incurred in RMU works of Pathri & Mohammadpur SHPs of UJVN Ltd. The Commission, as already spelt out in its impugned order, has considered the Capital Cost validated by CEA for both the Pathri & Mohammadpur SHP of the Petitioner. The relevant extract of the Commission's Order is being reproduced hereunder,

"3.2.2 CEA in its report has observed/recommended that the execution of R&M works was necessary for life extension of the power station. CEA further in its report stated that the works have been audited by AG Auditors and the Auditors have not found any discrepancies/anomalies in completed cost with respect to the Contract Agreement for the said RMU works and the completed cost of RMU works of Rs. 105.04 Crore in respect of Pathri SHP bifurcated into E&M

works amounting to Rs. 96.57 Crore & Hydro-Mechanical and Civil Works amounting to Rs. 8.47 Crore is generally in order. Similar observation has also been made on Mohammadpur SHP regarding completed cost of RMU works of Rs. 73.32 Crore bifurcated into E&M works amounting to Rs. 63.11 Crore & Hydro-Mechanical and Civil Works amounting to Rs. 10.22 Crore is generally in order. CEA also stated that the increase in Completed Cost vis-à-vis Awarded Cost was on account of price escalation as per contract provisions.”

The Commission also considered the IDC while arriving at the allowable Capital Cost of the Pathri & Mohammadpur SHP of the Petitioner for the purposes of determining the Tariff. The relevant extract of the Commission’s Order is reproduced hereunder,

3.2.2 The Commission also noted that the capital expenditure in respect of two SHPs approved by CEA constitutes only the hard cost, i.e. without including the IDC component of capital expenditure. Accordingly, the Commission asked the generator for submission of computation of IDCs in respect of two SHPs. The Petitioner vide letter dated 21.09.2016 and further vide its mail dated 28.10.2016 provided the IDC Calculation for both the Pathri & Mohammadpur SHPs amounting to Rs. 4.97 Crore and Rs. 2.89 Crore respectively which has been taken into consideration by the Commission while arriving at the Capital Cost of the projects...”

The Commission, vide its impugned order, had already spelt out that it had considered the capital cost as validated by CEA and had not gone into detailed analysis of each and every element of the cost claimed by the Petitioner, thus providing no ground before the Commission to consider the additional cost claimed by the Petitioner.

Further, the contention of the Petitioner that the capital cost (without IDC) of Pathri SHP had increased to Rs. 111.13 Crore on account of pending payments which were not paid by the time, when the actual cost was communicated to CEA is again devoid of merit. The Petitioner company is a company registered under the Companies Act and is required to follow the accrual basis of accounting where irrespective of the fact that payment has been made or not, expenditure has to be recognized in the accounts. Hence, it is all the more surprising that even after two years from the completion of RMU works, capital cost of RMU works could not be firmed up. CEA team had visited the site and they had recommended the final completed cost for such RMU activities which was also adopted by the Commission.

Therefore, the contention of the Petitioner in this regard is grossly denied by the Commission as there are no grounds of review which were fulfilled.

Design Energy

3.7 With regard to Design Energy, the Petitioner has raised the contentions that there is an error apparent on the face of record as the Commission has not considered the actual generation of Pathri and Mohammadpur SHPs, instead the generation as mentioned in the DPR and recommended by the CEA has been considered while determining the tariff for the plants.

The Commission, vide its impugned order, had clearly spelt out that the design energy as envisaged in the DPR after taking into consideration the recommendations/ observations of CEA has been taken into account while approving the design energy for the Petitioner's Mohammadpur & Pathri SHP. The relevant portion of the order is being reproduced hereunder:

"3.1.1 Clause (a) of Regulation 10(3) of the RE Regulations, 2013 specifies as under:

"(a) For projects opting to have their tariffs determined on the basis of actual capital cost instead of normative capital cost as specified for different technologies under Chapter 5, the CUF (generation) for recovery of fixed charges shall be taken as that envisaged in the approved DPR or the normative CUF specified under Chapter 5 for the relevant technology, whichever is higher;"

In accordance with the regulations normative CUF for SHPs is 40%, whereas, DPRs of the Pathri & Mohammadpur SHPs envisage design energy of 155.60 MUs and 64.92 MUs respectively, i.e. CUF of 87% & 80% respectively. Further, CEA also observed/recommended that the annual design energy for the Pathri & Mohammadpur SHPs as 155.60 MUs 64.92 MUs respectively are acceptable and the same may be considered for finalization of tariffs.

3.1.2 Accordingly, for the purposes of tariff determination, in accordance with the Regulations and recommendations of CEA, design energy of Pathri & Mohammadpur SHPs have been considered as 155.60 MUs and 64.92 MUs respectively. Accordingly, saleable energy for these two SHPs have been determined based on the normative auxiliary consumption of 1%."

The Petitioner has also contended that after commissioning of Tehri Project

average discharge of only 2007, 2008 and 2009 was considered for preparation of DPR in 2009 for estimation of energy potential. In this regard, the Commission is of the view that for arriving at energy potential of these SHPs UJVN Ltd. could have estimated the same based on the discharge data and other requisite parameters available with it. For the reasons best known to the Petitioner, why relevant discharge data of previous years were not factored in for computation of energy potential of these SHPs. The Commission, based on the contention made by the Petitioner in its review Petition, is of the view that there is no merit in adopting differential treatment for calculation of design energy initially for approval of DPR and adopting a different treatment at the time of filing of the Petition for Tariff determination. This differential treatment on the part of the Petitioner clearly depicts that at the time of getting the DPR approved the Petitioner tries to project higher quantum increase in generation after the Renovation and Modernisation activity which actually cannot be attained.

Further, the Regulation clearly specifies that for projects opting to have their tariffs determined on the basis of actual capital cost instead of normative capital cost as specified for different technologies under Chapter 5, the CUF (generation) for recovery of fixed charges shall be taken as that envisaged in the approved DPR or the normative CUF specified under Chapter 5 for the relevant technology, whichever is higher. The Commission has, accordingly, considered the CUF as has been specified in the DPR for computation of tariff and this is the principle on which tariffs of other RE generators are being worked out.

Hence, the same also does not hold any merit for reconsidering the design energy projected as per DPR. Thus in view of above the Commission denies the contention of the Petitioner in this regard as there is no grounds of review which are being fulfilled.

Operation and Maintenance Cost

- 3.8 With regard to the issue of Operation and Maintenance Cost, the Petitioner has raised the contention that the Commission on the one hand is denying the generic tariff for the Petitioner's Mohammadpur & Pathri SHPs by not considering them as new projects, whereas on the other hand the Commission is approving O&M on generic/normative basis under the RE Regulations, 2013, thus, showing two different treatment hand on

hand. Further, the Petitioner claimed that the Commission has not considered actual employee cost, while computing the operation and maintenance expenses, which is very high compared to total O&M expenses allowed by the Commission, like for FY 2015-16 the actual employee cost for Mohammadpur & Pathri SHP was Rs. 268 Lakh & Rs. 724 Lakh respectively whereas the Commission has allowed total O&M of Rs. 236 Lakh & Rs. 410 Lakh respectively for the Mohammadpur & Pathri SHP for FY 2015-16.

In this regard, so as to assess the manpower structure deployed by the Petitioner in the two SHPs, the Commission vide its order dated 15.03.2017, while admitting the review Petition, directed the Petitioner to provide the actual number of employees deputed in its Mohammadpur and Pathri SHPs, clearly indicating the cost attributable to each employee, in response to which the Petitioner vide its letter dated 03.04.2017 submitted the required details. From the details submitted by the Petitioner it was observed that on an average the Petitioner has employed 3 employees per MW for its Mohammadpur Power House and 3.8 employees per MW in its Pathri SHP in FY 2015-16. Based on the information submitted by the Petitioner in its APR Petition (including True Up for FY 2015-16) for FY 2017-18, it was observed that for FY 2015-16 the total installed capacity of UJVN Ltd. was 1287 MW (Approx) against which total employee strength was 2083 Nos., which in turn works out to 1.62 Person/MW on an average. The employee ratio per MW for Mohammadpur & Pathri SHP of UJVN Ltd. is way high than the overall average of the UJVN Ltd which indicates disproportionate distribution of manpower in these stations. Moreover, the O&M expenses (which includes employee expenses) are controllable expenses, which can be optimised by automation and efficient management of the available resources in the plants. The Commission is of the view that the Petitioner has failed to appreciate that the RE Regulations, 2013 does not provide any differential treatment for O&M expenses, in case of project specific tariff or generic tariff. Based on the contention made by the Petitioner in this respect, it appears that the Petitioner is trying to shift the burden of its inefficiency on the end electricity consumers of the State which is against the intent of law.

Infact, Section 61 of the Electricity Act stipulates as under:

“The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the

following, namely:-

...

(c) *the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*

...

(e) *the principles rewarding efficiency in performance;”*

Hence, the Commission in its RE Regulations, 2013 has specified normative O&M expenses so as to enable each and every RE generator to bring in efficiency. It is in the interest of the Petitioner company to properly plan its manpower structure so as to optimize the resources and bring in efficiency. Half of the employee cost as claimed by the Petitioner as incurred in the two SHPs can be saved through reasonable degree of automation and by properly allocating the surplus staff to other projects/sites.

The operation and maintenance expenses for the Petitioner’s Mohammadpur & Pathri SHP, which includes expenses towards employees, were determined in line with the provisions of the UERC RE Regulations, 2013 as discussed in detail in the impugned order of the Commission.

The relevant extract of the Tariff Order is reproduced hereunder,

“4.4 Operation and Maintenance expenses

As specified in the Regulations, the base year normative operation and maintenance expense has been fixed based on the project size, as given below, and is subject to an annual escalation of 5.72% per annum for the ensuing years.

Project Size	O&M Expenses for year of Commissioning (Rs. Lakh/MW)
Upto 5 MW	26.43
>5 MW & upto 15 MW	22.73
>15 MW & upto 25 MW	19.03

*Based on the above, Pathri SHP having capacity of 20.4 MW (3*6.8 MW), the O&M expenses have been considered as Rs. 19.03 lakh/MW which has been escalated for ensuing years @ 5.72% per annum upto the life of the project. Similarly, for Mohammadpur SHP having capacity of 9.3 MW (3*3.1 MW), the O&M expenses have been considered as Rs. 22.73 lakh/MW which has been escalated for the ensuing years @ 5.72% per annum upto*

the life of the project..."

Thus, there is no contradiction in the view taken by the Commission while allowing the O&M expenses for the aforesaid projects of the Petitioner nor are there any errors apparent on the face of record in the impugned Order. Therefore, the contentions of the Petitioner with regard to operation and maintenance cost are denied as there are no grounds of review which were fulfilled.

Depreciation

3.9 With regard to Depreciation, the Petitioner has contended that the Commission has erred in not considering the 10% residual value of the old plant while arriving at the capital cost for determination of tariff. The Commission, as already spell out in the impugned order, while calculating the depreciation has considered that since the two projects namely Mohammadpur & Pathri SHP have already outlived their useful life and assets would have been fully depreciated, therefore, the same have not been considered as part of capital cost. The contention of the Petitioner that 10% residual value of the plants should have been part of the Capital Cost holds no merit as Regulation clearly provides that depreciation is allowed only up to maximum of 90% of the capital cost of the asset considering 10% as salvage value of the asset. If the residual value of the old plant is added to capital cost for the purposes of tariff determination as contended by the Petitioner, then it will tantamount to allowing recovery of depreciation even beyond 90% of the cost, which would be in contravention to the Regulations.

Further, the Capital Cost of Pathri and Mohammadpur SHPs considered by the Commission vide the Order dated 19.05.2009 was Rs. 0.20 Crore & Rs. 0.16 Crore respectively out of which substantial cost would also have been written off due to replacement by new machines. Moreover, all the loans corresponding to the original cost of the projects would have been repaid, hence, the question of allowing depreciation on the salvage value does not arise. The relevant extract of the Tariff Order is reproduced hereunder,

"4.1 Depreciation

For the purpose of computation of depreciation, Regulation 17 of RE Regulations, 2013 specifies as under:

“(1) For the purpose of tariff, depreciation shall be computed in the following manner, namely:

(a) The value base for the purpose of depreciation shall be the capital cost of the project as admitted by the Commission in accordance with sub-regulation (2) below.

(b) The Salvage value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the Capital Cost of the asset.

(c) Depreciation per annum shall be based on ‘Differential Depreciation Approach’ over loan tenure and period beyond loan tenure over useful life computed on ‘Straight Line Method’. For generic tariff the depreciation rate for the first 12 years of the Tariff Period shall be 5.83% per annum and the remaining depreciation shall be spread over the remaining useful life of the project from 13th year onwards.

(d) Depreciation shall be chargeable from the first year of commercial operation. Provided that in case of commercial operation of the asset for part of the year, depreciation shall be charged on pro rata basis for computation of project specific tariff.

(2) 75% of the Capital subsidy received by the generator shall be reduced from the capital cost for depreciation purposes.”

Accordingly, depreciation has been allowed up to maximum of 90% of the capital cost approved by the Commission after adjusting 75% of the capital subsidy eligible in accordance with the Regulations. The depreciation has been provided @ 5.83% per annum to provide for repayment of loan capital during the first 12 years of tariff period. Subsequently, the remaining depreciable value up to maximum of 90% of the capital cost has been spread over the remaining useful life of the project from 13th year onwards on prorata basis based on the date of completion of RMU activities.”

The Commission has dealt in detail on the issue of depreciation in the Tariff Order with reasons and is of the view that there is no error apparent on the face of record as contended by the Petitioner. Therefore, the contentions of the Petitioner with regard to depreciation are denied as there are no grounds of review which were fulfilled.

Interest on loan capital

3.10 With regard to Interest on loan capital, the Petitioner has contended that there is an error apparent on the face of record in calculating the interest on loan capital, as reduction to the extent of 75% of the capital subsidy is not as per regulation, and there is no provision

for the same. The Commission here would like to draw attention to the Regulation 15(3) of RE Regulations, 2013 which reads as follows;

“15. Financial Principles

...

(3) Subsidy available from MNRE, to the extent specified under Regulation 24, shall be considered to have been utilized towards pre-payment of debt leaving balance loan and 30% equity to be considered for determination of tariff.

Provided further that it shall be assumed that the original repayments shall not be affected by this prepayment

...”

Further, Regulation 24 of RE Regulations, 2013 reads as follows;

“24. Subsidy or incentive by the Central/State Government

The Commission shall take into consideration any incentive or subsidy offered by the Central or State Government, including accelerated depreciation benefit if availed by the generating company, for the renewable energy power plants while determining the tariff under these Regulations.

Provided that only 75% of the capital subsidy for the financial year of commissioning as per applicable scheme of MNRE shall be considered for tariff determination.

Provided that the following principles shall be considered for ascertaining income tax benefit on account of accelerated depreciation, if availed, for the purpose of tariff determination:

- (a) Assessment of benefit shall be based on capital cost admitted, accelerated depreciation rate as per relevant provisions under Income Tax Act and corporate income tax rate.*
- (b) Capitalisation of RE projects during second half of the fiscal year. Per unit benefit shall be derived on levelised basis at discount factor equivalent to Post Tax weighted average cost of capital.*
- (c) It shall be assumed that the generating company shall avail the benefit of accelerated depreciation and the onus of establishing, to the satisfaction of distribution licensee, that it is not entitled for this benefit shall be that of such generating company. The*

auditor's certificate in this regard shall be considered sufficient for this purpose.

Provided further that where Central Government or the State Government has notified any Generation Based Incentive Scheme for a particular kind of renewable technology such technology based generating stations shall be assumed to have availed the benefit of such a scheme and their tariffs shall automatically be treated as reduced by the amount of GBI per unit."

From a plain reading of the above mentioned regulation, it can be seen that the Regulation clearly states that subsidy available from MNRE, to the extent specified under Regulation, 24 shall be considered to have been utilized towards pre-payment of debt leaving balance loan for the purposes of determination of tariff. The Commission, while determining the project specific tariff for the Petitioners Mohammadpur & Pathri SHP followed the similar approach and, accordingly, allowed the Interest on Loan Capital based on the actual loan for the project reduced to the extent of 75% of the Capital Subsidy as per the Regulations. The relevant portion of the order is reproduced hereunder;

"4.3 Interest on Loan

Regulation 16 of RE Regulations, 2013 specifies as under:

"16. Interest on loan capital

(1) The loans arrived at in the manner indicated in Regulation 15(2) shall be considered as gross normative loan for calculation of interest on loan. The normative loan outstanding as on 1st April of every year shall be worked out by deducting the cumulative repayment up to 31st March of previous year from the gross normative loan.

(2) For the purpose of computation of generic tariff, the normative interest rate shall be considered as average State Bank of India (SBI) Base Rate prevalent during the first six months of the previous year plus 300 basis points.

For the purpose of computation of project specific tariff, interest rate shall be considered as lower of the actual interest payable to the financial institutions or the average State Bank of India (SBI) Base Rate prevalent during the first six months of the previous year plus 300 basis points

(3) Notwithstanding any moratorium period availed by the generating company, the repayment of loan is being considered from the first year of commercial operation of the project and shall be

equal to the annual depreciation allowed.

While calculating project specific tariff, notwithstanding any moratorium period availed by the generating company, the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the annual depreciation allowed or actual repayment made, whichever is higher.

(4) Normative period of loan repayment shall be taken as 12 years."

Interest on Loan has been computed on the loan capital as determined in accordance with Para 3.2.6 above. As per regulation, in case of project specific tariff, notwithstanding any moratorium period availed by the generating company, the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the annual depreciation allowed or actual repayment made, whichever is higher.

Further, the interest rate has been considered as lower of the actual interest payable to the financial institutions or the average State Bank of India (SBI) Base Rate prevalent during the first six months of the previous year plus 300 basis points.

Based on the above, interest on loan capital has been calculated on the actual loan in the project which has been reduced to the extent of 75% of the capital subsidy in accordance with the Regulations. The rate of interest has been considered as 6.5% for Mohammadpur SHP being the actual rate of interest and 12.71% for Pathri SHP which is the SBI Base Rate plus 3%. Loan repayment has been considered equivalent to the depreciation allowed for each year starting from the date of completion of RMU."

The Commission had already dealt in detail on the issue of interest on loan capital in the Order and is of the view that the contention of the Petitioner that there is an error apparent on the face of record is not tenable. Therefore, the contentions of the Petitioner in this regard are denied as there are no grounds of review which were fulfilled.

Return on Equity

3.11 With regard to computation of Return on Equity, the Petitioner contended that there is an error apparent on record in not allowing the ROE for the first year, i.e. FY 2013-14 and FY 2014-15 for Mohammadpur & Pathri SHPs respectively under the RE Regulations, 2013. The Commission observed that for first year of restart of these SHPs subsequent to completion of RMU works the RoE had been disallowed inadvertently. While accepting

the contention of the Petitioner on this limited issue, the Commission, allows RoE for the first year of operation after the completion of RMU. **Accordingly, the revised levelled tariff after allowing ROE for first year of operation post RMU, works out to Rs. 1.92/Unit for Mohammadpur SHP and Rs. 1.42/Unit for Pathri SHP** against the already allowed levelled tariff of Rs. 1.85/Unit & Rs. 1.37/Unit respectively for Mohammadpur & Pathri SHP. The revised tariff have been made effective from 21st July 2013 for Mohammadpur SHP & 31st August 2014 for Pathri SHP being the date of completion of RMU of the SHP and shall be valid for a period of 35 years from this date.

3.12 Therefore, in light of the provisions in the Statutes, the facts of the case, the submissions of the Petitioner and precedents set by the Hon'ble Supreme Court and the Hon'ble ATE, it is clear that the grounds stated by the Petitioner for review do not satisfy the grounds for review under the Code of Civil Procedure as there is no error apparent on the face of record or any new facts which could not be presented at the time of the proceedings in most of the issues. The Commission partially allows the Review Petition with respect to Return on Equity thus revising the tariff already allowed vide its tariff order dated 30.11.2016 as discussed in detail at para 3.1 above.

3.13 Therefore, the Commission takes the Petition on record and partially allows the Review Petition.

3.14 Ordered accordingly.

(Subhash Kumar)
Chairman