

years 2014-15 and 2015-16. The cut-off date of the generating station is 31.3.2016. In our view, the additional capital expenditure incurred by the Petitioner, is in the nature of deferred works, which are within the original scope of the project, and the liabilities discharged are on account of balance payments against works/services, within the original scope of works already admitted, such as land, steam generator/ turbine generator, BOP mechanical and electrical, C&I package and civil works etc. It is further noticed that the additional capital expenditure and initial spares, on actual basis, up to the cut-off date, were allowed, after prudence check, in order dated 9.3.2017 in Petition No. 266/GT/2014. In view of this, the additional capital expenditure and initial spares claimed by the Petitioner up to the cut-off date, as allowed in order dated 9.3.2017, is allowed for the years 2014-15 and 2015-16 respectively.

Additional capital expenditure incurred after the cut-off date (31.3.2016) for the period 2016-19

(a) Land

15. The Petitioner has claimed actual capital expenditure of Rs. 180.72 lakh in 2016-17 and Rs.1715.22 lakh in 2018-19, on cash basis, towards Land, under Regulation 14(3)(i) of the 2014 Tariff Regulations. In justification for the same, the Petitioner has submitted that some of the land owners had approached the Hon'ble High Court of Punjab & Haryana for enhanced compensation of land and the Hon'ble Court vide its order dated 11.5.2016, had enhanced the compensation. However, on Special Leave Petition being filed before the Hon'ble Supreme Court for setting aside the enhanced land compensation granted by the Hon'ble High Court, the Hon'ble Supreme Court has stayed the operation of the order of Hon'ble High Court, with the direction to deposit 25% of the difference in compensation. However, vide judgment dated 5.9.2017, the Hon'ble Supreme Court finally decided the compensation payable to



land owners by and accordingly, the additional capitalization claimed by the Petitioner is in respect of the said compensation paid. The Respondent BRPL has submitted that the claim of the Petitioner may be allowed only after prudence check.

16. The matter has been considered. As the claim of the Petitioner for additional capital expenditure of Rs. 180.72 lakh in 2016-17 and Rs. 1715.22 lakh in 2018-19, on cash basis, is towards land compensation paid, based on the directions of the Hon'ble Supreme Court vide its judgement dated 5.0.2017, the same is allowed.

(b) SG & TG Package

17. The Petitioner has claimed actual additional capital expenditure of Rs. 1113.75 lakh in 2016-17, Rs. 74.03 lakh in 2017-18 and Rs. 42.64 lakh in 2018-19, on cash basis, towards SG & TG Package, under Regulation 14(3)(v) of the 2014 Tariff Regulations. In justification for the same, the Petitioner has submitted that the additional capitalization is in the nature of payment for Price Variation, Freight, Service Tax, Exchange Rate Variation and Balance payments etc. (as per the provisions of contract) corresponding to the works already capitalized before the cut-off date and as allowed by the Commission.

18. The matter has been considered. Considering the fact that the claim of the Petitioner is related to assets which form part of the original scope of work of the project, the claim for additional capitalization, is **allowed** under Regulation 14(3)(v) of the 2014 Tariff Regulations.

(c) Ash Related Works

19. The Petitioner has claimed actual additional capital expenditure of Rs. 662.51 lakh in 2016-17, Rs. 35.60 lakh in 2017-18 and Rs. 7.95 lakh in 2018-19, on cash basis, towards ash related works, under Regulation 14(3)(iv) of the 2014 Tariff Regulations. In justification for the same, the Petitioner has submitted that these works



relate to Ash handling and form part of the original scope of work of the generating station which are required to be executed in phased manner based on ash generation.

20. The Respondents BYPL and BRPL have submitted that the Petitioner may be directed to submit detailed justification/requisite information with documents to substantiate its claim for the additional expenditure claimed on works related to Ash handling. In response, the Petitioner has submitted that the capitalization is mainly towards balance works of infrastructure facilities for Ash utilization, balance mechanical works of fly ash silos & related auxiliaries of ash handling package, balance structural works (including grating & handrail works) of Ash handling system, balance cabling and earthing work in ash handling area, balance civil works of ash handling system, other balance painting and tagging jobs. It has also submitted that these works form part of the original scope of work and was awarded to M/s DCIPS, through tendering process. The Petitioner has further submitted that though majority of the works have been completed and capitalized within the cut-off date, however, some minor works which are of independent nature, but forming part of these bigger packages, could not be completed, due to the delay in supply of few materials, required for completion of erection works and also due to pending rectification of few materials which were found defective. The Petitioner has further submitted that in 2014-15, the agency, M/s DCIPS financial condition got worsened, and work at site came to a standstill and several letters were issued to the said agency to restart work at site, and the contractor ultimately went into insolvency. The Petitioner has added that after the failure of M/s DCIPS to start these works, the contract was terminated on 10.11.2015, and a letter of cancellation of contract was issued to M/s DCIPS and in the process, LD was imposed, and bank guarantee was encashed and the balance works, were awarded by the Petitioner, at the risk and cost of M/s DCIPS. The Petitioner has added that due to several reasons not attributable to the Petitioner, the



balance works could not be capitalized within the cutoff date. The Petitioner has also stated that though it made all out efforts for capitalization of the said asset within the cutoff date, the same could be capitalized only in 2017-18. The Petitioner has submitted that the delayed additional capitalization has not resulted into any non-performance of the generating station.

21. The matter has been considered. It is observed from the submissions of the petitioner that the additional capital expenditure claimed towards Ash related works is of a continuous nature, to be executed in a phased manner, during the operational life of generating station and is covered under the original scope of work of the project. In view of this, the additional capital expenditure claimed by the Petitioner, on cash basis, is allowed under this head in terms of Regulation 14(3)(iv) of 2014 Tariff Regulations.

(d) IP Camera based Surveillance

22. The Petitioner has claimed actual additional capital expenditure of Rs. 242.91 lakh in 2016-17, on cash basis, and Rs.4.73 lakh in 2018-19, on accrual basis, towards IP camera-based surveillance, under Regulation 14(3)(iii) of the 2014 Tariff Regulations. In justification of the same, the Petitioner has submitted that the Deputy Commandant, CISF, vide its letter dated 1.8.2013, has directed the Petitioner to take measures to strengthen security of the Project, including the installation of CCTV cameras. It has also submitted that joint inspection regarding the locations for CCTV cameras was carried out with CISF, and the same was finalized in February, 2015. It has stated that thereafter, the work was awarded on 27.11.2015 and the work was completed and capitalized in 2016-17. The Respondent BPRL has submitted that since these are new claims, the same shall not be allowed by the Commission.

23. The matter has been considered. It is observed that the Petitioner has claimed



additional capital expenditure of Rs.242.91 lakh in 2016-17, on cash basis, after the cut-off date. Since the additional capital expenditure incurred is related to project security as per requirement/ recommendations of CISF, which is a statutory agency and as these assets/ works are necessary for the safety and security of the generating station, the claim is allowed under Regulation 14(3)(iii) of the 2014 Tariff Regulations.

(e) RO Plant Package

24. The Petitioner has claimed actual additional capital expenditure of Rs. 5.48 lakh in 2016-17 (on accrual basis), Rs. 1.13 lakh (on accrual basis) and Rs. 0.07 lakh (on cash basis) in 2017-18, towards RO Plant Package, under Regulation 14(3)(v) of the 2014 Tariff Regulations. The Petitioner has submitted that the additional capitalization is towards balance payment of the works capitalized prior to the cutoff date.

25. The Respondents BYPL and BRPL have contended that the Petitioner has failed to provide any details / justification for the additional capital expenditure claimed and has stated that the additional capital expenditure may be allowed, only after prudence check. They have further submitted that the delay is a controllable factor and may not be condoned. In response, the Petitioner has clarified the said work form part of the original scope of work of the project and was awarded and executed prior to the cut-off date of the generating station. It has further submitted that the amount of Rs. 6.61 lakh is towards final adjustments and against the exchange rate variation for the retentions on the work done by M/s Triveni Engineering (the executing agency for RO Plant).

26. The matter has been considered. Keeping in view that the additional capital expenditure claimed is towards balance payment of the works capitalized prior to the cutoff date of the generating station, the claim for Rs. 0.07 lakh, on cash basis, in 2017-18 towards RO Plant Package is allowed.



(f) Make Up Water Civil Works Package

27. The Petitioner has claimed actual additional capital expenditure of Rs. 35.49 lakh in 2016-17 and Rs. 10.67 lakh in 2017-18, on cash basis, towards Make-Up Water Civil works package, under Regulation 14(1)(ii) read with Regulation 54 of the 2014 Tariff Regulations. The Petitioner has submitted that the job was included in the original scope of work and has furnished the reasons for the delay in capitalization.

28. The Respondents BYPL and BRPL have contended that the Petitioner cannot claim any additional expenditure towards Make Up Water Civil Works package as the same has already been disallowed by the Commission in its order dated 9.3.2017 in Petition No. 266/GT/2014. In response, the Petitioner has clarified as follows:

(a) The project has faced tough situations with respect to the civil works due to the unprecedented torrential rains during 2010 monsoon which has resulted into flooding/submergence of Make-up water pipeline area and surrounding areas. One of the most critical works that was affected due to the above unprecedented rains was the laying of the underground pipeline from the makeup water pump house which was located at a distance of 18 km from the reservoir. The make-up water line work was awarded in 2008. However, the Haryana Government restrained the Petitioner from executing the work due to absence of any legislation for the Right of Use (ROU) for laying of the underground pipelines. The Right of Use in the land was granted by Haryana Govt. vide its notification dated 16.9.2009. The works on the ROU corridor could only be taken up after the issuance of the Gazette notification.

(b) Subsequently, there was an unprecedented heavy rainfall during the monsoon months in the year 2010 due to which 1.4 Km of the ROU corridor was completely submerged in water up to the height of 1.5 metre. Work related to the laying of the pipeline came to a complete standstill for approx. 6 months resulting into delay in execution of work related to Make up Water Civil works within the scheduled time;

(c) Further, the ground condition of the water submerged area on the ROU route of makeup water pipeline was such that it was not possible to lay the pipeline for more than 6 months. It was decided to lay an over-ground Loop line circumventing the submerged area of approx. 2.5 km; There has also been agitation by villagers on several occasions hampering the progress of works. Due to the resistance put by the villagers the work of laying of makeup water pipe under the ground and the work of makeup water pump got delayed.

(d) Further, the capitalization of these works also got delayed due to JAT agitation in which the total roads were blocked and movement of manpower and other resources could not take place. These works which form part of the original scope of works were awarded well before cut-off date of the generating station. The Petitioner made all out efforts for capitalization of the same by cut-off date i.e., 31.3.2016. For reasons not attributable to the Petitioner, the Petitioner was unable to capitalize the works in the nature of the balance payments. Further, the delayed capitalization has not resulted into



any kind of non-performance of the plant and has further reduced front loading of tariff on this account.

29. The matter has been examined. It is noticed that the Commission in order its dated 9.3.2017 in Petition No. 266/GT/2014, had disallowed the Petitioners claim for additional capital expenditure towards Make-up Water Civil works package after the cut of date, as under:

“33. In the above background, we are of the view that the total delay on account of above reasons cannot be more than 4 months. Further, since the RoU was granted to the petitioner in September 2009, we are of the view that the petitioner could and should have completed the work within the cut-off date. Accordingly, we find no reason to allow the claim of the petitioner towards the Make-up water Civil Works package after cut-off date in relaxation of provision of Regulation 14(3) of the 2014 Tariff Regulations, and the same is disallowed.”

30. The Petitioner has not furnished any new information/documents in justification for the delay in additional capitalization of this asset/item. Moreover, the claim of the Petitioner for additional capitalization of this asset/item, in exercise of the power to relax, under Regulation 54 of the 2014 Tariff Regulations, was rejected by this Commission in its order dated 9.3.2017. In view of these, we find no reason to allow the Petitioner’s claim for additional capital expenditure of this asset/item, after the cut of date.

(g) Fire detection and Protection system, Air Conditioning System and Station piping package

31. The Petitioner has claimed actual additional capital expenditure of Rs. 18.97 lakh in 2016-17, Rs. 12.90 lakh in 2017-18, on cash basis, and Rs.2.39 lakh in 2018-19 (on accrual basis), towards Fire detection and Protection system, Air Conditioning system and Station Piping package, under Regulation 14(1)(ii) read with Regulation 54 of the 2014 Tariff Regulations. The Petitioner has submitted that an amount of Rs 900 lakh was projected for this scheme, in Petition No. 266/GT/2014, but the Commission had granted liberty to claim the same at the time of truing up of tariff for the period 2014-19. It has also submitted that the work was included in the original scope of work. The



Petitioner also submitted that the delay in capitalisation of these works is due to non-completion of the Civil fronts pertaining to 'Main Plant and Offsite Civil works'.

32. The Respondents BYPL and BRPL have contended that the Petitioner has failed to provide any documentary evidence to substantiate its claim for additional capitalization beyond the cut-off date. In response, the Petitioner has submitted that the work/ item could be capitalized only after the completion of the main plant and off-site civil works.

33. The matter has been considered. The Petitioner has claimed actual capital expenditure towards Fire detection and Protection system, Air Conditioning system and Station Piping package under Regulation 14(1)(ii) read with Regulation 54 of the 2014 Tariff Regulations. Regulation 14(1)(ii) of the 2014 Tariff Regulations provides for additional capitalization within the original scope of works and after the date of commercial operation and up to the cut-off date. It is noticed that the additional capitalization claimed is in respect of works within the original scope of work, but has been deferred and executed after cut-off date and capitalized only after completion of the main plant and off-site civil works. However, as these are adjustments of the balance payments for works within the original scope of work executed before cut-off date, we find it a fit case for exercise of power under relax, thus, we in exercise of the power under Regulation 54 of the 2014 Tariff Regulations relax Regulation 14(3)(v) and allow the said adjustments claimed after the cut-off date. Accordingly, the actual additional capital expenditure of Rs. 18.97 lakh in 2016-17, Rs. 12.90 lakh in 2017-18, claimed on cash basis is allowed.

(h) Permanent Township Civil work

34. The Petitioner has claimed actual additional capital expenditure of Rs. 4053.91 lakh in 2016-17, Rs. 1216.91 lakh in 2017-18 and Rs. 128.07 lakh in 2018-19 towards Permanent



Township Civil work under Regulation 14(1)(ii) read with Regulation 54 of 2014 Tariff Regulations. It has also submitted that an expenditure of Rs. 3200 lakh was projected against this scheme in Petition No. 266/GT/2014 and the Commission vide its order dated 9.3.2017 had granted liberty to the Petitioner claim the same at the time of truing up of tariff. The Petitioner has submitted that though the work was awarded to M/s ERA Infra Engineering Limited and the said contract with the agency was cancelled in 2015-16, however some works amounting to Rs. 10.83 crore, which were executed by M/s ERA Infra Engineering Limited, prior to cancellation of the contract, were capitalized in 2016-17. It has also stated that the work was included in the original scope and reasons of delay in capitalization have also been elaborated.

35. The Respondent TPDDL has contended that though the Petitioner had projected the expenditure for Permanent township civil works for Rs 3200 lakh, however, the final cost is Rs 4400 lakh and therefore, the cost for delay in construction may not be passed on to the Respondents. The Respondents BYPL and BRPL have contended that the Petitioner has failed to provide any documentary evidence for the said claim. The Petitioner while stating that the delay in capitalization of these assets, was beyond its control, has detailed the following:

- i. The works for the two packages namely the main plant and the off-site civil works and permanent Township package was awarded to M/s ERA Infra Engineering Limited as two separate contracts through a domestic competitive bidding process. However, on account of a ban on mining, as imposed in Haryana with effect from 28.2.2010, there was an acute scarcity of raw construction material such as sand, aggregate etc which affected the progress of civil construction works since the raw materials had to be sourced from alternate further sources. Further, the unprecedented rainfall also inundated the civil foundation works, leading to a further delay. The Petitioner had diligently and continuously taken up the matter with ERA infra for mobilization of adequate resources to ensure the completion of civil works within the cut-off date. Despite the same, the works could not be finished in time due to the scarcity of raw materials of the concrete strength of M35 or M30 which was required for civil works. The Petitioner has placed on record the relevant correspondence.
- ii. Due to the delay in the execution of the works, the Petitioner was constrained to terminate the contract with M/s ERA and proceeded to retender the leftover works to other alternate agencies. However, since the remaining works were of a smaller value and had been spread over the entire plant and Township area, there was inadequate response from the working agencies located in the area and accordingly, the bid dates kept getting extended in order to seek an adequate response and have competitive



rate for the award of works. The petitioner even tried to bring in the NBCC for completion of the balance works which did not materialise. After rigorous follow up for inclusion of new agencies in the local area, the work came to be awarded to various agencies. However, work was again affected on account of the Jat agitation in the month of February, 2016 since there was blockades and goods could not be transported to the site. All the reasons combined, namely the ban on mining, the torrential rainfall, the Jat agitation, the re-tendering process etc lead to a delay in the completion of the works.

36. We have examined the rival contentions. The Petitioner has claimed actual additional capital expenditure, on cash basis, towards Permanent Township Civil work under Regulation 14(1)(ii) read with Regulation 54 of the 2014 Tariff Regulations. It is observed that the additional capitalization claimed is in respect of works within the original scope of work, but has been deferred and executed after the cut-off date. Moreover, the delay in completion of the said works were beyond the control of the Petitioner. Hence, in exercise of the power to relax under Regulation 54 of the 2014 Tariff Regulations, since it was within the original scope of work we are inclined to allow under power to relax, the additional capital expenditure claimed towards Permanent Township Civil works by relaxing 14(3)(v) of the 2014 Regulations. Thus, the actual additional capital expenditure of Rs. 4053.91 lakh in 2016-17, Rs. 1216.91 lakh in 2017-18 and Rs. 128.07 lakh in 2018-19 on cash basis allowed.

(i) Main Plant and Offsite Civil Works

37. The Petitioner has claimed actual additional capital expenditure of Rs. 1412.91 lakh in 2016-17, Rs. 1196.20 lakh in 2017-18 and Rs. 1292.02 lakh in 2018-19, on cash basis, towards Main plant and offsite Civil Works under Regulation 14(1)(ii) read with Regulation 54 of 2014 Tariff Regulations. The Petitioner has submitted that an amount of Rs. 2900 lakh was projected against this scheme in Petition No. 266/GT/2014 and the Commission vide its order dated 9.3.2017, had granted liberty to claim the same at the time of truing up of tariff. In justification of the same, the Petitioner has submitted that the works for this package was awarded through domestic competitive bidding. The Petitioner has also submitted that the ban was

