

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 12/RP/2015**

**in**

**Petition No. 229/2010**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

**Shri A.K. Singhal, Member**

**Shri M.K.Iyer, Member**

**Date of Hearing: 03.03.2016**

**Date of Order: 27.06.2016**

**In the matter of**

Review of Order dated 6.5.2015 in Petition No.229/2010 for approval of the tariff of Indira Gandhi Super Thermal Power Project, Stage-I (3 x 500 MW) for the period from date of commercial operation of Unit-I to 31.3.2014

**And**

**In the matter of**

Aravali Power Company Private Limited  
NTPC Bhawan, Core-7, SCOPE Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi-110003

**...Petitioner**

Vs

1. Haryana Power Purchase Centre  
Shakti Bhawan, Sector-IV,  
Panchkula, Haryana-134109
2. Tata Power Delhi Distribution Company Ltd  
(*erstwhile* North Delhi Power Ltd)  
Grid Substation, Hudson road,  
Kingsway Camp,  
Delhi-110009
3. BSES Rajdhani Power Ltd.,  
BSES Bhawan, Nehru Place,  
New Delhi-110019
4. BSES Yamuna Power Ltd.  
Shakti Kiran Building,  
Karkardooma,  
Delhi-110092

**...Respondents**

**Parties present:**

Shri M.G. Ramachandran, Advocate, APCPL  
Ms. Poorva Saigal, Advocate, APCPL  
Shri Prashant Chaturvedi, APCPL  
Shri Ajay Prakash, APCPL  
Shri R.B.Sharma, Advocate, BRPL  
Shri Sanjay Srivastava, BRPL



## ORDER

The petitioner, Aravali Power Company Private Limited (APCPL) has filed this petition for review of order dated 6.5.2015 in Petition No.229/2010 whereby the tariff of Indira Gandhi Super Thermal Power Project, Stage-I (3 x 500 MW) ("the generating station") was determined by the Commission for the period from date of commercial operation of Unit-I to 31.3.2014 in terms of the 2009 Tariff Regulations.

2. Aggrieved by the said order, the petitioner has sought review of the said order dated 6.5.2015 on the ground of error apparent on the face of the order, raising the following issues:

- i) *Wrong consideration of Zero date;*
- ii) *Wrong consideration of scheduled completion date w.r.t contract agreement date;*
- iii) *Non-consideration of reasons for delay in execution of works while calculating IDC and IEDC;*
- iv) *Non-consideration of additional rate of ROE of 0.5%;*
- v) *The capital cost being within the Benchmark cost, has not been considered while giving effect to reduction in the capital cost for time overrun;*
- vi) *Wrong deduction of escalation in Main Plant Civil Packages;*
- vii) *Non-consideration of Notional IDC in absence of Weighted Average Interest Rate of loan;*
- viii) *Non-consideration of part of loan amount of ₹1302.94 Cr for IDC calculation;*
- ix) *Wrong adjustment of revenue from sale of infirm power;*
- x) *Wrong consideration of depreciation rate;*
- xi) *Disallowance of additional capitalization of ₹400 lakh during 2011-12 for 400 kV Jhajjar-Mundka D/C transmission line;*

3. In addition to the above the petitioner vide affidavit dated 15.7.2015 sought review of the order dated 6.5.2015 on the issue of "*Non-consideration of additional capitalization between commercial operation date of different units for computation of tariff.*"

4. The matter was heard on 'admission' and the Commission by order dated 9.2.2016 had admitted the issues raised in para 2 (ix) and para 3 above. Other issues raised by the petitioner were however disposed of by the Commission in the said order. There observation of the Commission in order dated 9.2.2016 that the issue raised in para 2(vi) above has been admitted is an inadvertent error, as the said issue was examined on merits and rejected in terms of para 27 of the said order dated 9.2.2016. Hence, the same is not considered in this order. Accordingly,



the issues namely (i) Wrong adjustment of revenue from sale of infirm power and (ii) Non-consideration of additional capitalization between commercial operation date of different units for computation of tariff, has been examined based on the submissions of the parties and the documents available on records.

### **Wrong adjustment of revenue from sale of infirm power**

5. The Commission in its order dated 6.5.2015 had observed as under:

“35. ....Details of infirm power Injected and the revenue earned (excl. cost of fuel) are as under:

	Infirm power sent (MUs)	Revenue earned (in lakh)
Unit-I	23.720	276.59
Unit-II	110.476	2951.81
Unit-III	202.313	2218.78
<b>Total</b>	<b>336.509</b>	<b>5447.18</b>

36. From the break-up of the capital cost furnished in Form-5B of the affidavit dated 15.11.2013, it appears that the revenue earned from the sale of infirm power has not been adjusted in the capital cost as on COD of units/generating station. Therefore, the revenue earned from the sale of infirm power has been adjusted from the capital cost of the generating station.”

6. The petitioner in the review petition has submitted that the pre-commissioning expenses of ₹37895 lakh indicated in row 5.1 of Form 5-B of the original petition is net pre-commissioning expenditure after adjustment of the revenue earned from infirm power of ₹5447.18 lakh. The petitioner has also pointed out that the same is evident from Note No.12 of the Capital Work in Progress to the financial statements as on 25.4.2013 i.e. commercial declaration of Unit-III. The petitioner has further submitted that the Accounting Policy of the Company in respect of pre-commissioning expenses as mentioned at item H in respect of expenditure under Note No. 1 Significant Accounting Policies is as under:

*“Net pre-commissioning income/expenditure is adjusted directly in the cost of related assets and systems.”*

7. Accordingly, the petitioner has submitted that the pre-commissioning expenses given in row 5.1 of Form 5-B of the original petition are the net pre-commissioning expenses i.e. after the adjustment of revenue earned from the infirm power. Based on this, the petitioner has submitted that there is error apparent on the face of the order and or otherwise sufficient reason exists for review of the order dated 6.5.2015.



8. The respondent, BRPL vide reply affidavit dated 2.3.2016 has submitted that the petitioner refrained to file the relevant information to the Commission and justifies the details in the context of accounting policies of the Petitioner company. It has submitted that the petitioner should have clearly detailed out vital information in the body of the petition and all information must have been supplied in the statutory forms prescribed by the Commission. The respondent has also submitted that the petitioner under the garb of review is in fact trying to review the order dated 6.5.2015 which is not permissible under the law. Accordingly, the respondent has submitted that there is no error apparent on the face of the record on this issue. The respondent has pointed out that it is a settled legal position that an error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the power of review under order 47 Rule 1 of the CPC.

### Analysis

9. The petitioner has pointed out that the pre-commissioning expenses indicated in row 5.1 of Form-5B are the net pre-commissioning expenses i.e. after adjustment of revenue earned from sale of infirm power which is as per Accounting Policy of the Company. It is further observed from the audited financial statements furnished by the petitioner that the revenue earned from infirm power has been adjusted in the capital cost. The non consideration of the audited financial statements furnished by the petitioner, while passing the order dated 6.5.2015, is in our view an error apparent on the face of the record and the same is required to be corrected. Accordingly, the adjustment of (-) ₹276.59 lakh as on COD of unit-I, ₹3228.40 lakh as on COD of unit-II and ₹5447.18 lakh made on account of revenue earned from infirm power in the table under para 37 of the order dated 6.5.2015 is revised as under:

(₹ in lakh)

	As on COD Unit-I – 5.3.2011	As on COD Unit-I and Unit-II – 21.4.2012	As on COD Unit-III and generating station 24.2013
Capital cost excluding IDC	280948.00	(47098 – 159.18) = 486938.82	(662751.00 – 159.18 – 1350.64 – 1153.29) = 660087.89
less: Pro rata reduction due to time overrun	-	-	-



(i) Main plant civil works	0.00	0.00	0.00
(ii) IEDC (only establishment cost)	159.18	1153.29	3614.47
Capital cost excluding IDC	280788.82	485785.53	656473.42
Adjustment due to sale of infirm power	0.00	0.00	0.00
Capital cost excluding IDC	280788.82	485785.53	656473.42

**Non consideration of additional capitalization between commercial operation date (COD) of different units for computation of tariff**

10. The petitioner vide affidavit dated 15.7.2015 has submitted that while calculating the tariff for the generating station in order dated 6.5.2015, the Commission has inadvertently made an arithmetical error of not considering the details of additional capitalisation between the COD of the different units of the generating station (from COD of Unit-I to Unit-II and from Unit-II to Unit-III) which had been furnished vide affidavit dated 15.11.2013 at Page No 20 (Form-IA) and in Page No 28 (Form-5B) of the original petition. The additional capitalization between the COD of the different units of the generating station which was not considered by the Commission in order dated 6.5.2015 as submitted by the petitioner is as under:

<b>Additional capital expenditure in respect of</b>	<b>Period</b>	<b>Amount (₹ in lakh)</b>
Unit-I	5.3.2011 to 31.3.2011	554.00
Unit-I	1.4.2011 to 31.3.2012	27052.00
Unit-I	1.4.2012 to 20.4.2012	0.00
Unit-I & II	21.4.2012 to 31.3.2013	13393.00
Unit-I & II	1.4.2013 to 25.4.2013	39.00

11. The respondent, BRPL has submitted that the amendment of review petition by raising additional issue is not permissible under Section 94 of the Electricity Act, 2003 read with Regulations, 103, 111 and 114 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Order 47 Rule 1 of the Code of Civil Procedure, 1908. The respondent has also submitted that there are definitive limits to the exercise of the power of review and the review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1.

**Analysis**

12. We have examined the matter. It is noticed that the petitioner by affidavit dated 15.7.2015 has raised the additional issue regarding the non consideration of additional capitalisation between the



COD of the different units of the generating station in addition to certain other issues raised in affidavit dated 22.6.2015. Since these documents were filed prior to the hearing of the matter “on admission” the Commission after hearing the petitioner on 10.9.2015 admitted certain issues, including this issue of non consideration of additional capitalisation between the COD of the different units of the generating station as raised in affidavit dated 15.7.2015. The Commission having admitted this issue on 10.9.2015, submission of that the respondent that the same should not be permitted cannot be accepted. In our view, the non consideration of Form 1A and Form 5-B of the affidavit dated 15.11.2013 (in original petition) in order dated 6.5.2015, wherein, the additional capitalisation between the COD of the different units of the generating station was submitted by the petitioner, in is an error apparent on the face of the order and the same is required to be corrected, in the interest of justice. Accordingly, review of order dated 6.5.2015 on this ground is allowed.

13. It is observed that the petitioner has filed Petition No. 437/GT2014 for truing up of tariff of the generating station for the period from 5.3.2011 to 2014 and the same is pending for consideration by the Commission. Moreover, the petitioner has been granted liberty in para 35 of the order dated 6.5.2015 to submit certain information. In this background, we consider it prudent to revise the tariff of this generating station considering the issues allowed in this order at the time of truing up of tariff in terms of Regulation 6(1) of the 2009 Tariff Regulations.

14. Petition No. 12/RP/2015 is disposed of in terms of the above. Petition No. 437/GT2014 shall be listed for hearing on 28.7.2016.

**-Sd/-**  
**(Dr. M.K.Iyer)**  
**Member**

**-Sd/-**  
**(A.K. Singhal)**  
**Member**

**-Sd/-**  
**(Gireesh B. Pradhan)**  
**Chairperson**

