

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.3/RP/2020
in
Petition No.309/GT/2015

Coram:

Shri P.K.Pujari, Chairperson
Shri. I.S.Jha, Member

Date of order: 23rd October, 2021

In the matter of

Petition seeking review of Commission's order dated 19.11.2019 in Petition No. 309/GT/2015 pertaining to revision of tariff of Pragati-III Combined Cycle Power Station (1371.2 MW) for the period from COD of GT-1 to 31.3.2014 after truing up exercise.

And

In the matter of

Pragati Power Corporation Limited,
Himadri, Corporate Office,
Rajghat Power House Complex,
New Delhi- 110 002

.... Review Petitioner

Vs

1. BSES Yamuna Power Limited,
Shakti Kiran Building, Karkardooma,
Delhi- 110 092.
2. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi- 110 019
3. Tata Power Delhi Distribution Limited,
33 kV Substation, Hudson Line, Kingsway Camp,
Delhi-110 009
4. New Delhi Municipal Council,
Regd. Office: Palika Kendra, Sansad Marg,
New Delhi- 110 001
5. Punjab State Power Corporation Limited,
The Mall, Patiala- 147 001
6. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-VI, Panchkula,
Haryana-134 109



7. Military Engineering Services,
Kotwali Road,
Delhi Cantonment-110 010

.... Respondents

Parties present:

Shri M.G. Ramachandran, Senior Advocate, PPCL
Ms. Poorva Saigal, Advocate, PPCL
Shri Buddy Ranganadhan, Advocate, BRPL
Shri Anupam Varma, Advocate, BRPL
Shri Rahul Kinra, Advocate, BRPL
Shri Utkarsh Singh, Advocate, BRPL
Shri Gurmeet Deogen, BRPL
Ms. Megha Bajpeyi, BRPL
Shri Anand Shrivastava, Advocate, TPDDL
Ms. Anju Thomas, Advocate, TPDDL

ORDER

Petition No. 309/GT/2015 was filed by the Review Petitioner, Pragati Power Corporation Limited (in short 'PPCL'), for truing-up of tariff of Pragati-III Combined Cycle Power Station (1371.2 MW) (hereinafter referred to as 'the generating station') for the period from COD of GT-1 to 31.3.2014, in terms of Regulation 6 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as 'the 2009 Tariff Regulations and the Commission vide order dated 19.11.2019 disposed of the same. Aggrieved thereby, the Review Petitioner has filed the Review Petition challenging the impugned order dated 19.11.2019 on the following issues:

(A) Arithmetical/typographical error in estimation of the total capital cost, as determined by the Commission in Paragraph 34 of the Impugned Order;

(B) Non-consideration of fuel charges as per Regulation 18(2) of the Tariff Regulations, 2009;

(C) Non-consideration of the cost of one full module and GT-4 while calculating the working capital for the period from 27.2.2014 to 31.3.2014;

(D) Typographical and estimation error in arriving fixed component of receivables of the working capital in table of Paragraph-46 for the period from 2011-12 till 2013-14; and

(E) Disallowance of the Normative Interest During Construction (IDC) on the actual cash flow even up to the Scheduled Commercial Operation Date (SCOD) in Paragraphs 27 and 28 of the order.



2. The Review Petition was heard through video conferencing on 25.6.2020 and the Commission, after condoning the delay in filing the Review Petition, admitted the Review Petition vide interim order dated 10.7.2020, on the issues raised in paragraph 1 above. The Review Petitioner, vide additional affidavit dated 22.6.2020, has placed on record the judgment of APTEL dated 28.1.2020 in Review Petition No.1/2019 in Appeal No. 175/2015. The Respondent BRPL has filed its reply on 26.10.2020.

3. Subsequently, the Review Petition was heard through video conferencing on 18.6.2021 and the Commission, after directing the parties to file their written submissions, reserved its order in the matter. The Respondent BRPL and the Review Petitioner have filed their written submissions on 26.6.2021 and 30.7.2021 respectively. The Respondent TPDDL has filed its reply vide affidavit dated 17.7.2021.

4. In order to examine as to whether the contentions of the Review Petitioner satisfy the conditions of review, it would be pertinent to note the relevant provisions and settled position of law in this regard.

5. The Commission has the power to review its decision, directions and orders under Section 94(f) of the Electricity Act, 2003, which is extracted below:

*“Section 94 (Powers of Appropriate Commission): -
(1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -
(f) reviewing its decisions, directions and orders;”*

6. Further, Order 47 Rule 1 of the Civil Procedure Code, 1947, provides for filing of an application for review, which is extracted below:

*“1. Application for review of judgement
(1) Any person considering himself aggrieved-
(a) by a decree or order from which an appeal is allowed, but from 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 judgement to the Court which passed the decree or made the order.”

7. Thus, under Order 47 Rule 1 of the CPC, 1908, an application for review would be maintainable upon the discovery of new and important matter or evidence or on account of some mistake or error apparent on the face of record or for any other sufficient reason.

8. It is also a settled position in terms of the judgment of Hon'ble Supreme Court in Parsion Devi v Sumitra Devi reported in 1997 8 SCC 715 that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC and that the judgment may be open to review, inter alia, if there is a mistake or an error apparent on the face of the record and 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 requiring court to exercise its power of review. These principles of the review have also been enunciated by the Hon'ble Supreme Court in judgment in Kamlesh Verma v. Mayawati and Ors. as reported in AIR 2006 SC 75.

9. Further, in the judgment of Hon'ble Supreme Court in BCCI v. Netaji Cricket Club as reported in 8 2004 (5) SCC 741, the Hon'ble Court held that under Order 47 Rule 1 of the CPC, the words 'sufficient reason' is wide enough to include a misconception of fact or law by a court or even an Advocate. The relevant extract of the said judgment is as follows:-

“Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.



Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

10. Thus, the principles that can be culled out from various judgments of the Hon'ble Supreme Court on exercise of power of review by the civil court are summarized hereunder:

- a) An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power of review.
- b) An order cannot be corrected in guise of power of review merely because it is erroneous in law or on the ground that a different view could have been taken by the Court on a point of fact or law.
- c) While exercising the power of review, the Court cannot sit in appeal over its own order/ judgment.
- d) While considering an application for review, the court has to confine its adjudication with reference to material which was available at the time of initial decision.

11. In the light of the above principles and based on the submissions of the parties and the documents available on record, we shall now consider whether the impugned order dated 19.11.2019 in Petition No. 309/GT/2015, suffers from any patent mistake or an error apparent so as to warrant its review.

Issue (A) Arithmetical/typographical error in the total capital cost (paragraph 34 of the impugned order):

Submissions of the Review Petitioner

12. The Review Petitioner has submitted that in paragraph 34 of the impugned order, the Commission, while allowing the additional capital expenditure relating to 'Headquarters' during the period till 31.3.2012 for Rs. 272.97 lakh and Rs.18.43 lakh



for the year 2012-13, had inadvertently not summed up and carried forward the said expenditure as part of the gross fixed asset. This, according to the Review Petitioner, had resulted in a reduced capital cost for the above amount, during the period from 1.4.2012 to 31.3.2014. It has also pointed out that the corrected table, after considering the accumulation of additional expenditure of 'Headquarters' share on year to year basis, is as under:

	<i>(Rs. in lakh)</i>							
	7.12.2011 (COD of GT-I) to 31.3.2012)	1.4.2012 (COD of STG- I & HRSG-I) to 15.7.2012	16.7.2012 (COD of GT-II) to 13.12.2012	14.12.2012 (Block-I) to 31.3.2013)	1.4.2013 to 27.10.2013	28.10.2013 (COD of GT-III) to 26.2.2014	27.2.2014 (COD of GT-IV) to 26.3.2014	27.3.2014 (COD of STG-II/ Project) to 31.3.2014
Opening capital cost as on COD/ 1st April excluding IDC	96552.71	147284.98	204252.48	219678.56	219052.85	266925.09	309677.62	378266.04
Less: Exchange variation disallowed	283.47	431.61	598.85	644.14	0.00	782.80	908.31	1109.68
Add: Cumulative IDC	403.9	662.16	989.97	1114.16	1114.16	1578.3	1983.75	2709.40
Less: Un-discharged liabilities (cumulative)	6584.01	7684.54	9123.26	9183.81	9183.81	9771.42	10289.57	10396.42
Opening capital cost including IDC and excluding un-discharged liabilities	90089.13	139830.99	195520.34	210964.77	210983.20	257949.17	300463.79	369469.34
Additional capitalization allowed	3030.33	0.00	0.00	215.70	0.00	0.00	0.00	10102.65
Add: Discharge of liability	0.00	0.00	0.00	1830.40	0.00	0.00	0.00	869.46
Add: Additional expenditure left out in Petition No. 257/2010 and considered in this petition	272.97	0.00	0.00	18.43	0.00	0.00	0.00	99.60
Closing capital cost	93392.43	139830.99	195520.34	213029.30	210983.20	257949.17	300463.49	380541.05

13. Accordingly, the Review Petitioner has submitted that there is error apparent on the face of record and the impugned order dated 19.11.2019 in Petition No. 309/GT/2015 may be reviewed on this ground.



Replies of the Respondents

14. The Respondent BRPL has submitted that as per paragraph 17 of the impugned order dated 19.11.2019, the Review Petitioner had admitted that the capital expenditure was inadvertently left out in Petition No. 257/2010 and, hence, the same cannot be taken up in truing-up exercise, to cover up the act of omission and commission by the Review Petitioner. It has also submitted that the said claims do not fall under any of the provisions of the 2009 Tariff Regulations and, therefore, the same may be rejected. The Respondent has further submitted that the Commission had correctly not considered the same as being a common share in nature with other generating station i.e. IPGCL & PPCL-I and there is no arithmetical error in calculating the total capital cost as determined in paragraph 34 of the impugned order dated 19.11.2019. The Respondent has also stated that it is unaware of any calculation provided by the Review Petitioner in the present petition, for calculation of the expenditure relating to 'Headquarters' and as such, from the impugned order as well as from the Review Petitioner's submission, it is not possible for the Respondent to ascertain as to whether the amount of Rs. 272.97 lakh and Rs. 18.43 lakh have already been included in the computation of the opening capital cost of Rs. 147012.01 for the period from 1.4.2012 to 15.7.2012. The Respondent TPDDL has submitted that the Commission had considered the additional expenditure of Rs. 272.97 lakh and Rs. 18.43 lakh for the period from 27.12.2011 to 31.3.2012 and 14.12.2012 to 31.3.2013 respectively and, therefore, there is no arithmetical error in calculating the total capital cost as determined by this Commission in paragraph 34 of the impugned order dated 19.11.2019.

Written submissions of the Review Petitioner

15. The Review Petitioner in its written submission has submitted that the statement of the Respondent BRPL that since the amounts of Rs.272.97 lakh and Rs. 18.43 lakh had not been claimed in the original petition (Petition No. 257 of



2010), the same cannot be allowed at the stage of truing up. This contention of the Respondent was considered and rejected by the Commission in the impugned order dated 19.11.2019. It has also pointed out that the Respondent TPDDL has not placed on record any document/ proof to show that the amounts (Rs. 272.97 lakh and Rs. 18.43 lakh) have been considered, while computing the closing capital cost.

Analysis and Decision

16. We have examined the matter and perused the documents on record. As regards the capital cost allowed for the purpose of tariff, the Commission in the impugned order dated 19.11.2019 in Petition No. 309/GT/2015 decided as follows:

“34. Based on the above discussions, the capital cost allowed for the purpose of tariff is as under:

	<i>(Rs in lakh)</i>							
	27.12.2011 (COD of GT-I) to 31.3.2012	1.4.2012 (COD of STG- I & HRSG-I) to 15.7.2012	16.7.2012 (COD of GT-II) to 13.12.2012	14.12.2012 (Block-I) to 31.3.2013	1.4.2013 to 27.10.2013	28.10.2013 (COD of GT-III) to 26.2.2014	27.2.2014 (COD of GT-IV) to 26.3.2014	27.3.2014 (COD of STG-II/ Project) to 31.3.2014
Opening capital cost as on COD / 1st April excluding IDC	96552.71	147012.01	203979.51	219405.59	218761.45	266633.69	309386.22	377974.64
Less: Exchange variation disallowed	283.47	431.61	598.85	644.14	0.00	782.80	908.31	1109.68
Add: Cumulative IDC	403.9	662.16	989.97	1114.16	1114.16	1578.30	1983.75	2709.40
Less: Un-discharged liabilities (cumulative)	6584.01	7684.54	9123.26	9183.81	9183.81	9771.42	10289.57	10396.42
Opening capital cost including IDC and excluding un-discharged liabilities	90089.13	139558.02	195247.37	210691.80	210691.80	257657.77	300172.09	369177.94
Additional capitalization allowed	3030.33	0.00	0.00	215.70	0.00	0.00	0.00	10102.65
Add: Discharge of liability	0.00	0.00	0.00	1830.40	0.00	0.00	0.00	869.46
Add: Additional expenditure left out in Petition No. 257/2010 and considered in this petition	272.97	0.00	0.00	18.43	0.00	0.00	0.00	99.60
Closing capital cost	93392.43	139558.02	195247.37	212756.33	210691.80	257657.77	300172.09	380249.65

17. It is noticed that in paragraph 15 to paragraph 20 of the impugned order dated 19.11.2019 in Petition No. 309/GT/2015, the Commission had considered and



allowed the additional capital expenditure of Rs.272.97 lakh in 2011-12, Rs.18.43 lakh in 2012-13 and Rs.99.60 lakh in 2013-14, which were left out in Petition No. 257/2010, while determining the capital cost as on COD of the generating station. Though the aforesaid amounts were indicated in the table under paragraph 34 of the impugned order dated 19.11.2019, the additional capitalization of Rs.272.97 lakh in 2011-12 and Rs.18.43 lakh in 2012-13 were not summed up and carried forward as part of the gross fixed asset, thereby reducing the capital cost during the period from 1.4.2012 to 31.3.2014. This, according to us, is an inadvertent arithmetical/ calculation error in the impugned order dated 19.11.2019 and the same needs to be rectified on review. Accordingly, the additional capitalisation amounts of Rs.272.97 lakh in 2011-12 and Rs.18.43 lakh in 2012-13 have been considered as part of the gross fixed asset for the purpose of tariff. Based on this, the capital cost allowed for the purpose of tariff, in the table under paragraph 34 of the impugned order dated 19.11.2019 in Petition No. 309/GT/2015, stands modified as under:

	<i>(Rs.in lakh)</i>							
	27.12.2011 (COD of GT-I) to 31.3.2012	1.4.2012 (COD of STG- I & HRSG-I) to 15.7.2012	16.7.2012 (COD of GT-II) to 13.12.2012	14.12.2012 (Block-I) to 31.3.2013	1.4.2013 to 27.10.2013	28.10.2013 (COD of GT-III) to 26.2.2014	27.2.2014 (COD of GT-IV) to 26.3.2014	27.3.2014 (COD of STG-II / Project) to 31.3.2014
Opening capital cost as on COD/ 1 st April excluding IDC	96552.71	147284.98	204252.48	219678.56	219052.85	266925.09	309677.62	378266.04
Less: Exchange variation disallowed	283.47	431.61	598.85	644.14	0.00	782.80	908.31	1109.68
Add: Cumulative IDC	403.9	662.16	989.97	1114.16	1114.16	1578.3	1983.75	2709.40
Less: Un-discharged liabilities (cumulative)	6584.01	7684.54	9123.26	9183.81	9183.81	9771.42	10289.57	10396.42
Opening capital cost including IDC and excluding un-discharged liabilities	90089.13	139830.99	195520.34	210964.77	210983.20	257949.17	300463.79	369469.34
Additional capitalization allowed	3030.33	0.00	0.00	215.70	0.00	0.00	0.00	10102.65
Add: Discharge of liability	0.00	0.00	0.00	1830.40	0.00	0.00	0.00	869.46
Add: Additional expenditure left out in Petition No.257/2010 and considered in this petition	272.97	0.00	0.00	18.43	0.00	0.00	0.00	99.60



Closing capital cost	93392.43	139830.99	195520.34	213029.30	210983.20	257949.17	300463.49	380541.05
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18. Issue (A) is decided accordingly.

Issue(B) Non-consideration of fuel charges as per Regulation 18(2) of the 2009 Tariff Regulations

Submissions of the Review Petitioner

19. The Review Petitioner has submitted that the Commission, while truing up the total cost of working capital for the 2009-14 tariff period, had not taken the gross actual GCV and landed fuel cost prior to three months preceding the month for which tariff is determined i.e. actual fuel cost prior to 14.12.2012 in case of COD of full Module-1. This, according to the Review Petitioner, has resulted in a lesser working capital, due to reduction in the two month receivables and one month fuel cost. While submitting that the actual GCV has not been considered for the period from 27.12.2011 to 31.3.2014, for the purpose of working capital, the Review Petitioner has pointed out that the Commission, instead of taking GCV of 9470 kCal/scm, 9613 kCal/scm, 9472 kCal/scm, 9643 kCal/scm, 9690 kCal/scm 9732 kCal/scm and 9662 kCal/scm respectively, for the said period, had taken the GCV of 9469.98 kCal/scm, 9602.67 kCal/scm, 9472.01 kCal/scm, 9649.09 kCal/scm, 9690 kCal/scm, 9731 kCal/scm and 9661 kCal/scm respectively for the said period. The Review Petitioner has submitted that the above information was furnished in paragraph 4.19 of the original petition (Petition No. 309/GT/2015) with a request to true up the same, while calculating interest on working capital.

Replies of the Respondents

20. The Respondent BRPL has submitted that the submissions of the Review Petitioner seeking review of the impugned order dated 19.1.2019, on the basis of the non-consideration of fuel charges, as per Regulation 18(2) of the 2009 Tariff Regulations is liable to be dismissed since in terms of the said regulation, truing-up



is limited only to the capital cost and not to the fuel charges. It has also submitted that the Review Petitioner has failed to show any 'other sufficient reason' for review of the impugned order, with respect to the non-consideration of fuel charges, as the impugned order does not make any reference to the figures quoted by the Review Petitioner. The Respondent has submitted that the Commission had rightly considered the fuel stock for ½ month corresponding to the Normative Annual Plant Availability Factor and the issue raised by the Review Petitioner does not fall within the scope of Order 47 Rule 1 of the Civil Procedure Code, 1908. The Respondent TPDDL has submitted that the Commission, has, in terms of Regulation 18(1)(b)(ii) of the 2009 Tariff Regulations, considered the fuel stock for ½ month corresponding to the normative annual plant availability factor. It has, however, submitted that for consideration of Energy Charge Rate, this Commission can consider the landed fuel cost and gross calorific values for three months preceding the first month of which tariff is to be determined, as per the 2009 Tariff Regulations.

Written submissions of the Respondent BRPL

21. The Respondent BRPL, in its written submissions, has stated that the Review Petitioner is seeking to re-open the original tariff order dated 26.5.2015 in Petition No. 257/2010, even though the Review Petition is directed against the impugned order dated 19.11.2019 in Petition No. 309/GT/2015. Referring to paragraph 86 of the order dated 26.5.2015 in Petition No. 257/2010, the Respondent has stated that the Commission had approved GCV of gas while determining the tariff for the generating station of the Review Petitioner. The Respondent has further pointed out that the Review Petitioner filed Appeal No. 175 of 2015 against the said order dated 26.5.2015 before the Appellate Tribunal for Electricity (in short 'APTEL'), wherein the issue of GCV of fuel was not raised and, therefore, the said issue of GCV of fuel has attained finality between the parties and the same cannot be re-agitated by the



Review Petitioner. Referring to paragraph 46 of the impugned order, the Respondent has stated that the Commission had only trued up the interest on working capital limited to the consequential changes in revision of additional capitalisation, but not trued up GCV for the purpose of working capital, which is in accordance with Regulation 6(1) of the 2009 Tariff Regulations. The Respondent has added that the reliance placed by the Review Petitioner on the judgment of APTEL dated 21.4.2011 in Appeal No. 24/2010 (MPPGCL v MPERC) is not applicable to the present case, as the said judgment relates to the regulations notified by MPERC and is not with reference to the regulations notified by this Commission. Relying on the judgment dated 4.12.2007 in Appeal No. 100 of 2007 (KPTCL v KERC) and judgment dated 9.5.2008 in Appeal No. 9/2008 (KPTCL V KERC), the Respondent has submitted that the truing up exercise is not the time to rethink the principles laid down in the provisional/ previous tariff order(s).

Written submissions of the Review Petitioner

22. The Review Petitioner, in its written submissions, has submitted that the Commission has the power to consider the expenditure at actuals, at the time of truing-up of tariff, including the correction of any arithmetical or inadvertent errors made earlier (even if it pertains to the fuel cost). It has submitted that the principles laid down by APTEL in its judgment dated 21.4.2011 in Appeal No. 24/2010 (MPPGCL v MPERC) and judgment dated 28.11.2014 in Appeal No. 61 and 62 of 2012 (BRPL v DERC) are of universal application, namely, that an error in the main order cannot be perpetuated in the truing-up order. The Review Petitioner has further submitted that the reliance made by the Respondent BRPL to the judgements of APTEL in KPTCL v KERC cases, is misconceived, as the Review Petitioner is not seeking any de-novo revision in the principles applied at the time of determining the tariff, in order dated 26.5.2015 in Petition No. 257/2010, but is only seeking



correction of the error which had occurred at the time of the passing the main order. Accordingly, the Review Petitioner has submitted that the consideration of incorrect GCV values at the time of computing the interest on working capital, constitutes an error apparent on the face of the order, and review on this ground may be allowed.

Analysis and Decision

23. We have examined the submissions of the parties and the documents on record. The Commission in its order dated 26.5.2015 in Petition No. 257/2010 had considered the following parameters of Gross Calorific Value (GCV) and fuel cost for determination of the Interest on Working Capital (IWC) and Energy Charges:

Particulars	Unit	As on COD of GT-I (27.12.2011 to 31.3. 2012) OC Mode	As on COD of ST-I (1.4. 2012 to 15.7.12) (GT-I + I/II ST) CC mode	As on COD of GT-II (16.7. 2012 to 13.12. 2012) in OC Mode	As on COD of ST-I with WHRB-2 / Block-I (14.12. 2012 to 27.10.13) CC Mode	As on COD of GT-III (28.10. 2013 to 26.2. 2014) in OC mode	As on COD of GT-IV (27.2. 2014 to 26.3. 2014) in OC mode	As on COD of Block-II / Station (27.3. 2014 to 31.3. 2014) In CC mode
Capacity	MW	216	342.80	216	685.60	216	216	685.60
Normative PLF (85% PLF)	Hours/kw/ year	7466.40	7466.40	7466.40	7466.40	7466.40	7466.40	7466.40
Gross Station Heat Rate	kCal/kWh	2755.78	1845.14	2755.78	1845.14	2755.78	1845.14	1845.14
Aux. Energy Consumption	%	1.00	3.00	1.00	3.00	1.00	3.00	3.00
GCV of Gas (Average)	kCal/ SCM	9469.98	9602.67	9472.01	9649.09	9690	9731	9661.25
Price of Gas (Average)	Rs/ SCM	13.24	12.92	13.83	13.50	15.01	15.33	15.19
Rate of Energy Charge (ex-bus)	Paise/kWh	389.082	255.998	406.404	266.218	431.284	438.550	299.019

24. However, in paragraph 4.19 of the Petition No. 309/GT/2015, the Review Petitioner had submitted the following:

Particulars	Unit	As on COD of GT-I (27.12.2011 to 31.3.2012) OC Mode	As on COD of ST-I (1.4.2012 to 15.7.2012) (GT-I + I/II ST) CC mode	As on COD of GT-II (16.7.2012) to 13.12.2012 in OC Mode	As on COD of ST-I with WHRB-2 / Block-I (14.12.2012 to 27.10.2013) CC Mode	As on COD of GT-III (28.10.2013 to 26.2.2014) in OC mode	As on COD of GT-IV (27.2.2014 to 26.3.2014) in OC mode	As on COD of Block-II / Station (27.3.2014 to 31.3.2014) In CC mode
Capacity	MW	216	342.80	216	685.60	216	216	685.60
Normative PL (85% PLF)	Hours/kw/ year	7466.40	7466.40	7466.40	7466.40	7466.40	7466.40	7466.40
Gross Station Heat Rate	kCal/kWh	2755.78	1845.14	2755.78	1845.14	2755.78	1845.14	1845.14



Aux. Energy Consumption	%	1.00	3.00	1.00	3.00	1.00	3.00	3.00
GCV of Gas (Average)	kCal/ SCM	9469.98	9602.67	9472.01	9649.09	9690	9731	9661.25
Price of Gas (Average)	Rs/ SCM	13.24	12.92	13.83	13.50	15.01	15.33	15.19
Rate of Energy Charge Paise/kWh (ex-bus)	Paise/kWh	389.082	255.998	406.404	266.218	431.284	438.550	299.019

However, there is minor change in the per unit cost of gas for year 2012-13. The Cost per Unit of gas as per receipt basis is summarized as under:

	Unit	As on COD of GT-I (27.12.2011 to 31.3.2012) OC Mode	As on COD of ST-I (1.4.2012 to 15.7.2012) (GT-I + I/II ST) CC mode	As on COD of GT-II (16.7.2012) to 13.12.2012 in OC Mode	As on COD of ST-I with WHRB-2 / Block-I (14.12.2012 to 27.10.2013) CC Mode	As on COD of GT-III (28.10.2013 to 26.2.2014) in OC mode	As on COD of GT-IV (27.2.2014 to 26.3.2014) in OC mode	As on COD of Block-II / Station (27.3.2014 to 31.3.2014) In CC mode
Capacity	MW	216	342.80	216	685.60	216	216	685.60
Normative PLF (85% PLF)	Hours/kw/ year	7466.40	7466.40	7466.40	7466.40	7466.40	7466.40	7466.40
Gross Station Heat Rate	kCal/kWh	2755.78	1845.14	2755.78	1845.14	2755.78	1845.14	1845.14
Aux. Energy Consumption	%	1.00	3.00	1.00	3.00	1.00	3.00	3.00
GCV of Gas (Average)	kCal/SCM	9470	9613	9472	9643	9690	9732	9662
Price of Gas (Average)	Rs/ SCM	13.27	12.94	13.83	13.63	15.01	15.33	15.19
		13.24	12.92	13.83	13.50	15.01	15.33	15.19

Hon'ble Commission is therefore requested to true up the same while calculating the interest on working capital.

The petitioner has accordingly revised all applicable forms as per Appendix-I and has attached along with the true up petition."

25. The submissions of the Respondent BRPL that truing-up exercise is limited only to the capital cost and that the principles laid down in the previous tariff order(s) cannot be revised during the truing-up exercise, is misconceived, as the Review Petitioner, has only sought the correction of errors in respect of the incorrect GCV values considered at the time of computing the interest on working capital in order dated 26.5.2015 in Petition No. 257/2010 (which was later trued up in order dated 19.11.2019 in Petition No. 309/GT/2015). On scrutiny of the documents available on record, it is noticed that the Review Petitioner, in Form-15 of Petition No. 257/2010, had furnished the actual fuel data corresponding to the respective CODs of different GTs/STs. However, while passing the order dated 26.5.2015, certain inadvertent typographical/ clerical errors had crept in the data considered for the computation of



fuel cost in interest on working capital and the corresponding energy charges. Though the Review Petitioner had brought to the notice of the Commission, the minor changes in the per unit cost of gas, and had submitted the cost per unit of gas, as on receipt basis (as on COD of the different GTs/STs), in paragraph 4.19 of Petition No. 309/GT/2015, as indicated above, the same was inadvertently not considered in the impugned order dated 19.11.2019. As a result of this, the typographical/ clerical errors, which occurred in order dated 26.5.2015 in Petition No.257/2010, had continued in the impugned order dated 19.11.2019 also. This, according to us, is an error apparent on the face of the order and review on this ground is maintainable. Also, there is 'sufficient reason' to correct the errors committed in the previous orders, as the same cannot be perpetuated further. The impugned order is, therefore, rectified on review. Accordingly, the following weighted average GCV and weighted average fuel cost has been considered for the computation of fuel cost in interest on working capital energy charges:

	Unit	As on COD of GT-I (27.12.2011 to 31.3.2012) in OC Mode	As on COD of ST-I (1.4.2012 to 15.7.2012) (GT-I + I/II ST) in CC mode	As on COD of GT-II (16.7.2012 to 13.12.2012) in OC Mode	As on COD of ST-I with WHRB-2 / Block-I (14.12.2012 to 27.10.2013) in CC Mode	As on COD of GT-III (28.10.2013 to 26.2.2014) in OC mode	As on COD of GT-IV (27.2.2014 to 26.3.2014) in OC mode	As on COD of Block-II / Station (27.3.2014 to 31.3.2014) in CC mode
GCV of Gas (weighted Average)	kCal/ SCM	9469.98	9613.28	9471.97	9643.07	9689.75	9731.22	9661.90
Price of Gas (weighted Average)	Rs/ SCM	13.27	12.96	13.83	13.63	15.01	15.33	15.19

26. Issue (B) is decided accordingly.

Issue(C) Non-consideration of the cost of one full module and GT-4 while calculating the working capital for the period from 27.2.2014 to 31.3.2014

Submissions of the Review Petitioner

27. The Review Petitioner has submitted that the Commission, while truing-up the total cost of working capital for the 2009-14 tariff period, had not considered the fuel cost of Gas Turbine No.4, while calculating the fuel cost for one month and receivables for the period from 27.2.2014 to 26.3.2014. The Review Petitioner has



also submitted that for the period from 27.3.2014 to 31.3.2014, only the cost of one module has been considered in arriving at the total fuel cost, even though the second module was declared under commercial operation on 27.3.2014. The Review Petitioner has stated that these aspects were raised by it in paragraph 4.10 of the truing-up petition (Petition No.309/GT/2015), but was not considered by the Commission, while passing the impugned order dated 19.11.2019. The Review Petitioner has reiterated these submissions in its written submissions. Accordingly, the Review Petitioner has prayed that the error apparent on the face of the order may be rectified.

Replies of the Respondents

28. The Respondent, BRPL has submitted that the Commission had arrived at and computed the working capital amounts, after considering that there is no change in the working capital components, as allowed in order dated 26.5.2015 (in Petition No. 257/2010), except for the change in the fixed charges (2 months) in the receivable component, due to revision of the capital cost. It has also submitted that there is no sufficient reason for this Commission to review the above decision. Referring to the judgments of the Hon'ble Supreme Court in Lily Thomas & Ors. v Union of India & Ors. [(2000) 6 SCC 224] and Parsion Devi and Ors. v Sumitri Devi and Ors. [(1997) 8 SCC 715], the Respondent has submitted that the power of review can be exercised for correction of a mistake and not to substitute a view and that the review petition cannot be allowed to be an appeal in disguise. The Respondent TPDDL has submitted that the Commission may examine the same on merits before grant of any relief to the Review Petitioner.

Analysis and Decision

29. We have examined the matter and perused the documents on record. The COD of the GTs/STs (Block I and Block II) of the generating station were declared



on different occasions, with different capacities and the Commission by its order dated 26.5.2015 in Petition No. 257/2010, had determined the tariff of the generating station from COD of Block-I and Block-II till 31.3.2014. However, the Commission, in the said order, while calculating the fuel cost for one month and receivables for the period from 27.2.2014 to 26.3.2014, in terms of Regulation 18(1)(b) of the 2009 Tariff Regulations, had inadvertently not considered the fuel cost of Gas Turbine No.4 (GT-4). Also, for the same period i.e. from 27.3.2014 to 31.3.2014, the cost of one module only was considered, in arriving at the total fuel cost, even though the second module was declared under commercial operation on 27.3.2014. This aspect was raised by the Review Petitioner in paragraph 4.10 of Petition No.309/GT/2015 with a request to allow the fuel cost for computing interest on working capital as under:

“4.10 Fuel Cost

In this regard, petitioner may like to submit that Hon'ble Commission while calculating applicable ECR for the purpose of calculating amount of notional receivables and interest on working capital for the period 27.02.2014 to 26.03.2014 and 27.03.2014 to 31.03.2014 has not considered all the units commercially operational during the period. In case of period 27.02.2014 to 26.03.2014 Hon'ble Commission has taken only Module-1 and GT-3, however, during the period GT-4 was also commercially operated. Therefore, Fuel Cost should also include the fuel cost for operation of GT-4 in Open Cycle. Further, for the period 27.02.2014 to 26.03.2014 both the modules were commercially operational. However, Hon'ble Commission has calculated the amount of Fuel Cost for one module only. The details of the allowed expenditure on above heads and the details of fuel cost allowed by Hon'ble Commission are as under:

Table 1: Details of fuel cost allowed by the Commission

(Rs. in lakh)							
27.12.2011 to 31.3.2012	1.4.2012 to 15.7.2012	16.7.2012 to 13.12.2012	14.12.2012 to 31.3.2012	1.4.2013 to 27.10.2013	28.10.2013 to 26.2.2014	27.2.2014 to 26.3.2014	27.3.2014 to 31.3.2014
5176.78	5281.91	5392.48	10674.38	10985.57	5722.61	5819.02	12339.11

However actual details of final fuel cost for one month as per CERC Regulation, 2009 is as under:

Table 4: Details of claimed fuel cost

(Rs. in lakh)							
27.12.2011 to 31.3.2012	1.4.2012 to 15.7.2012	16.7.2012 to 13.12.2012	14.12.2012 to 31.3.2012	1.4.2013 to 27.10.2013	28.10.2013 to 26.2.2014	27.2.2014 to 26.3.2014	27.3.2014 to 31.3.2014
5191.76	5248.08	5392.88	11091.81	11091.81	5721.34	11636.18	24681.05

The Commission is therefore requested to allow the above fuel cost for computing interest on working capital.”



30. Admittedly, the Review Petitioner had brought to the notice of the Commission, the non-consideration of the fuel cost of GT-4 (for calculation of fuel cost for one month and receivables) and the cost of second module (for arriving at the total fuel cost) for the purpose of calculation of working capital and had also placed on record, the details of the fuel cost claimed in Petition No. 309/GT/2015. However, these submissions appear to have escaped the consideration of the Commission, while passing the impugned order dated 19.11.2019. This according to us, is an error apparent on the face of the order, as the said errors in the order dated 26.5.2015 in Petition No. 257/2010, have continued in the impugned order also. There is 'sufficient reason' to correct the inadvertent errors which had crept in the previous order(s) as narrated above and review on this ground is, therefore, maintainable. Accordingly, we consider the fuel cost for GT-4 and the cost of second module for the purpose of calculation of working capital, for the period from 27.2.2014 to 26.3.2014.

31. Thus, after rectification/ correction of the errors in the computation of value of GCV and fuel cost and considering the capacity of GT-4 and the second module for the period from 27.2.2014 to 26.3.2014, as stated in paragraphs 25 and 30 above, the fuel cost for the purpose of calculation of working capital and Energy Charges are re-calculated and allowed as under:

	<i>(Rs.in lakh)</i>							
	27.12.2011 to 31.3. 2012	1.4.2012 to 15.7.2012	16.7.2012 to 13.12.2012	14.12.2012 to 31.3.2012	1.4.2013 to 27.10.2013	28.10.2013 to 26.2.2014	27.2.2014 to 26.3.2014	27.3.2014 to 31.3.2014
One month fuel cost (Rs.in Lakh)	5191.69	5292.53	5392.28	11091.70	11091.70	5722.88	11638.05	24676.56
Rate of Energy Charge Rs./kWh (ex-bus)	3.902	2.565	4.064	2.688	2.688	4.313	4.386	2.990

32. Issue(C) is decided accordingly.



Issue (D) Typographical and estimation error in arriving at fixed component of receivables of the working capital in table of paragraph 46 for the period from 2011-12 till 2013-14.

Submissions of the Review Petitioner

33. The Review Petitioner has submitted that the Commission, while computing the working capital, had made certain typographical and arithmetical errors in paragraph 46 of the impugned order dated 19.11.2019, to the extent that the value of fuel stock and receivable (variable charges), appears to have got interchanged. In addition to this, the Review Petitioner has submitted that receivables (fixed charges component) for determining the total working capital, should include two months of the annual fixed charges component, as provided in Regulation 18 of the 2009 Tariff Regulations. It has further submitted that while determining the annualized value of working capital in the table under paragraph 46, only 1/6th of the respective fixed charges (as determined in the table under paragraph 47) for the respective period of operation of the units, has been considered in the impugned order. This, according to the Review Petitioner, is erroneous in as much as the value of the fixed cost component in paragraph 47 of the impugned order dated 19.11.2019, is only for the actual days of operation of unit(s) for the respective periods. The Review Petitioner has, therefore, submitted that the error apparent on the face of the order may be rectified.

Replies of the Respondents

34. The Respondent BRPL has submitted that the typographical and estimation errors in arriving at the fixed component of receivables of the working capital in the table under paragraph 46 of the impugned order, deserves interference by this Commission, owing to the typographical errors in the value of stock and receivable (variable charge) being interchanged. The Respondent, TPDDL has submitted that the receivable (fixed charges) has been increased, after recalculation by the Review Petitioner, but no clarification for the same has been furnished. It has further



submitted that the Review Petitioner is required to provide the calculation of the fixed charges computed, as per revised submissions.

Analysis and Decision

35. We have considered the submissions and perused the documents on record. It is observed that certain inadvertent arithmetical/ clerical errors had crept in the impugned order dated 19.11.2019, while calculating the receivables (fixed charges component) for the purpose of determining the total working capital for the period from 2011-12 till 31.3.2014, as pointed out by the Review Petitioner. This, according to us, is an error apparent on the face of the order and the same is rectified on review.

36. Issue (D) is decided accordingly.

Issue (E) Disallowance of the Normative Interest During Construction on the actual cash flow even upto the Scheduled Commercial Operation Date in paragraphs 27 and 28 of the impugned order

Submissions of the Review Petitioner

37. The Review Petitioner has submitted that the Commission has disallowed the normative IDC up to the scheduled COD on the ground that the Review Petitioner has not submitted the actual fund flow up to the Scheduled COD. This according to the Review Petitioner is factually incorrect and an error apparent on the face of record as the Review Petitioner had duly placed the requisite documents before the Commission, as under:

(i) Affidavit dated 13.10.2014 (Form No. 14A) filed in compliance with the Letters dated 26.9.2014 and 11.7.2014 issued by this Commission in Petition No. 257 of 2010;

(ii) Affidavit dated 5.12.2014 filed in Petition No. 257 of 2010 in compliance with the Record Of Proceedings dated 11.11.2014 issued by the Commission in Petition No. 257 of 2010; and

(iii) Form 14A of the tariff filing forms filed in Petition No. 309/GT/2015.



38. In addition, the Review Petitioner has submitted that APTEL in its judgment dated 12.7.2018 in Appeal No. 175 of 2015 (PPCL v CERC & ors) had observed as under:

*“.....Further, in absence of details of IDC apportionment as on COD of GT(s)/ Block (s) which are not provided by the Appellant the Central Commission has arrived at the figure of Rs. 27.09 Cr. as allowable IDC, **which in any case would be adjusted as and when the Appellant provides the details as directed by the Central Commission during truing up exercise.**”*

39. Accordingly, the Review Petitioner has submitted that APTEL had proceeded on the basis that IDC, as computed in the order dated 26.5.2015, would be adjusted on the basis of the details provided by the Review Petitioner. The Review Petitioner has pointed out that even assuming that the Review Petitioner is entitled to IDC only up to SCOD, the total amount works out to Rs 214 crore, whereas the Commission had allowed only Rs.27.09 crore. Referring to the judgment of APTEL dated 3.10.2019 in Appeal No. 231 of 2017 (Powerlinks Transmission Limited v CERC & ors), the Review Petitioner has stated that all the funds deployed need to be serviced including the equity so infused. The Review Petitioner has submitted that since the details were provided by the Review Petitioner, the non-consideration of the same constitutes an error apparent on the face of record or otherwise constitutes a sufficient reason for review of the impugned order dated 19.11.2019.

Replies of the Respondents

40. The Respondent BRPL has submitted that the Commission had disallowed the normative IDC up to the scheduled COD, in paragraph 27 of the impugned order dated 19.11.2019 on the ground that the Review Petitioner had not submitted the actual fund flow up to the scheduled COD. It has also submitted that the Commission, in terms of the decision of the APTEL in Appeal No. 175 of 2015, had considered the submissions of the Review Petitioner, for allowance of normative IDC and, accordingly, there was no revision in the IDC. The Respondent has further



submitted that the expression 'any other sufficient reason' used in Order 47 Rule 1 CPC, means 'a reason sufficiently akin' to those specified in the said Rule. Accordingly, the Respondent has submitted that the Review Petition is liable to be dismissed as not maintainable, both on preliminary grounds as well as merits. The Respondent TPDDL has submitted that the Review Petitioner had not claimed normative IDC in tariff calculation as per Regulation 7(1)(a) of the 2009 Tariff Regulations and the same is based on the capital cost, without normative IDC. It has also submitted that for computation of normative IDC, the Review Petitioner, instead of using actual cash expenditure, has used the capital cost as on 31.3.2014 by spreading it equally in all quarters up to the scheduled COD. The Respondent has further submitted that the amount of Rs. 435519 lakh is not the expenditure, but also includes un-discharged liabilities of Rs.7697.46 lakh as submitted by the Review Petitioner. It has further stated that in the absence of audited balance sheet, no estimate of actual cash expenditure and allowance of normative IDC could be undertaken. The Respondent has added that the Review Petitioner had not furnished the details with respect to quarterly infusion of funds in support of the computation. Accordingly, the Respondent has prayed that review on this ground may be disallowed.

Written Submissions of the Respondent BRPL

41. The Respondent BRPL, in its written submissions, has submitted that the Commission in the impugned order had categorically noted that the Review Petitioner had failed to provide the audited balance sheet for each unit and therefore no prudence check of the actual cash expenditure could be undertaken. It has also submitted that the Commission had also noted that IEDC/IDC was being disallowed in terms of the judgment dated 12.7.2018 of APTEL in Appeal No. 175 of 2015. The Respondent has pointed out that in the affidavits dated 13.10.2014 and 5.12.2014, filed by the Petitioner in Petition No.257/2010, it was mandated to provide the actual



expenditure for each unit and not for the entire generating station. The Respondent has further submitted that the Commission in its order dated 26.5.2015 in Petition No.257/2010, had categorically directed the Review Petitioner to furnish the detailed calculations for unit-wise allocation of the total IDC, at the time of truing-up of tariff. However, in the truing-up petition (Petition No.309/GT/2015), the Review Petitioner has filed Form-14A, which provides for the financing details of IDC components, but not the unit-wise details of the 'actual capital expenditure', as directed by the Commission. The Respondent has also submitted that the Review Petitioner had submitted the actual capital expenditure of the entire generating station in Petition No.309/GT/2015, contrary to the categorical directions of providing the unit-wise computation in order dated 26.5.2015 in Petition No. 257 of 2010. It has pointed out that the issue of disallowance of IEDC/IDC by order dated 26.5.2015 in Petition No. 257 of 2010, was also raised by the Review Petitioner before APTEL in Appeal No. 175 of 2015 and vide judgment dated 12.7.2018, the APTEL had upheld the findings of the Commission. Thereafter, the Review Petitioner had filed Review Petition (R.P. No. 1 of 2019) against the said judgment before APTEL, which was also dismissed by APTEL vide its judgment dated 28.1.2020.

Written Submissions of the Review Petitioner

42. The Review Petitioner, in its written submissions, has mainly reiterated the submissions made in the review petition. It has, however, added that the import of the judgment dated 12.7.2018 in Appeal No.175 of 2015 on this issue, has been clarified by APTEL in its order dated 28.1.2020 in Review Petition No. 1 of 2019 (filed by the Review Petitioner against the said judgment dated 12.7.2018) that it is open for this Commission to consider the audited accounts relating to deployment of funds at the time of truing up of tariff. The Review Petitioner has further stated that in the case of Muzaffarpur Thermal generating station of KBUNL, this Commission, in



its order dated 27.1.2020 in the Review Petition No. 11/RP/2019, had also taken cognizance of the judgment of APTEL dated 3.10.2019 in Appeal No. 231 of 2017 and observed that the same would be considered at the time of truing up of tariff. Accordingly, the Review Petitioner has submitted that non-consideration of the aforementioned facts, amounts to an error apparent on the face of record or sufficient cause to review the impugned order dated 19.11.2019.

Analysis and Decision

43. We have examined the matter and perused the documents on record. As regards IDC, the Commission in its order dated 26.5.2015 in Petition No.257/2010 had allowed IDC as under:

“38. As stated, the total time overrun involved in the commissioning of the project has not been allowed and accordingly the cost overrun due to time overrun has not been allowed. Therefore, IDC has not been allowed for the time over run period of 21 months, 26 months, 28½ months, 39 months, 41 months, 40 months in the commissioning of GT-I, GT-II, Block-I, GT-III, GT-IV and Block-II respectively. Despite directions of the Commission, the petitioner has not furnished the detailed calculations for unit-wise allocation of the total IDC. Therefore, the interest amount of Rs.4941 lakh worked up to 30.11.2010 (scheduled COD of the generating station) has been apportioned between capital and revenue, based on the same proportion as considered by the petitioner vide affidavit dated 5.12.2014. The petitioner is however directed to furnish the detailed calculations for unit-wise allocation of the total IDC at the time of revision of tariff based on truing-up exercise in terms of Regulation 6(1) of the 2009 Tariff Regulations.

39. On the basis of the above, out of total interest of `4941 lakh, an amount of Rs.2709.40 lakh has been treated as IDC and the same has been allocated to the various units based on the total IDC vis-a vis the unit-wise IDC claimed by the petitioner.”

44. In the appeal (Appeal No.175/2015) filed by the Review Petitioner against the findings in order dated 26.5.2015, as quoted above, the APTEL in its judgment dated 12.7.2018 had observed as under:

“.....Further, in absence of details of IDC apportionment as on COD of GT(s)/ Block (s) which are not provided by the Appellant the Central Commission has arrived at the figure of Rs. 27.09 Cr. as allowable IDC, which in any case would be adjusted as and when the Appellant provides the details as directed by the Central Commission during truing up exercise.”

45. In the impugned order dated 19.11.2019 in Petition No.309/GT/2015, the Commission had decided the following:



"27. It is observed that the Petitioner has not claimed normative IDC in the tariff calculation as defined in Regulations 7(1)(a) of the 2014 tariff Regulations and the same is based on the capital cost without normative IDC. As regards the computation of normative IDC as submitted by the Petitioner, it is observed that the same is not based on the actual cash expenditure incurred. Instead, the Petitioner has considered the capital cost of ₹435519.00 lakh (excluding IDC of ₹43478.00 lakh) as on 31.3.2014 by spreading equally in all quarters up to the scheduled COD. It is further noticed that the amount of ₹435519.00 lakh is not the cash expenditure and includes un-discharged liabilities of ₹7697.46 lakhs. The amount of ₹435519.00 lakh has been considered by the Petitioner as on quarter-3 of 2010-11, whereas, the same is the capital cost as on 31.3.2014. As stated, the Petitioner has submitted that the balance sheets for the generating station are not available since the same are prepared for the company as a whole. Hence, in absence of audited station balance sheets, no prudence check of the actual cash expenditure and allowance of normative IDC there on could be undertaken. Further, the Petitioner has not furnished the details with respect to quarterly infusion of funds in support of the computation. It is further observed that in Appeal No. 175/2015 filed by the Petitioner before the Tribunal, wherein the issue of "Disallowance of normative IDC" was raised, the tribunal had rejected the prayer of the Petitioner as under:

"c) Now we let us take the question of law related to second issue regarding normative debt: equity ratio for the purpose of IDC until SCOD. On Question No. 6. c) i.e. Whether the Central Commission in computing the interest on loan has acted in violation of Regulation 12 of the Tariff Regulations 2009 which provides for normative debt : equity ratio of 70:30?, we consider as below:

.....
iv. We observe that the Regulation 12 and 16 of the Tariff Regulations 2009 relied by the Appellant provides for consideration of equity invested beyond 30% as normative debt from COD for the purpose of tariff determination. The Appellant has contended to apply the same principle during the construction period also, which in our opinion is flawed. However, from the submissions of the Appellant it is clear that the Appellant has been deploying only equity since 2008-09 before first drawal of loan on 5.2.2010. However, it is observed that the Central Commission has taken actual interest on loan on payment basis during construction for the purpose of capitalisation as on COD of GT(s)/ Block(s) based on the claim of the Appellant vide revised forms submitted by it on affidavit dated 5.12.2014. Further, in absence of details of IDC apportionment as on COD of GT(s)/ Block (s) which are not provided by the Appellant the Central Commission has arrived at the figure of Rs. 27.09 Cr. as allowable IDC, which in any case would be adjusted as and when the Appellant provides the details as directed by the Central Commission during truing up exercise....."

28. In terms of the decision of the Tribunal as above, the submission of the Petitioner for allowance of normative IDC has not been considered. Accordingly, there is no revision in the IDC allowed by the Commission's order dated 26.5.2015."

46. In the Review Petition No. 1 of 2019 filed by the Review Petitioner (against the judgment of APTEL dated 12.7.2018 in Appeal No.175 of 2015), APTEL vide its order dated 28.1.2020 clarified as under:

10. The main grievance of the Petitioner seeking review concerns the observations in sub-para (iii) of para 11(c) of the decision on appeal, which portion we have highlighted (in bold). It has been argued on behalf of the Petitioner that the observation in the said para denying the abovementioned benefits, upholding the approach of CERC to be "correct", would clinch the issue finally against it, to its disadvantage at the stage of truing-up exercise in the relevant period, rendering the later observations in



sub-para (iv) that there would be adjustment as and when requisite details are provided meaningless. It is also submitted that since the Appeal was “dismissed” as devoid of merits, there is an apprehension that CERC at the stage of truing-up may decline to consider the relevant data or the contentions of the Petitioner based on conjoint reading of Regulations 7 and 12.

11. On careful scrutiny of the matter, we find that CERC was unable to give consideration to the actuals because the relevant details were not provided. The lament of the Commission about default on the part of the Petitioner in furnishing the requisite details compelling it to proceed on normative basis runs through the impugned order. Mercifully, the Commission clearly observed, as has been duly noted in the order under review, that necessary adjustment on account of IDC apportionment would be provided “during truing up exercises” subject to the Petitioner furnishing the details as directed.

12. We must note here that the Petitioner has not offered any justification whatsoever for failure on its part to furnish the detailed information in absence of which the Commission was constrained to take restricted view. It is not the case of the Petitioner that information was not available or that the information, which was called for, had no relevance to the issues. Undoubtedly, by the time the truing-up exercise comes up, the audited accounts would be available.

13. We are confident that the Commission, hopefully having the benefit of the requisite data to be furnished by the Petitioner, while undertaking truing-up exercise and, of course, tariff determination for subsequent periods will bear in mind the Tariff Regulations in entirety including the width and scope of the expression “capital cost”, as defined by Regulation 7.

14. We do not have the least doubt that the Commission would abide by the assurance held out to the above noted effect in the order which was challenged by the Appeal, at the stage of truing-up. Mere fact that the appeal was dismissed as devoid of merits does not mean the said assurance of the Commission is rendered nugatory. Apprehensions of the Petitioner to such effect as noted earlier are unfounded and misplaced.”

47. The Respondent BRPL has submitted that the directions of the Commission in order dated 26.5.2015 in Petition No.257/2010, to the Review Petitioner to furnish the detailed calculation for unit-wise allocation of the total IDC at the time of truing up of tariff had not been complied with by the Review Petitioner in Petition No.309/GT/2015. It has also submitted that the findings of the Commission in its order dated 26.5.2015 in Petition No.257/2010 rejecting the claim of the Review Petitioner had been affirmed by the APTEL vide its judgment dated 12.7.2018 in Appeal No.175/2015, the impugned order dated 19.11.2019 in Petition No. 309/GT/2015 and by APTEL vide order dated 28.1.2020 in RP No.1/2019. Per contra, the Review Petitioner has submitted that APTEL in its judgment dated 12.7.2015 had proceeded on the basis that the IDC as computed in order dated



26.5.2015 was to be adjusted on the basis of the details provided by the Review Petitioner. It has also pointed out that the APTEL in its order dated 28.1.2020 in RP No. 1/2019 had clarified that it was open for this Commission to consider the audited accounts relating to deployment of funds at the time of truing up of tariff.

48. Admittedly, the Review Petitioner, in Petition No.257/2010, had not furnished the details of IDC apportionment as on COD of GT(s)/ Block(s) and therefore, the IDC of Rs.27.09 crore was only allowed in order dated 26.5.2015, which was, however, made subject to the Review Petitioner furnishing calculations for unit-wise allocation of the total IDC, at the time of truing-up of tariff. From the judgment dated 12.7.2018 of the APTEL (in Appeal 175 of 2015), upholding the said order of the Commission, we note that APTEL had observed that the allowable IDC (Rs.27.09 crore) was adjustable, as and when the Review Petitioner, provides details as directed by the Commission, during truing up exercise. Apart from the affidavits dated 13.10.2014 and 5.12.2014 filed in Petition No. 257/2010, the Review Petitioner had also filed Form 14A of the tariff filing form at the time of truing-up of tariff in Petition No. 309/GT/2015. Despite the observations of APTEL and the availability of the documents on record, as aforesaid, the normative IDC was not considered in the impugned order dated 19.11.2019, on the ground that the Review Petitioner had not furnished any details. Moreover, APTEL in its order dated 28.1.2020 in RP No.1/2019, had clarified that the details furnished by the Review Petitioner, may be considered at the time of truing up of tariff. In view of this, the contentions of the Respondents BRPL and TPDDL that the claim of the Review Petitioner is not maintainable are misplaced. Though the Review Petitioner had not furnished the project balance sheet, it had, in Petition No.309/GT/2015, furnished Form-14A, which appears to have escaped the attention of the Commission, while passing the impugned order dated 19.11.2019, thereby resulting in the disallowance of the



normative IDC. The Hon'ble Supreme Court in Indian Charge Chrome Ltd. v. Union of India had observed that review is permissible on account of manifest errors which have crept up in the judgment under review, resulting in grave miscarriage of justice. In this background, we hold that the non-consideration of the documents filed by the Review Petitioner with regard to IDC while passing the impugned order dated 19.11.2019, is an error apparent on the face of the order, and review on this ground is maintainable. Also, there is sufficient reason to review the order on this ground. Accordingly, the details furnished by the Review Petitioner, in Form-14A of the Petition No.309/GT/2015 is considered for the purpose of considering the normative IDC, allowable in terms of Regulation 7(1)(a) of the 2009 Tariff Regulations.

49. Issue (E) is decided accordingly.

Revision of tariff for 2011-14

50. Based on the above discussions and after scrutiny of the details of the quarterly debt-equity position corresponding to the actual cash expenditure, furnished by the Review Petitioner, the allowable normative IDC, over and above the actual IDC of Rs.2709.40 lakh already allowed in the impugned order dated 19.11.2019 in Petition No.309/GT/2015, works out to Rs.4021.88 lakh in terms of Regulation 7(1)(a) of the 2009 Tariff Regulations. This has been considered for the purpose of truing-up of tariff of the generating station of the Review Petitioner for the period 2011-14. Therefore, the tariff determined by the Commission vide its order dated 19.11.2019 in Petition No.309/GT/2015, in respect of the generating station for the period from 27.12.2011 to 31.3.2014 shall stand revised, as stated in the subsequent paragraphs.



Capital Cost:

	2011-12		2012-13		2013-14			
	27.12.2011 (COD of GT-1) to 31.3.2012	1.4.2012 (COD of STG-I & HRSG-I) to 15.7.12	16.7.12 (COD of GT-II) to 13.12.12	14.12.12 (Block-I) to 31.3.13	1.4.13 to 27.10.13	28.10.13 (COD of GT-III) to 26.2.14	27.2.14 (COD of GT-IV) to 26.3.14	27.3.14 (COD of STG-II / Project) to 31.3.14
Opening capital cost as on COD / 1 st April excluding IDC	96552.71	147284.98	204252.48	219678.56	219052.85	266925.09	309677.62	378266.04
Less: Exchange variation disallowed	283.47	431.61	598.85	644.14	0.00	782.80	908.31	1109.68
Add: Cumulative IDC	403.9	662.16	989.97	1114.16	1114.16	1578.3	1983.75	2709.40
Less: Un-discharged liabilities (cumulative)	6584.01	7684.54	9123.26	9183.81	9183.81	9771.42	10289.57	10396.42
Add: Normative IDC allowed	4021.88	4021.88	4021.88	4021.88	4021.88	4021.88	4021.88	4021.88
Opening capital cost including IDC and excluding un-discharged liabilities	94111.01	143852.87	199542.22	214986.65	215005.08	261971.05	304485.37	373491.22
Additional capitalization allowed	3030.33	0.00	0.00	215.7	0.00	0.00	0.00	10102.65
Add: Discharge of liability	0.00	0.00	0.00	1830.4	0.00	0.00	0.00	869.46
Add: Additional expenditure missed in Petition No. 257/2010, now added in the claim	272.97	0.00	0.00	18.43	0.00	0.00	0.00	99.60
Closing capital cost	97414.31	143852.87	199542.22	217051.18	215005.08	261971.05	304485.37	384562.93

Return on Equity:

	(Rs. in lakh)							
	27.12.2011 to 31.3.2012	1.4.2012 to 15.7.2012	16.7.2012 to 13.12.2012	14.12.2012 to 31.3.2013	1.4.2013 to 27.10.2013	28.10.2013 to 26.2.2014	27.2.2014 to 26.3.2014	27.3.2014 to 31.3.2014
Gross Notional Equity	28233.30	43155.86	59862.67	64495.99	64501.52	78591.31	91345.61	112047.37
Addition due to Additional Capital Expenditure	990.99	0.00	0.00	619.36	0.00	0.00	0.00	3321.51
Closing Equity	29224.29	43155.86	59862.67	65115.35	64501.52	78591.31	91345.61	115368.88
Average Equity	28728.80	43155.86	59862.67	64805.67	64501.52	78591.31	91345.61	113708.12
Return on Equity (Base Rate)	15.500%	15.500%	15.500%	15.500%	15.500%	15.500%	15.500%	15.500%
Tax rate (MAT)	20.008%	20.008%	20.008%	20.008%	20.961%	20.961%	20.961%	20.961%
Rate of Return on Equity (Pre Tax)	19.377%	19.377%	19.377%	19.377%	19.611%	19.611%	19.611%	19.611%
Return on Equity (Pre Tax)	1460.13	2428.50	4798.72	3715.60	7277.57	5151.48	1374.18	305.46



Interest on loan:

(Rs. in lakh)

	27.12.2011 to 31.3.2012	1.4.2012 to 15.7.2012	16.7.2012 to 13.12.2012	14.12.2012 to 31.3.2013	1.4.2013 to 27.10.2013	28.10.2013 to 26.2.2014	27.2.2014 to 26.3.2014	27.3.2014 to 31.3.2014
Gross Notional Loan	65877.71	100697.01	139679.55	150490.65	150503.56	183379.73	213139.76	261443.85
Cumulative Repayment of Loan up to previous year	0.00	1243.10	3313.98	7490.98	10732.53	17006.05	21463.25	22659.17
Net Opening Loan	65877.71	99453.91	136365.57	142999.67	139771.03	166373.69	191676.51	238784.68
Addition due to Additional Capitalisation	2312.31	0.00	0.00	1445.17	0.00	0.00	0.00	7750.20
Repayment of Loan during the period	1243.10	2070.88	4177.00	3241.55	6273.52	4457.21	1195.92	265.84
Net Closing Loan	66946.91	97383.02	132188.57	141203.30	133497.51	161916.48	190480.59	246269.04
Average Loan	66412.31	98418.46	134277.07	142101.48	136634.27	164145.09	191078.55	242526.86
Weighted Average Rate of Interest on Loan	11.796%	11.811%	11.811%	11.822%	11.580%	11.567%	11.526%	11.480%
Interest on Loan	2054.91	3375.78	6561.00	4970.91	9103.31	6346.11	1689.42	381.41

Depreciation:

(Rs. in lakh)

	27.12.2011 to 31.3.2012	1.4.2012 to 15.7.2012	16.7.2012 to 13.12.2012	14.12.2012 to 31.3.2013	1.4.2013 to 27.10.2013	28.10.2013 to 26.2.2014	27.2.2014 to 26.3.2014	27.3.2014 to 31.3.2014
Opening Gross Block	94111.01	143852.87	199542.22	214986.65	215005.08	261971.05	304485.37	373491.22
Addition during 2009-14 due to Actual/ Projected Additional Capitalisation	3303.30	-	-	2064.53	-	-	-	11071.71
Closing Gross Block	97414.31	143852.87	199542.22	217051.18	215005.08	261971.05	304485.37	384562.93
Average Gross Block	95762.66	143852.87	199542.22	216018.91	215005.08	261971.05	304485.37	379027.07
Rate of Depreciation	4.949%	4.957%	5.060%	5.071%	5.071%	5.090%	5.120%	5.120%
Depreciable Value	86186.39	129467.58	179588.00	194417.02	193504.57	235773.94	274036.83	341124.37
Depreciation (for the period)	1243.10	2070.88	4177.00	3241.55	6273.52	4457.21	1195.92	265.84
Cumulative Depreciation (at the end of the year)	1243.10	3313.98	7490.98	10732.53	17006.05	21463.25	22659.17	22925.01
Cumulative Depreciation reduction due to de-capitalization	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Cumulative Depreciation after adjustment due to de-capitalization (at the end of the period)	1243.10	3313.98	7490.98	10732.53	17006.05	21463.25	22659.17	22925.01



Operation & Maintenance Expenses:

(Rs. in lakh)							
27.12.2011 to 31.3.2012	1.4.2012 to 15.7.2012	16.7.2012 to 13.12.2012	14.12.2012 to 31.3.2013	1.4.2013 to 27.10.2013	28.10.2013 to 26.2.2014	27.2.2014 to 26.3.2014	27.3.2014 to 31.3.2014
1494.82	2358.70	4922.92	4177.24	8516.86	6282.82	1748.33	376.44

Interest on Working Capital:

(Rs. in lakh)								
	27.12.2011 to 31.3.2012	1.4.2012 to 15.7.2012	16.7.2012 to 13.12.2012	14.12.2012 to 31.3.2013	1.4.2013 to 27.10.2013	28.10.2013 to 26.2.2014	27.2.2014 to 26.3.2014	27.3.2014 to 31.3.2014
O&M expenses	474.92	676.83	991.65	1176.46	1233.59	1566.41	1899.23	2289.99
Receivables (Fixed Charges)	4407.34	6445.53	8909.65	10170.95	10134.15	11886.15	14328.31	18437.35
Receivables (Variable Charges)	5191.69	5292.53	5392.28	11091.70	11091.70	5722.88	11638.05	24676.56
Maintenance Spares	1709.70	2436.58	3569.93	4235.25	4440.93	5639.09	6837.24	8243.96
Fuel Stock	10383.38	10585.06	10784.56	22183.40	22183.40	11445.76	23276.10	49353.12
Total Working Capital	22167.03	25436.53	29648.07	48857.76	49083.78	36260.29	57978.93	103000.98
Interest Rate	11.75%	13.50%	13.50%	13.50%	13.50%	13.20%	13.20%	13.20%
Interest on Working Capital	683.18	997.25	1655.82	1951.63	3812.40	1599.82	587.10	186.25

Annual Fixed Charges:

(Rs. in lakh)								
	27.12.2011 to 31.3.2012	1.4.2012 to 15.7.2012	16.7.2012 to 13.12.2012	14.12.2012 to 31.3.2013	1.4.2013 to 27.10.2013	28.10.2013 to 26.2.2014	27.2.2014 to 26.3.2014	27.3.2014 to 31.3.2014
Return on Equity	1460.13	2428.50	4798.72	3715.60	7277.57	5151.48	1374.18	305.46
Interest on Loan	2054.91	3375.78	6561.00	4970.91	9103.31	6346.11	1689.42	381.41
Depreciation	1243.10	2070.88	4177.00	3241.55	6273.52	4457.21	1195.92	265.84
Interest on Working Capital	683.18	997.25	1655.82	1951.63	3812.40	1599.82	587.10	186.25
O&M Expenses	1494.82	2358.70	4922.92	4177.24	8516.86	6282.82	1748.33	376.44
Annual Fixed Charges	6936.14	11231.11	22115.46	18056.92	34983.65	23837.44	6594.95	1515.40

51. The difference in the tariff determined by this order and the tariff recovered by the Review Petitioner in terms of the order dated 19.11.2019 in Petition No. 309/GT/2015 shall be adjusted as per Regulation 6(6) of the 2009 Tariff Regulations.

52. Review Petition No. 3/RP/2020 is disposed of in terms of the above.

Sd/-
(I.S.Jha)
Member

Sd/-
(P.K.Pujari)
Chairperson