

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 7/RP/2022

in

Petition No. 293/GT/2020

Coram:

Shri P. K. Pujari, Chairperson

Shri I. S. Jha, Member

Shri Pravas Kumar Singh, Member

Date of Order: 24th May, 2022

In the matter of

Review of Commission's order dated 11.1.2022 in Petition No. 293/GT/2020 with regard to truing-up of tariff of Simhadri Super Thermal Power Station, Stage-II (1000 MW) for the 2014-19 tariff period.

And

In the matter of

NTPC Limited,
NTPC Bhawan
Core-7, Scope Complex,
7, Institutional Area, Lodhi Road
New Delhi-110003

Petitioner

.....Review

Vs

1. AP Eastern Power Distribution Company Limited,
Corporate Office, P&T Colony, Seethamadhara,
Visakhapatnam – 530 013 - (AP)
2. AP Southern Power Distribution Company Limited,
Corporate Office, Back Side Srinivasa Kalyana Mandapam,
Tiruchhanur Road, Kesavayana Gunta,
Tirupathi – 517 503 (AP)
3. Telangana State Northern Power Distribution Company Limited,
H.No. 2-5-31/2, Vidyut Bhavan, Nakkalagutta, Hanamkonda
Warangal – 506 001 (AP)
4. Telangana State Southern Power Distribution Company Limited,
Mint Compound, Corporate Office,
Hyderabad (AP) – 500 063



5. Tamil Nadu Generation & Distribution Corporation Limited,
144, Anna Salai,
Chennai – 600 002
6. Bangalore Electricity Supply Company Limited,
Krishna Rajendra Circle,
Bangalore - 560 009
7. Mangalore Electricity Supply Company Limited,
MESCOM Bhavan, Corporate Office,
Bejai, Kavoor cross road,
Mangaluru-575004, Karnataka
8. Chamundeshwari Electricity Supply Corporation Limited,
Corporate Office, No. 29, Vijayanagar, 2nd stage, Hinkal,
Mysore – 570 017.
9. Gulbarga Electricity Supply Company Limited,
Main road,
Gulbarga – 585 102, Karnataka
10. Hubli Electricity Supply Company Limited,
Corporate office, P.B.Road, Navanagar,
Hubli – 580 025
11. Kerala State Electricity Board Limited,
Vaidyuthi Bhavanam, Pattom,
Thiruvananthapuram – 695 004
12. Electricity department,
Government of Puducherry, 137, NSC Bose Salai,
Puducherry- 605001

...Respondents

Parties Present:

Ms. Shikha Ohri, Advocate, NTPC
Ms. Surabhi Pandey, Advocate, NTPC
Shri S.Vallinayagam, Advocate, TANGEDCO
Ms. R.Ramalakshmi, TANGEDCO
Ms. R.Alamelu, TANGEDCO

ORDER

Petition No. 293/GT/2020 was filed by the Review Petitioner, for truing-up of tariff of Simhadri Super Thermal Power Station, Stage-II (1000 MW) (in short ‘the generating station’) for the 2014-19 tariff period and the Commission vide its order dated 11.1.2022 (in short “the impugned order”) disposed of the same in terms of the



Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “the 2014 Tariff Regulations”). Aggrieved by the impugned order dated 11.1.2022, the Petitioner has sought review on the ground of error apparent on the face of the order, raising the following issues:

- a) *Error in the disallowance of ‘Ash transportation expenses’;*
- b) *Error in the disallowance of AEC on account of use of sea water;*
- c) *Error in the disallowance of discharge of liability for admitted works;*
- d) *Error in the computation of loan repayment adjustment on account of decapitalization;*
- e) *Error in the consideration of depreciation rate for 2014-15 and 2015-16;*
- f) *Error in the rate of interest of loan;*
- g) *Typographical error;*
- h) *Error in Normative O&M expenses.*

2. The Review Petition was heard ‘on admission’ through video conferencing on 26.4.2022. After hearing the oral submissions of the learned counsel of the Petitioner and the learned counsel for the Respondent, TANGEDCO, the Commission reserved its order on ‘admissibility’.

3. Based on the submissions of the parties and documents on record, the issues raised by the Review Petitioner, is disposed of at the ‘admission’ stage as stated in the subsequent paragraphs:

(A) Error in the disallowance of ‘Ash Transportation expenses’

4. The Commission in the impugned order dated 11.1.2022 had observed as under:

“192. However, it is noticed that the Petitioner has only furnished the Auditor Certificate and Conveyance charges of materials-common Schedule of Rates, 2017-18, but has not submitted the relevant information required in terms of the MoEF&CC notification dated 25.1.2016 (such as the quantum of ash transported, locations, the distance of the end user (in km), the applicable awarded rate in Rs./ton per kilometer, name of the transporters, etc.). From the details furnished by the Petitioner, it is not clear as to the (i) the quantum of ash, (ii) if ash transportation is beyond 100 km radius or less than 100 km radius, and (iii) if the sharing of 50% of ash transportation expenses to be shared between the ash (end) user and the Thermal Power plant as stipulated in MoEF&CC notification, were excluded from the claim or not. Therefore, in the absence of the above required information, we are not inclined to allow the said



expenditure towards fly ash transportation. However, the Petitioner is granted liberty to file a separate petition with all the supporting documents and justification for the claim of expenditure towards fly ash transportation.”

5. The Review Petitioner has submitted that the Commission by impugned order dated 11.1.2022 had not allowed an expenditure of Rs.2453.69 lakh towards “fly ash transportation’ on account of the Review Petitioner not furnishing the requisite details as per MOEF notification. The Review Petitioner has also submitted that the ROP dated 13.8.2020 was never issued and in fact, the first hearing of the main petition was held on 11.6.2021 and no Record of Proceedings (ROP) for the same was issued. Accordingly, the Review Petitioner has submitted that it is erroneous to disallow the said expenditure which are necessitated on account of change in law. The Review Petitioner has pointed out that details have already been submitted by the Petitioner vide affidavit dated 4.6.2021 and if further details were sought by the Commission, the same would have been furnished. It has also submitted that since projects of National Highways Authority of India comes under asset creation programme, the Review Petitioner has to bear the entire cost of transportation of ash, within a radius of three hundred kilometers. Accordingly, the Review Petitioner has submitted that there is an error apparent on the face of record and the impugned order may be reviewed on this ground. The Review Petitioner has furnished the details like quantum of ash transported, distance of end user, applicable rate of transportation as Annexure-I to the Review Petition.

6. The learned counsel for the Review Petitioner reiterated the above submissions during the hearing. The learned counsel for the Respondent TANGEDCO submitted that since no details have been filed, the relief sought for may not be granted.



7. The matter has been considered. The Review Petitioner has submitted that since no additional information was not sought by this Commission vide ROP on this issue, the disallowance of the fly ash transportation expenses is erroneous. The onus of justifying the claims with supporting documents lies on the Review Petitioner. The submission of the Review Petitioner that in case the Commission had sought the information, it would have filed the same is misconceived, since nothing prevented the Review Petitioner to file the required information in terms of the MOEF Notification dated 25.1.2016. It is noticed from records that though ROP dated 13.8.2020 was not related to Petition No. 293/GT/2020, the Review Petitioner had filed affidavit dated 4.6.2021 based on the ROP dated 13.8.2020, which was taken into consideration in the impugned order dated 11.1.2022. It was noticed that the additional information filed by the Review Petitioner also did not contain details regarding the quantum of ash transported, distance of end user, applicable rate of transportation. Accordingly, in the absence of these information, the Commission, in the impugned order dated 11.1.2022 did not allow the expenditure claimed by the Review Petitioner. Be that as it may, it is noticed that vide impugned order dated 11.1.2022, the Review Petitioner has been granted liberty to claim the fly ash transportation expenditure by way of a separate petition along with supporting documents. In this background, we find no reason to entertain the Review Petition on this count.

8. Issue No. (A) is decided accordingly.

(B) Error in the disallowance of Auxiliary Energy Consumption (ACE) on account of use of sea water

9. The Commission in paragraph 198 of the impugned order dated 11.1.2022 observed the following:

“198. The submissions have been considered. As per Detailed Operating Procedure (DoP) of the Grid Code dated 5.5.2017 on compensation mechanism for ISGS, on account of degradation of SHR and increase in AEC due to part loading, a separate



compensation is payable by the beneficiaries. As per data furnished by the Petitioner, it is observed that AEC has increased abruptly only during the years 2017-18 and 2018-19, which could also be due to lower loading factors in that period. Hence, the Petitioner's claim for additional AEC, above the normative of 5.25%, cannot be accepted on account of utilisation of sea water. The detailed calculation of AEC, after compensation, has not been submitted by the Petitioner. Therefore, the prayer of the Petitioner to relax the provisions of AEC in exercise of the power under Regulation 54 power to relax of the 2014 Tariff Regulations is rejected. Accordingly, AEC of 5.25% as approved by order dated 29.7.2016 in Petition No. 294/GT/2014, which is in accordance with the Regulation 36(E)(a) of the 2014 Tariff Regulations, is allowed."

10. The Review Petitioner has submitted that the disallowance of the prayer for relaxation of Auxiliary Energy Consumption (AEC) to 5.38 % in place of the normative AEC of 5.25 % on the ground that the detail calculation of AEC, after compensation, were not furnished is erroneous as it had furnished all details like loading factor of the generating station and the AEC applicable after compensation in the main petition, which is reproduced below:

Parameter	2014-15	2015-16	2016-17	2017-18	2018-19	Average
Actual AEC%	5.49	5.61	5.55	5.99	5.95	5.72
Loading factor (%)	94.59	86.85	82.94	74.27	81.55	94.59
Normative AEC after compensation (%)	5.25	5.25	5.25	5.90	5.60	5.45

11. The Petitioner has also pointed out that from the details of actual AEC and Normative AEC after compensation (which are applicable only after 1.5.2017), it is clear that the actual AEC is more than the normative AEC after compensation, which is due to high pumping power due to usage of sea water. Accordingly, the Review Petitioner has prayed that the review may be allowed and relaxation in AEC may be granted.

12. The matter has been examined. It is evident from paragraph 198 of the impugned order as quoted in paragraph 9 above, that the Commission had disallowed the prayer of Review Petitioner for relaxation in AEC after examining the submissions of the Review Petitioner on merits, made in the original petition. It has been observed by the



Commission in the impugned order that detailed calculation of AEC after compensation had not been furnished by the Review Petitioner. The Commission, after having considered the submissions filed by the Petitioner, rejected the prayer of the Review Petitioner for relaxation in AEC on merits. The Petitioner cannot now re-argue the case and seek review of the same. In our view, there is no error apparent on the face of the record warranting the review of the impugned order. Accordingly, review on this ground is not maintainable.

13. Issue (B) is decided accordingly.

(C) Error in the disallowance of discharge of liability for admitted works

14. The Review Petitioner has submitted that the Commission in impugned order dated 11.1.2022 had disallowed the discharge of the liability after the cut-off date, for the works which has been allowed. Referring to Regulation 14(3)(vi) of the 2014 Tariff Regulations, the Review Petitioner has submitted that actual payments were made on cash basis, details of which were available in the main petition. It has also submitted that these works were already admitted by the Commission and it seems the above regulation has escaped the attention of this Commission. Accordingly, the Review Petitioner has prayed that the disallowance of discharge of liability for the allowed works may be reviewed on this count.

15. The matter has been examined. It is noticed that the Commission vide its impugned order dated 11.1.2022 had (i) allowed the discharges against the admitted additional capital expenditure, where no ceiling has been imposed on cash basis and (ii) disallowed the discharges towards additional capital expenditure which have been disallowed. Also, for works, where actual additional capital expenditure has been restricted to the total additional capital expenditure allowed by order dated 1.5.2017 in



Review Petition No. 50/RP/2016 read with order dated 29.7.2016 in Petition No. 294/GT/2014, the creation of un-discharged liability and corresponding discharges against such items have been disallowed, as the additional capital expenditure against such item(s) has been allowed on cash basis up to the ceiling limit. However, the Petitioner in this review petition has not furnished the details of the admitted capital works, against which discharges have been disallowed. On scrutiny of records and calculations, we find no error apparent on the face of record. Accordingly, the review on this count is not maintainable.

16. Issue (C) is disposed of accordingly.

(D) Error in the computation of loan repayment adjustment on account of decapitalization

17. The Review Petitioner has submitted that the Commission in the table under paragraph 154 of the impugned order dated 11.1.2022 had considered the loan repayment adjustment on account of decapitalization equal to the adjustment in cumulative depreciation. It has also submitted that the same is not in order and is inconsistent with earlier practice, where 70% of the decapitalization amount (loan component of capital cost) was adjusted from loan repayment. The Review Petitioner has further submitted that loan consist of 70% of the capital cost of work/ item and once the item is decapitalized for the purpose of tariff, the repayment amount should also be adjusted equal to the loan part of the decapitalized work/item. Accordingly, the Review Petitioner has prayed to allow the review on this count.

18. We have examined the matter. For computing the loan repayment adjustment on account of decapitalization, the Commission had considered the minimum value of 70% of decapitalisation adjustment allowed and the cumulative depreciation reduction due to decapitalization. This methodology has been consistently adopted by the



Commission, in the various tariff orders relating to the 2014-19 tariff period e.g in order dated 21.3.2022 in Petition No.395/GT/2020 and order dated 22.3.2022 in Petition No. 112/GT/2020 etc. Also, on scrutiny of the records and calculations, we find no error apparent on the face of record. Therefore, review on this count is not maintainable.

19. Issue (D) is disposed of accordingly.

(E) Error in the consideration of depreciation rate for 2014-15 and 2015-16

20. The Petitioner has submitted that there is error in the calculation of the depreciation rate of 5.1124% and 5.091% for 2014-15 and 2015-16 respectively, in the impugned order dated 11.1.2022. Accordingly, the Petitioner has sought review on this ground. The Petitioner has sought the rectification of the same as under:

FY	Gross Block considered in order (Rs. lakh)	Depreciation amount considered in order (Rs. lakh)	Depreciation rate considered in order (%)	Depreciation rate prayed for (%)
2014-15	520447.79	26654.15	5.1124 %	5.1214 %
2015-16	550761.22	28110.53	5.091 %	5.1039 %

21. The matter has been examined. It is observed that for computation of the weighted average rate of depreciation, the Petitioner had claimed depreciation on the opening capital cost, whereas for the computation of depreciation, average capital cost has been considered in accordance with the consistent methodology followed by the Commission in all tariff orders. Also, the depreciation rates have been considered in terms of the 2014 Tariff Regulations. Accordingly, there is no error apparent on the face of record and review on this count is not allowed.

22. Issue (E) is disposed of accordingly.

(F) Error in the rate of interest of Loan

23. The Review Petitioner has submitted that the rate of interest on loan allowed for 2014-15 and 2015-16 is 8.8443% and 8.9023% respectively in the impugned order



dated 11.1.2022, which differs from the rate of interest on loan of 9.2606% and 8.9258% claimed for these years. The Review Petitioner while pointing out that same appears to be due to adjustment of IDC pertaining to prior period, has submitted that there appears to be calculation error. The Review Petitioner has submitted that it is not able to find the details in the absence of back up papers. The Review Petitioner has further submitted that some of the loans allocated to the generating station had been refinanced by taking new loans, with lower rate of interest. It has stated that the details were furnished in page 147 of the main petition and the same appear to have escaped the attention of the Commission, while passing the impugned order dated 11.1.202. The Review Petitioner has added that as per Regulation 8(6) read with Regulation 26 (7) of the 2014 Tariff Regulations, the benefits of refinancing of loans has to be shared with the beneficiaries in the ration of 2:1 (Beneficiaries: Generator) and the same principle has been applied by adjusting the rate of interest of new loans, while computing the weighted average rate of interest. It has submitted that the adjustment in rate of interest for new loans has been done as illustrated below:

- (i) Rate of interest of existing loan: 8.000% (say)
- (ii) Rate of interest of new loan for refinancing of existing loan: 6.000% (say)
- (iii) Rate of interest of new loan considered for computing weighted average rate of interest: 6.667%

Accordingly, the Review Petitioner has submitted that the rate of interest may be corrected and the review may be allowed on this count.

24. The submissions have been considered. It is observed that the IDC allowed has been adjusted for computation of Weighted Average Rate of Interest on Loan (WAROI) in accordance with Regulation 26(5) of the 2014 Tariff Regulations, which provides as under:

"26(5) The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio after providing appropriate accounting adjustment for interest capitalized:"



25. As regards the consideration of rate of interest for computation of WAROI, the Commission vide paragraph 152 and paragraph 153 (vi) of the impugned order dated 11.1.2022 has observed as under:

“152. The Commission, in its ROP in the truing-up petitions in respect of other generating stations of the Petitioner, had directed the Petitioner to submit the repayment schedule of all loans, for the purpose of reconciliation of refinancing of loans and to specify the period over which the benefits of prepayment has been claimed in respect of each of such loans. In respect of this generating station, the Petitioner vide affidavit dated 4.6.2021 has furnished the statement of prepayment and refinancing of loan, indicating the details of the original loan and refinancing loan along with corresponding interest rate savings retained while sharing the loan refinancing gains with the beneficiaries in terms of the 2014 Tariff Regulations. Also, Form-8 provides for interest rate, term of loan and repayment schedule of all loans required for the refinancing of original loans. The Petitioner has claimed weighted average rate of Interest on loan, based on its actual loan portfolio and the rate of interest. It is observed that the loan details submitted by the Petitioner in Form 13 vary from the rate of interest submitted by the Petitioner, in response to the replies of the Respondent, KSEBL. Further, the Petitioner has also not furnished adequate explanation for consideration of the rate of interest in Form 13. In the absence of proper explanation as regards the consideration of rate of interest in Form 13, the rate of interest, based on loan details submitted by the Petitioner, in the petition, and subsequent submissions has been considered for the purpose of tariff.

153. (vi) In line with the provisions of the regulations stated above, the weighted average rate of interest has been calculated by applying the actual loan portfolio existing as on 1.4.2014, along with subsequent additions during the 2014-19 tariff period, if any, for the generating station. In case of loans carrying floating rate of interest, the details of rate of interest, as provided by the Petitioner, has been considered for the purpose of tariff.”

26. Further, clause (7), clause (8) and clause (9) of Regulation 26 of the 2014 Tariff Regulations provides as under:

“24(7) The generating company or the transmission licensee, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:1.

(8) The changes to the terms and conditions of the loans shall be reflected from the date of such re-financing.

(9) In case of dispute, any of the parties may make an application in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, as amended from time to time, including statutory re-enactment thereof for settlement of the dispute:

Provided that the beneficiaries or the long term transmission customers /DICs shall not withhold any payment on account of the interest claimed by the generating company or the transmission licensee during the pendency of any dispute arising out of re-financing of loan.”



27. In terms of the above regulation, the net savings on interest on account of refinancing of loan is to be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:1. The Petitioner has claimed the interest rate on refinanced loans, including the one-third share of benefit, to be shared between the beneficiaries and the generating company. Accordingly, by impugned order dated 11.1.2022, the rate of interest on loan was computed in accordance with Regulation 26(5) of the 2014 Tariff Regulations, by considering weighted average rate of interest (actual) calculated on the basis of the actual loan portfolio. We therefore find no error apparent on the face of the impugned order dated 11.1.2022. Accordingly, review on this count is not maintainable.

28. Issue (F) is disposed of accordingly.

(G) Typographical errors

29. The Petitioner has submitted that there are typographical errors in the table under paragraph 183 of the impugned order as tabulated below:

Sl. No.	Page Number of the order	Sl. No of the table (last column Total for 2015-19 of table)	Error	Correction prayed
1	96	Sl. No. 1	Rs.184380.69 lakh	Rs.151898.3 lakh
2		Sl. No. 2	Rs.92190.34 lakh	Rs.75949.14 lakh
3		Sl. No. 2	Rs.81666.00 lakh	Rs.67266.0 lakh
4		Sl. No. (Blank in order)	Rs.(-)10524.34 lakh	Rs.(-)8683.14 lakh

30. The matter has been examined. The Commission in paragraph 183 of the impugned order dated 11.1.2022 had observed the following:

“183. As stated, for like to like comparison of the actual O&M expenses and normative O&M expenses, the expenditure against O&M sub-heads, as stated in paragraph 94 above has been excluded, from the actual O&M expenses to arrive at the actual O&M expenses (normalized) for the combined Stage-I and Stage-II of the generating station (2000 MW). Accordingly, the following table portrays the comparison of normative O&M expenses versus the actual O&M expenses (normalized) along with wage revision impact claimed by the Petitioner for this generating station (Stage-II 1000 MW)



for the period 2015-19 (on a combined basis) commensurate with the wage revision claim being spread over these four years.”

(Rs. in lakh)

Sl. No.		2015-16	2016-17	2017-18	2018-19	Total for 2015-19
1	Actual O&M expenditure (normalized) for Simhadri STPS (Combined for stage-I and stage-II) (a)	33377.38	36180.21	38894.05	43446.64	184380.69
2	Actual O&M expenditure (normalized) for Simhadri STPS-II prorated based on capacity (b)	16688.69	18090.11	19447.02	21723.32	92190.34
2	Normative O&M Expenses for Simhadri STPS-II (c)	15309.00	16272.00	17298.00	18387.00	81666.00
	Under-recovery (d) = [(c)-(b)]	(-)1379.69	(-)1818.11	(-)2149.02	(-)3336.32	(-)10524.34
3	Wage revision impact claimed excluding PRP/ ex-gratia	52.00	1292.85	1570.19	1699.54	4614.58

31. On scrutiny of the calculations, it is found that certain clerical/arithmetical errors had crept in while totalling the amount for the period 2015-19 in the table above. This, according to us, is an error apparent on the face of record and review on this count is maintainable. Accordingly, after rectification of the errors as aforesaid, the table under paragraph 183 of the impugned order stands modified and corrected as under:

(Rs. in lakh)

Sl. No.		2015-16	2016-17	2017-18	2018-19	Total for 2015-19
1	Actual O&M expenditure (normalized) for Simhadri STPS (Combined for stage-I and stage-II) (a)	33377.38	36180.21	38894.05	43446.64	151898.28
2	Actual O&M expenditure (normalized) for Simhadri STPS-II prorated based on capacity (b)	16688.69	18090.11	19447.02	21723.32	75949.14



SI. No.		2015-16	2016-17	2017-18	2018-19	Total for 2015-19
2	Normative O&M expenses for Simhadri STPS-II (c)	15309.00	16272.00	17298.00	18387.00	67266.00
	Under-recovery (d) = [(c)-(b)]	(-)1379.69	(-)1818.11	(-)2149.02	(-)3336.32	(-) 8683.14
3	Wage revision impact claimed excluding PRP/ ex-gratia	52.00	1292.85	1570.19	1699.54	4614.58

32. Issue (G) is disposed of as above.

(H) Error in Normative O&M expenses

33. The Petitioner has submitted that the Commission in the impugned order dated 11.1.2022 had allowed O & M expenses to units whose COD occurred on or after 1.04.2009 by applying the multiplying factor of 0.9, in terms of the proviso under Regulation 29(1)(a) of the 2014 Tariff Regulations, by relying upon the earlier order dated 29.7.2016 in Petition No. 294/GT/2014. The Petitioner has submitted that APTEL vide its judgement dated 11.1.2022 in Appeal No.101/2017 and Appeal No. 110/2017 (NTPC v CERC & ors), has set aside the findings of the Commission qua the issue of applicability of proviso to Regulation 29(1)(a) of the 2014 Tariff Regulations to units whose COD occurred on or after 1.4.2009. The Petitioner, while pointing out that the Commission could not have considered the APTEL judgment in the said order dated 11.1.2022, has prayed for consideration of the same in review.

34. The matter has been considered. It is pertinent to mention that the Commission while truing up the tariff of the generating station vide impugned order dated 11.1.2022 had not and could not have taken cognizance of the APTEL judgment dated 11.1.2022 in Appeal No. 101/2017 and Appeal No. 110/2017 on account of the fact that the said judgment dated 11.1.2022 was uploaded in the website of APTEL only on 13.1.2022. Therefore, the Commission in the impugned order dated 11.1.2022



had applied the multiplication factor of 0.9 for this generating station, in terms of the proviso under Regulation 29(1)(a) of the 2014 Tariff Regulations and by relying upon the order dated 29.7.2016 in Petition No. 294/GT/2014. It is observed that against the order dated 29.7.2016 in Petition No.294/GT/2014 (the tariff of the generating station for the 2014-19 tariff period), the Review Petitioner has filed Appeal No. 25 of 2017 before APTEL on various issues including the computation of O&M expenses and the same is pending. However, as the issue of allowable O & M expenses raised by the Review Petitioner was common in other pending five appeals, including Appeal No. 25/2017, APTEL vide order dated 23.11.2021 segregated Appeal No.101/2017 and Appeal No. 110/2017 for hearing. It was also decided that the determination in the two appeals would regulate the questions raised in that regard in the other five appeals, which would come up for hearing in due course. Thereafter, vide judgment dated 11.1.2022, in Appeal No. 101/2017 and Appeal No. 110/2017) the APTEL has set aside the findings of the Commission on this issue. The relevant portion of the judgment dated 11.1.2022 is extracted below:

“8.1(a) The Normative O&M charges for 2014-19 control period are determined on the basis of O&M charges incurred during the 2009-2014 control period. Xxx (b) Further, the O&M charges for the past years are collected as consolidated charges for the complete project /generating station irrespective of new /additional units during that period or existing units.

“8.2. From the above, it is crystal clear that the Normative O&M charges are determined based on the actual consolidated O&M charges for the past five years for a specific project having similar unit sizes.

8.3 Also, the Normative O&M charges are determined for the complete Generating Station including all the units which achieve COD prior to 1.4.2014. The multiplication factor is to be applied for new units which achieve COD after 1.4.2014 and during the control period 2014-19.”

Xxxx

8.7 We agree with the submissions made by the Appellant that considering the above COD, only the revised O&M norms for units existing as on 01.04.2014, as laid down in Regulation 29 (1) (a) of the 2014 Tariff Regulations are to be applied in case of the Appellant. As such any other interpretation of the aforesaid regulations is contrary to the plain text and meaning.



Xxx

8.13 We decline to accept the said contention as the provisions of the Tariff Regulations, 2014 have already been deliberated in the foregoing paras and there is no doubt that the Normative O&M charges are determined by consolidating the actual O&M charges for the past five years (the last control period) thus considering the actual sharing benefits by the additional units for that period and rationalising the expenditure

Xxx

8.15 We do not find any relevance to the above submission as the benefit of sharing of resources by the additional units have already been factored in the actual O&M charges considered for the past years

Xxx

8.17 There is no denial that the benefit of sharing of resources by the additional units should be passed on to the consumers, however, once already factored into the actual O&M charges which is the basis for determination of Normative O&M charges for the next control period, such a benefit becomes the integral part of O&M charges.

Xxx

8.25 However, in the Impugned Order, CERC has essentially amended Proviso to Regulation 29 (1) (a) of the Tariff Regulations, 2014 without providing an opportunity to the Appellant to make submissions on this issue of Proviso to Regulation 29 (1)(a) of the Tariff Regulations, 2014. It is apposite to mention that in the entire proceedings no party had even whispered that the Proviso to Regulation 29 (1)(a) ought to be made applicable to units achieving COD Prior to 01.04.2014. Hence, there was no occasion for the Appellant to even respond to such a course being adopted by Central Commission. Even Central Commission at no stage indicated that it is seeking to apply to Proviso to Regulation 29 (1)(a) to Units achieving COD before 01.04.2014. Such a course adopted by Central Commission violates the principle of Natural Justice and for this ground alone the Impugned Order is liable to be set aside.”

ORDER

In light of the above, we are of the considered view that the issues raised in the Batch of Appeals have merit and hence Appeals are allowed. The impugned order dated 21.01.2017 in Petition No. 283/GT/2014 and order dated 06.02.2017 in Petition No. 372/GT/2014 (“Petition 372”), are hereby set aside to the extent of our findings. The matter is remitted back to the Central Commission for passing a reasoned order pursuant to our observations are scrupulously complied with expeditiously and in a time-bound manner.”

35. Since the issue of allowable O&M expenses raised by the Review Petitioner in Appeal No. 25/2017 has been decided vide judgment of APTEL dated 11.1.2022, the O&M expenses allowable for the 2014-19 tariff period in terms of Regulation 29(1)(a) of the 2014 Tariff Regulations are worked out and allowed for this generating station in modification of paragraph 193 of the order dated 11.1.2022 as under:



	2014-15	2015-16	2016-17	2017-18	2018-19
Installed Capacity (MW) (A)	1000.00	1000.00	1000.00	1000.00	1000.00
O&M Expenses under Regulation 29(1) in Rs. lakh / MW (B)	16.00	17.01	18.08	19.22	20.43
Total O&M Expenses (in Rs. lakh) (C) = [(A)*(B)]	16000.00	17010.00	18080.00	19220.00	20430.00
Water Charges (in Rs. lakh) (D)	662.74	815.77	681.43	794.29	746.70
Capital Spares Consumed (in Rs. lakh) (E)	0.00	15.28	127.65	7.22	39.46
Total O&M Expenses as allowed (including Water Charges and Capital Spares Consumed) (in Rs. lakh) (F) = (C+D+E)	16662.74	17841.05	18889.08	20021.51	21216.15
Additional O&M Expenditure					
Impact of Wage Revision (in Rs. lakh) (G)	0.00	52.00	1292.85	1570.19	1699.54
Impact of GST (in Rs. lakh) (H)	0.00	0.00	0.00	0.00	0.00
Ash Transportation Expenditure (in Rs. lakh) (I)	0.00	0.00	0.00	0.00	0.00
Sub Total Additional O&M Expenditure (in Rs. lakh) (J) = (F+G+H+I)	0.00	52.00	1292.85	1570.19	1699.54
Total O&M Expenses (in Rs. lakh) (K) = (F+I)	16662.74	17893.05	20181.93	21591.69	22915.69

36. Issue (H) is disposed of as above

Working Capital for Maintenance Spares

37. Consequent upon revision of the O&M expenses as in paragraph 35 above, paragraph 226 of the order dated 11.1.2022 with regard to Working Capital for Maintenance spares is revised as under:

<i>(Rs. in lakh)</i>				
2014-15	2015-16	2016-17	2017-18	2018-19
3332.55	3568.21	3777.82	4004.30	4243.23



Working Capital for Receivables

38. Consequent upon revision of the O&M expenses as in paragraph 35 above, the Working Capital for Receivables as allowed in paragraph 227 of the order dated 11.1.2022 is modified as under:

(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Variable Charges - for two months (A)	31356.81	31442.72	31356.81	32112.40	32112.40
Fixed Charges - for two months (B)	18644.98	19016.64	18782.60	18555.51	18392.96
Total	50001.79	50459.36	50139.41	50667.90	50505.36

Working Capital for Maintenance Spares

39. Consequent upon revision of the O&M expenses as in paragraph 35 above, the working capital for Maintenance spares as allowed in paragraph 229 of the order dated 11.1.2022 is modified as under:

(Rs. in lakh)

2014-15	2015-16	2016-17	2017-18	2018-19
1388.56	1486.75	1574.09	1668.46	1768.01

Interest on working capital

40. Accordingly, the Interest on working capital as allowed in paragraph 231 of the order dated 11.1.2022 stands revised as under:

(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Cost of Coal/Lignite for Stock (A)	15302.79	15302.79	15302.79	15671.53	15671.53
Cost of Coal/Lignite for Generation (B)	15302.79	15302.79	15302.79	15671.53	15671.53
Cost of oil for 2 months (C)	325.26	326.15	325.26	333.10	333.10
Fuel Cost (D)	0.00	0.00	0.00	0.00	0.00
Liquid Fuel Stock (E)	0.00	0.00	0.00	0.00	0.00
O & M expenses - 1 month (F)	1388.56	1486.75	1574.09	1668.46	1768.01
Maintenance Spares – 20% of O&M (G)	3332.55	3568.21	3777.82	4004.30	4243.23
Receivables - 2 months (H)	50001.79	50459.36	50139.41	50667.90	50505.36
Total Working Capital	85653.72	86446.04	86422.15	88016.81	88192.75



	2014-15	2015-16	2016-17	2017-18	2018-19
(I) = (A+B+C+D+E+F+G+H)					
Rate of Interest (J)	13.50%	13.50%	13.50%	13.50%	13.50%
Total Interest on Working capital (K) = [(I)*(J)]	11563.25	11670.22	11666.99	11882.27	11906.02

Annual Fixed Charges

41. Based on the above, the annual fixed charges allowed in paragraph 232 of the order dated 11.1.2022 stands modified as under:

	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation (A)	26559.47	27374.71	27475.38	27539.68	27633.31
Interest on Loan (B)	26521.69	25429.70	22683.19	19829.08	17345.22
Return on Equity (C)	30562.71	31784.16	31980.97	32060.50	32257.08
Interest on Working Capital (D)	11563.25	11670.22	11666.99	11882.27	11906.02
O&M Expenses (E)	16662.74	17841.05	18889.08	20021.51	21216.15
Total Annual Fixed Charges (F) = (A+B+C+D+E)	111869.85	114099.84	112695.62	111333.04	110357.78

Summary

42. The table under the head ‘Summary’ in paragraph 235 of the order dated 11.1.2022 is modified as under:

	2014-15	2015-16	2016-17	2017-18	2018-19
Annual Fixed Charges	111869.85	114099.84	112695.62	111333.04	110357.78
Wage revision impact	0.00	52.00	1292.85	1570.19	1699.54

43. Review Petition No. 7/RP/2022 is disposed of in terms of the above.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(I. S. Jha)
Member

Sd/-
(P. K. Pujari)
Chairperson

