

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.33/RP/2022**

in

**Petition No.367/GT/2020**

**Coram:**

**Shri Jishnu Barua, Chairperson**

**Shri Arun Goyal, Member**

**Shri Pravas Kumar Singh, Member**

**Date of Order: 29<sup>th</sup> April, 2024**

**IN THE MATTER OF**

Review of Commission's order dated 9.6.2022 in Petition No. 367/GT/2020 in respect of revision of tariff of Circulating Fluidized Bed Combustion Technology based NLC Thermal Power Station-II Expansion Units I & II (500 MW) for the period from their actual date of commercial operation till 31.3.2019.

**AND**

**IN THE MATTER OF**

NLC India Limited,  
135/73, EVR Periyar Salai, Kilpauk,  
Chennai – 600 010, Tamil Nadu

**.....Petitioner**

**Vs**

1. Tamil Nadu Generation and Distribution Corporation Ltd.  
NPKRR Maaligai, 144, Anna Salai,  
Chennai – 600002
2. Power Company of Karnataka Limited,  
KPTCL Complex, Kaveri Bhavan,  
Bangalore – 560009
3. Bangalore Electricity Supply Company Limited,  
Krishna Rajendra Circle, Bangalore - 560 001
4. Mangalore Electricity Supply Company Limited,  
Paradigm Plaza, A.B. Shetty Circle, Mangalore – 575 001
5. Chamundeshwari Electricity Supply Corporation Limited  
Corporate Office No 927, L.J.Avenue, New Kantharaj Urs Road  
Saraswathipuram, Mysore -570 009
6. Gulbarga Electricity Supply Company Limited  
Station Main Road, Gulbarga -585 102, Karnataka



7. Hubli Electricity Supply Company Limited,  
Corporate office, P. B. Road, Navanagar,  
Hubli - 580 025
8. Kerala State Electricity Board Limited,  
Vaidyuthi Bhavanam, Pattom,  
Thiruvananthapuram-695004
9. Puducherry Electricity Department,  
137, NSC Bose Salai,  
Puducherry – 605 001

.... Respondents

**Parties Present:**

Ms. Anushree Bardhan, Advocate, NLCIL  
 Ms. Surbhi Kapoor, Advocate, NLCIL  
 Shri A. Srinivasan, Advocate, NLCIL  
 Shri S. Vallinayagam Advocate, TANGEDCO

**ORDER**

Petition No. 367/GT/2020 was filed by the Review Petitioner, NLC India Limited, for truing up of tariff of Circulating Fluidized Bed Combustion Technology based NLC Thermal Power Station-II Expansion Units I & II (500 MW) (in short, “the generating station”) for the period 2014-19, in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (in short, 'the 2014 Tariff Regulations') and the Commission, vide order dated 9.6.2022 (in short, the ‘impugned order’), disposed of the said petition. The annual fixed charges determined vide the impugned order dated 9.6.2022 are as under:

|                                   | 2015-16                                  |   | 2016-17         | 2017-18         | 2018-19         |
|-----------------------------------|--|---|-----------------|-----------------|-----------------|
|                                   | 22.4.2015<br>to<br>4.7.2015<br>(Unit-II) | 5.7.2015<br>to<br>31.3.2016<br>(Unit-I &<br>Unit- II) |                 |                 |                 |
| Depreciation                      | 1492.86                                  | 11817.39  | 16206.78        | 16288.45        | 16298.54        |
| Interest on Loan                  | 1959.31                                  | 15086.92  | 19136.39        | 17390.75        | 15404.25        |
| Return on Equity                  | 1689.68                                  | 13375.46  | 18343.58        | 18436.01        | 18497.06        |
| Interest on Working Capital       | 456.92                                   | 3471.99   | 4982.36         | 5134.22         | 5378.05         |
| O&M Expenses                      | 1283.88                                  | 9549.57   | 13754.75        | 14877.81        | 16285.58        |
| <b>Total annual fixed charges</b> | <b>6882.65</b>                           | <b>53301.34</b>                                       | <b>72423.86</b> | <b>72127.23</b> | <b>71863.48</b> |

(Rs. in lakh)



2. Aggrieved by the impugned order dated 9.6.2022, the Review Petitioner has filed this Review Petition on the ground that there is an error apparent on the face of the record on the following issues:

- (a) Disallowance of liabilities discharged for additional capitalization;*
- (b) Disallowance of discharged liquidated damages withheld in Additional Capitalization;*
- (c) Disallowance of Personnel charges in water charges;*
- (d) Disallowance of higher Auxiliary Consumption.*

### **Hearing dated 6.12.2022**

3. The Review Petition was heard on 'admission' on 6.12.2022. During the hearing, the learned counsel for the Review Petitioner made detailed oral submissions in the matter and prayed that the review on the aforesaid issues may be allowed. The learned counsel for the Respondent, TANGEDCO, raised preliminary objections to the 'admissibility' of the review petition, stating that the grounds raised by the Review Petitioner do not fall within the scope and ambit of Order 47 Rule 1 of CPC, warranting the review of the impugned order. Further, the learned counsel of the Respondent submitted that the Respondent may be permitted to file its reply on maintainability. The Commission, after hearing the parties, directed the Respondent TANGEDCO to file its reply on 'maintainability' and 'merits' on the issues raised in paragraph 1 above.

### **Hearing dated 24.1.2023**

4. The matter was heard on 24.1.2023. During the hearing, Respondent TANGEDCO made detailed oral submissions on the matter. However, due to paucity of time, the learned counsel of the Respondent could not complete his arguments. The Commission accordingly adjourned the matter and listed the same for hearing on 27.4.2023.



### **Hearing dated 27.4.2023**

5. The matter was heard on 27.4.2023. During the hearing, the Respondent TANGEDCO made a detailed oral submission, objecting to the relief(s) sought by the Review Petitioner. The learned counsel for the Review Petitioner made its rejoinder submissions in support of the reliefs sought in the Review Petition. The Commission, after hearing the learned counsel for the Review Petitioner and the Respondents, permitted the parties to file their written submissions in the matter and, accordingly, reserved its order in the Review Petition.

### **Hearing dated 31.1.2024**

6. Since the order in the Petition (which was reserved on 27.4.2023) could not be issued prior to one Member of this Commission, who formed part of the Coram, demitting office, the matter has been re-listed for hearing. During the hearing, the learned counsel for the Petitioner and the learned counsel for the Respondent TANGEDCO submitted that since the pleadings and arguments have been completed, the Commission may reserve its order in the matter. Accordingly, based on the consent of the parties, the order in the Petition was reserved

7. We, therefore, proceed to consider the grounds raised in the Review Petition for review of the impugned order dated 9.6.2022 in Petition No. 367/GT/2020 as stated below:

#### **A. Disallowance of liabilities discharged for additional capitalization;**

8. The Commission, in the impugned order dated 9.6.2022 in Petition No. 367/GT/2020, had disallowed the claim of the Review Petitioner towards 'discharge of liabilities' for the works which have been allowed 'on accrual basis' as per Regulation



14(1)(i) and Regulation 14(2)(iv) and Regulation 14(3)(v) of the 2014 Tariff Regulations. The relevant portion of the impugned order is extracted below:

*“26. We have considered the matter. According to us, the discharge of liabilities is always allowed on cash basis, for works which have already been allowed on accrual basis, as per Regulation 14(1)(i), Regulation 14(2)(iv) and Regulation 14(3)(v) of the 2014 Tariff Regulations. Therefore, there is no need for extension of cut-off date as prayed for by the Petitioner. Accordingly, the discharge of liabilities of Rs.6686 lakh in 2015-16, Rs.5218 lakh in 2016-17, Rs.643 lakh in 2017-18 and Rs.256 lakh in 2018- 19 is considered for further scrutiny.*

*27. It is noticed that the Petitioner, has, claimed discharge of liabilities, as additional capital expenditure in Form-9A. However, on prudence check, it is observed that the Petitioner has not submitted the corresponding liability flow statement (Form 18) matching to the above discharges. Hence, many items claimed under discharge of liabilities in Form 9A, could not be ascertained as to whether they relate to discharges of the earlier allowed items/heads and could not also be reconciled with revised Form 5B furnished, as on the cut-off date. Accordingly, only those items which could be reconciled with the heads as in Form 5B, have been allowed and the remaining items claimed as discharge of liabilities for additional capitalization, have been disallowed in the respective years, as detailed below:*

*a. 2015-16: The Petitioner has claimed discharge of liabilities of Rs.6686.71 lakh for items in the main plant package, lignite handling system, ash handling system, cooling water system, effluent plant, civil works etc. The same is in order with Form 5B and is therefore allowed.*

*b. 2016-17: The Petitioner has claimed discharge of liabilities of Rs 5218.28 lakh, which consists of items like Ash handling system, shed near cooling tower, flooring way approach, lean roofing to diesel, cemetery rocks to canteen etc. It is observed that, except for discharge of liability of Rs. 2762.82 lakh claimed under Ash handling system, the remaining items could not be reconciled, as the Petitioner has neither submitted Form 18 (liability flow statement), nor it could be reconciled with revised Form 5B. In view of this, we allow the discharge of liability for Rs. 2762.82 lakh pertaining to Ash handling system and the balance unreconciled discharge of liability is not allowed.*

*2017-18: The Petitioner has claimed discharge of liabilities of Rs 643.00 lakh which consists of items like bed material store shed, extension of scooter shed, BT roads, RCC roads, rail track road, culverts, duct banks, RCC drains, retaining wall cum drain, portable high frequency induction heater, portable high frequency induction heater, infra-red thermal imaging camera, pedestal fan 18 inch, PVC chairs 150 nos, RO units with UV system, battery operated industrial trolley vehicles 2 nos, etc. It is observed that for items like BT roads, RCC roads, rail track road, culverts, duct banks, RCC drains, retaining wall cum drain, falling under the head of civil works could be reconciled with the previously recognized liabilities by the Commission in order dated 24.7.2017 in petition 146/GT/2015 and hence are allowed. However, the remaining items that could not be reconciled with Form 5B are disallowed. Accordingly, discharge of liabilities amounting to Rs. 364.31 lakh is allowed.*

*2018-19: The Petitioner has claimed discharge of liabilities of Rs 255.86 lakh for A01 - Main Plant Package - Unit II, A01-Main Plant Package- Unit-I, plasma cutting machine, OFC cable joining splicing machine, 5 HP 3 ph centrifugal self-priming monobloc pump set, morpho smart 300 series fingerprint sensor, 2nos UHD 65-inch smart monitor, 4 nos. UHD 55-inch smart monitor, 65-inch smart monitor, TPS IIE reciprocating air compressor, etc. It is noticed that only two items i.e. A01 - Main Plant Package - Unit II,*



*A01-Main Plant Package- Unit-I fall under the package of Plant & Equipment and is therefore reconciled and allowed for Rs 22.36 lakh. However, the remaining items could not be reconciled with Form 5B and are accordingly disallowed.”*

### **Submissions of the Review Petitioner**

9. The Review Petitioner has claimed the discharge of liabilities as additional capital expenditure in Form-9A along with the Auditor certificate. The details of additional capital expenditure claimed versus allowed are as under:

*(Rs. in lakh)*

|         | <b>2015-16</b> | <b>2016-17</b> | <b>2017-18</b> | <b>2018-19</b> | <b>Total</b>    |
|---------|----------------|----------------|----------------|----------------|-----------------|
| Claimed | 6686.71        | 5218.28        | 643.00         | 255.86         | <b>12803.00</b> |
| Allowed | 6686.71        | 2762.82        | 364.31         | 22.36          | <b>9836.20</b>  |

10. The Petitioner has further submitted that the Commission, vide its order dated 9.6.2022, has stated that in the absence of details in the liability flow statement as per Form-18, the liabilities could not be reconciled with Form-5B, and therefore, such items claimed as the discharge of liabilities for additional capitalization, have been disallowed. Therefore, the Review Petitioner has now submitted the filled-in Form-18 in the Review Petition. The Review Petitioner has also submitted that the non-recognition of the expenditure incurred for the discharge of liabilities, which are within the cut-off date, will cause serious financial prejudice to the Review Petitioner, and hence, the Review Petitioner will not be able to recover the cost of the establishment of the power plant. The Review Petitioner has accordingly prayed for allowing the additional capitalization based on Form-18 submitted herein.

### **Reply of the Respondent TANGEDCO**

11. Respondent TANGEDCO has pointed out that the Review Petitioner has stated in the present Petition that the Commission, vide its order dated 9.6.2022, has observed that in the absence of details in the liability flow statement as per Form-18, the liabilities could not be reconciled with Form-5B and therefore, such items claimed as the discharge of liabilities for additional capitalization, has been disallowed and in terms



of this, the Petitioner has submitted the filled-in Form -18 in the present Petition. The Respondent has also submitted that the issues involved in the disallowance of liabilities discharged for additional capitalization are as under:

(a) The first issue regarding the liabilities is that the liabilities are not discharged before the cut-off date and hence cannot be considered. As per Regulation 14(1) of the 2014 Tariff Regulations, the additional capital expenses in respect of the new project or an existing project incurred or projected to be incurred on the following counts within the original scope of work after the date of commercial operation and up to the cut-off date may be admitted by the Commission, subject to prudence check:

- (1) *Undischarged liabilities recognized to be payable at a future date.*
- (2) *xxx.*

(b) As per the Commission's order dated 24.7.2017 in Petition No. 146/GT/2015 (provisional tariff for the station), the projected undischarged liability was Rs.25077 lakh. Further, in Petition No. 367/GT/2020, filed by the Petitioner for truing up of the tariff for the period 2014-19, it has claimed the actual undischarged liability up to 31.3.2018 (cut-off date) as Rs. 12803 lakhs and had further stated that the balance Rs.12274 lakh is proposed to be utilized before 31.3.2020. Further, the extension of the cut-off date was requested up to 31.03.2020 under Power to Relax.

12. The Respondent has further submitted that the (i) admission of additional capitalization after the cut-off date and the (ii) relaxation of the cut-off date itself have been made in a single claim, as the petition for truing-up of the tariff has been filed for the period 2014-19 only. It has also contended that the Commission, in its order dated 9.6.2022, had considered and approved all eligible claims for undischarged liability. On the issue of admitting that the undischarged liability is the mismatch of claims made under Form-9A (add-cap liabilities split-up) and corresponding liability flow statement (Form 18), the Respondent has submitted that the Commission had taken a reasoned decision, after conducting a prudence check and the liabilities, which could not be reconciled with Form-5C, due to the absence of details in the flow statement as per Form-18, were disallowed.



## **Rejoinder of the Review Petitioner**

13. The Review Petitioner, in its rejoinder, has submitted the following:

- (a) In the additional capitalization claimed in Form-9A, the details of undischarged liabilities were in correlation to the depreciation claimed in the truing-up petition. The details of undischarged liabilities were submitted in Form-9A with details of equipment/head of work and the Regulation under which it has been claimed. Moreover, the discharge of liabilities pertains to individual assets capitalized in the books of accounts related to the Main Plant Package (A01), Ash Handling System (AHS Phase-II), and other Civil works, which are very well within the original scope of work. The same was also brought out in the truing-up of tariff petition with the detailed workings taking into account the discharge of liabilities.
- (b) An Auditor Certificate was also furnished on the additional capitalization at the time of filing the truing-up petition. The details of the liability flow statement in tariff form No. 18 were not furnished inadvertently, and it is prayed before the Commission that denying a genuinely incurred expenditure for not submitting a liabilities flow statement, although details of undischarged liabilities were submitted in other tariff filing form would further add to the financial burden as the Review Petitioner is already having under-recovery in annual fixed cost due to technical issues in the CFBC boiler of the generating station.

## **Analysis and Decision**

14. The matter has been considered. The Review Petitioner, in the Review Petition, has submitted that the Commission has erred in disallowing the liabilities discharged for additional capitalization. We notice that at the time of claiming the additional capitalization for the period 2014-19 in the main Petition (Petition No. 367/GT/2020), the Review Petitioner had not furnished the details of the Packages against which the liabilities have been discharged. Thus, some of the items claimed under the discharge of liabilities in Form 9A could not be ascertained as to whether they relate to discharges of the earlier allowed items/heads. However, we note that though the Commission, vide ROP of the hearing dated 27.7.2021, had sought certain additional information from the Review Petitioner, the details/information with regard to the liability flow statement in Form-18 were not sought from the Review Petitioner prior to the passing of the impugned order. Thus, the same could not be furnished by the





Review Petitioner. In this background, the disallowance of the claim of the Review Petitioner on the ground that it had not submitted the corresponding liability flow statement (Form 18) matching the above discharges is, in our view, an error apparent on the face of the order, which is required to be reviewed. Thus, review on this ground is allowed. Considering the fact that the Review Petitioner had made the payments against the allowed undischarged liabilities, we allow the undischarged liabilities, as under:

|                                  | <i>(Rs. in lakh)</i> |                |                |                |
|----------------------------------|----------------------|----------------|----------------|----------------|
|                                  | <b>2015-16</b>       | <b>2016-17</b> | <b>2017-18</b> | <b>2018-19</b> |
| Discharge of liabilities Claimed | 6638.71              | 5218.28        | 643.00         | 255.86         |
| Discharge of liabilities Allowed | 6638.71              | 5218.28        | 643.00         | 255.86         |

15. Accordingly, the summary of liabilities allowed is as under:

|  | <i>(Rs. in lakh)</i> |                 |                 |                 |
|--|----------------------|-----------------|-----------------|-----------------|
|  | <b>2015-16</b>       | <b>2016-17</b>  | <b>2017-18</b>  | <b>2018-19</b>  |
| Opening undischarged liabilities   | 25076.97             | 18438.26        | 13219.98        | 12576.98        |
| Add: Liabilities corresponding to additional capital expenditure allowed during the year | 0.00                 | 0.00            | 0.00            | 0.00            |
| Less: Discharges of liabilities during the year  | 6638.71              | 5218.28         | 643.00          | 255.86          |
| <b>Closing undischarged liabilities</b>  | <b>18438.26</b>      | <b>13219.98</b> | <b>12576.98</b> | <b>12321.12</b> |

16. Since the discharge of liabilities has been modified as above, the total plant & equipment cost for the generating station is required to be revised. Accordingly, the initial spares allowed to the generating station, vide order dated 9.6.2022 in Petition No.367/GT/ 2020, will undergo revision. In light of the above modification, para 19 and the table under para 20 of the impugned order dated 9.6.2022 stand revised as under:

*19. The Plant & Machinery cost, as on the cutoff date (31.3.2018), has now been revised and considered as Rs. 153292.35 lakh. Hence, the allowable initial spares, as on the cut-off date, at 4% of the Plant & Machinery cost is revised to Rs. 6131.69 lakh. Accordingly, the excess initial spares disallowed is Rs. 1819.37 lakh as on the cut-off date.*

*20. Accordingly, the opening capital cost, as on the COD of the units of the generating station, is approved as under:*



|   | <b>(Rs. in lakh)</b>               |                                   |
|---|------------------------------------|-----------------------------------|
|   | <b>Unit-II COD<br/>(22.4.2015)</b> | <b>Station COD<br/>(5.7.2015)</b> |
| Capital cost, including IDC, Normative IDC, and Liabilities                 | 185536.99                          | 389398.64                         |
| Less: Liabilities   | 12538.50                           | 25076.97                          |
| Capital cost, including IDC and Normative IDC excluding Liabilities         | 172998.49                          | 364321.67                         |
| Less: IDC   | 39512.39                           | 79551.02                          |
| Less: Normative IDC   | 17218.51                           | 38267.03                          |
| Capital cost excluding IDC, Normative IDC, and Liabilities                  | 116267.59                          | 246503.62                         |
| Less: Pro-rata reduction on overhead expenses IEDC                          | 2479.27                            | 5836.74                           |
| Less: Initial spares beyond 4% of plant and machinery                       | 909.68                             | 1819.37                           |
| <b>Total Opening Capital cost excluding IDC, Normative IDC, Liabilities</b> | <b>112878.64</b>                   | <b>238847.51</b>                  |
| Add: IDC allowed  | 27281.65                           | 58661.76                          |
| Add: Normative IDC allowed  | 5109.44                            | 13340.58                          |
| Less: Adjustment of LD recovered  | 3792.16                            | 8399.54                           |
| <b>Opening Capital Cost</b>   | <b>141477.57</b>                   | <b>302450.32</b>                  |

**B. Disallowance of discharged Liquidated Damages withheld in additional capitalization.**

17. The Commission, in the impugned order dated 9.6.2022 in Petition No. 367/GT/2020, had disallowed the claim of the Review Petitioner towards liquidated damages discharged, which was withheld in the additional capitalization. The relevant portion of the impugned order dated 9.6.2022 is extracted below:

**“Reversal of Liquidated Damages**

28. The Petitioner has claimed reversal of LD in 2018-19 under the following heads:

|          | <i>Liquidated Damages claimed</i>   | <i>Amount<br/>(Rs. in lakh)</i> |
|----------|---|---------------------------------|
| A        | <i>Release of LD of A0-6 Package (50% reduced in the final order for 2014-19 dated 24.7.2017, so only 50% is being claimed)</i> | 276.49                          |
| B        | <i>Cost of arbitration as awarded in arbitration order in A0-6 Arbitration</i>  | 20.41                           |
| C        | <i>Post award interest on total award amount as given in arbitration order in A0-6 Arbitration</i>                              | 201.80                          |
| D        | <i>Interest on LD withheld awarded as per arbitration order in A0-6 Arbitration</i>   | 97.27                           |
| <b>E</b> | <b>Total (A+B+C+D)</b>  | <b>595.97</b>                   |



*29. It is observed from the details of the LD deducted as furnished by the Petitioner, that the LD against the package mentioned in the table above is 'nil'. Further, the Petitioner has not submitted any documentary proof of the arbitration award etc. In case the arbitration proceedings are pending, the Petitioner is at liberty to approach the Commission after finalization and the same will be considered in accordance with law. In view of this, the additional capital expenditure claimed under this head, is not allowed."*

### **Submissions of the Review Petitioner**

18. The Review Petitioner has submitted that it has incurred Rs. 852.05 lakh, which includes an interest portion of Rs. 299.07 lakh, and the same is hereby claimed after releasing the amount to the package contractor relating to the works carried out in the Chimney and Cooling Tower of the A06 package. It has also been submitted that the same was brought out in the main Petition, but the documentary evidence could not be furnished at the time of the truing-up of the tariff. The Review Petitioner has submitted that the Commission, in para 29.0 of the impugned order, had directed the Review Petitioner to approach the Commission after the finalization of the award of arbitration for any package. In view of this, a copy of the Arbitration award along with the payment details is enclosed with this Review Petition for the consideration of the Commission and adjustment in the capital cost and subsequent annual fixed charges. It has further submitted that, in Packages of A03-Ash Handling System (PH1), A04 Circulating water System, and C02-Roads and drains, the LD issues are yet to be finalized, and on finalization of the LD, the Review Petitioner may be permitted to approach the Commission for adjustment of the capital cost.

### **Reply of the Respondent TANGEDCO**

19. The Respondent has submitted that the Petitioner had claimed additional expenses towards Arbitration and LD amount with interest in the main Petition, and the Commission, in the impugned order, had disallowed the said claim as under:



*"29. It is observed from the details of the LD deducted as furnished by the Petitioner, that the LD against the package mentioned in the table above is 'nil'. Further, the Petitioner has not submitted any documentary proof of the arbitration award etc. In case the arbitration proceedings are pending, the Petitioner is at liberty to approach the Commission after finalization and the same will be considered in accordance with law. In view of this, the additional capital expenditure claimed under this head, is not allowed."*

20. The Respondent has also submitted that the Review Petitioner has now furnished the details of the Arbitration, wherein only the page of award (which is the last page of order in arbitration) has been enclosed. It has further submitted that the details as to why the Review Petitioner has lost the arbitration and the details of the action taken for the delay in execution of works have not been detailed in the main Petition. Accordingly, the Respondent has submitted that the claim of the Review Petitioner may be rejected.

### **Rejoinder of the Review Petitioner**

21. The Review Petitioner has submitted that the Liquidated Damages have already been deducted and accounted for in the capital cost at the time of filing the tariff Petition for the period 2014-19, and based on this, the workings have been submitted to the Commission. It has also been clarified that for the A06 package (Chimney and Cooling Tower), though time extension was given seven times to the contractor, with the right to levy LD, the contractor could not complete the works within the stipulated timelines and, therefore, LD was deducted, as per the terms and conditions of the contract. The Review Petitioner has submitted that in the arbitral award, the Arbitral Tribunal has opined that the Review Petitioner has not suffered any revenue loss due to the delay in completion of A06 package and that the LD amount deducted has to be refunded to the contractors, along with interest of 12% on the amount (Rs.5.52 crore) from 21.6.2014 till the date of award with interest of 15% on the amounts, from date of award till the realization of the amount or part thereof. The Review Petitioner has



submitted that it has claimed the reversal of Liquidated Damages amounting to Rs.852.05 lakh, which includes an interest portion of Rs. 299.07 lakh relating to the works carried out in the Chimney and cooling Tower of the A06 package and the same was brought out in the petition, but the documentary evidence for the same could not be furnished at the time of truing-up of tariff. However, it is observed in paragraph 29 of the impugned order dated 9.6.2022 that the Commission had granted liberty to approach after the finalization of the award, and hence, the documentary evidence has been furnished in the Review Petition. The Review Petitioner has pointed out that the Commission had also not sought any documents like the award of Arbitration in the Record of Proceedings (ROP) issued on 4.8.2021. Accordingly, the Review Petitioner has prayed that the Commission may take note of the fact that it has released the payment to the contractors based on the Arbitration award of the Arbitral Tribunal, and disallowing the same would be tantamount to a denial of its legitimate claim.

### **Analysis and Decision**

22. The matter has been considered. The Review Petitioner in Petition No. 146/GT/2015 (determination of tariff for the period from actual COD to 31.3.2019) had submitted that the LD amount of Rs 1917.88 lakh withheld is in the custody of the Petitioner. The Commission, vide order dated 24.7.2017 in Petition No. 146/GT/2015, had adjusted the amount of Rs 384.93 lakh as on COD of Unit-II and Rs 646.45 lakh as on COD of Unit-I, with the following observations:

*42..... the petitioner vide affidavit dated 31.8.2016 has submitted the total amount withheld towards LD as Rs 1917.88 lakh as detailed under: -*

| <b>Sl. No.</b> | <b>Package</b> | <b>Description</b>       | <b>Name of Firm</b> | <b>Withheld amount towards LD</b> |
|----------------|----------------|--------------------------|---------------------|-----------------------------------|
| 1              | A01            | Main Plant               | BHEL                | 114341148                         |
| 2              | A03            | Ash Handling system      | ENERGO              | 1609490                           |
| 3              | A04            | Circulating water system | SPML                | 3324706                           |



|              |     |                                    |                        |                  |
|--------------|-----|------------------------------------|------------------------|------------------|
| 4            | A06 | Chimney + Cooling tower            | GAMMON                 | 55297890         |
| 5            | A08 | Switch Yard                        | BHEL                   | 8678107          |
| 6            | B01 | DG Station                         | Jeevan Diesels         | 357089           |
| 7            | C02 | Gen. Civil works-Phase-II          | RS Development & Co.   | 6246988          |
| 8            | C02 | Gen. Civil works - Phase-II- Gr-I  | ECCI                   | 752863           |
| 9            | C02 | Gen. Civil works- Phase-II- Gr-III | Diamond Infra Constr.  | 325000           |
| 10           | C02 | Gen. Civil works- Phase-II- Gr-IV  | ECCI                   | 424203           |
| 11           | C02 | Gen. Civil works- Phase-II- Gr-V   | ECCI                   | 322810           |
| 12           | C02 | Roads & Drains- Phase-II- Gr-II    | NSK Builders Pvt. Ltd. | 107310           |
| <b>Total</b> |     |                                    |                        | <b>191787604</b> |

43. The petitioner has further submitted that the LD amount of `1917.88 lakh withheld is in the custody of the petitioner and based on the decision which is yet to be taken, the amount will be either refunded or accounted as LD. We are of the considered view that since the petitioner has kept an amount of `1917.88 Lakh in his possession as on date of COD of the generating station, the same needs to be adjusted in the capital cost to the extent the time overrun has been allowed in Unit-I and Unit-II respectively. The total LD amount of `1917.88 lakh withheld is for the total delay of 77 months, and hence the same is to be prorated for the time overrun allowed for 56 months for Unit-I and 42.5 months for Unit-II.....

44. Based on the above, the capital cost considered for the purpose of tariff as on COD of the units is as under:

| <b>Particulars</b>  | <b>(Rs in lakh)</b>                    |                                   |
|---|--|-----------------------------------|
|   | <b>COD<br/>Unit-II<br/>(22.4.2015)</b> | <b>COD-Station<br/>(5.7.2015)</b> |
| Capital cost, including IDC, Normative IDC and                                  | 185536.99                              | 389398.64                         |
| Less: Liabilities   | 12538.50                               | 25076.97                          |
| Capital cost including IDC and Normative IDC<br>excluding Liabilities           | 172998.49                              | 364321.67                         |
| Less: IDC   | 39512.39                               | 79551.02                          |
| Less: Normative IDC   | 17218.51                               | 38267.03                          |
| Capital cost excluding IDC, Normative IDC and                                   | 116267.59                              | 246503.62                         |
| Less: Pro-rata reduction on overhead expenses IEDC                              | 2479.27                                | 5836.74                           |
| Less: Initial spares beyond 4% of plant and machinery                           | 872.74                                 | 1745.48                           |
| Less: Adjustment of LD recovered  | 384.93                                 | 646.45                            |
| <b>Total Opening Capital cost excluding IDC,<br/>Normative IDC, Liabilities</b> | <b>112530.65</b>                       | <b>238274.95</b>                  |

23. Subsequently, Petition No. 367/GT/2020 was filed by the Petitioner for the truing-up of tariff for the period 2014-19. However, the Petitioner, vide affidavit dated 17.9.2021, has stated that the deducted LD amount of Rs.12670.28 lakh has been accounted for and adjusted in the capital cost. The Commission, vide order dated 9.6.2022 in Petition No. 367/GT/2020, based on the revised submission of the



Petitioner, has adjusted the LD as on the COD of Unit-II and Station COD, respectively, with the following observations.

12. The details of the LD deducted and LD status as on 12.8.2021, as furnished by the Petitioner is as under:

| Sl. No.      | Package | Description                        | Name of Firm               | LD amount withheld (in Rs.) as on 31.3.2016 submitted and considered in 146/GT/2015 (A) | LD amount withheld (in Rs.) as submitted in instant Petition (B) | LD amount Discharged (in Rs.) as submitted in instant Petition (C) | Total (in Rs.) (B+C) |
|--------------|---------|------------------------------------|----------------------------|---|--|--|----------------------|
| 1            | A01     | Main Plant                         | BHEL                       | 114341148   | 0.00   | 114341148  | 114341148            |
| 2            | A03     | Ash Handling system                | ENERGO                     | 1609490   | 17704500   | 0.00   | 17704500             |
| 3            | A04     | Circulating water system           | SPML                       | 3324706   | 3324706  | 0.00   | 3324706              |
| 4            | A06     | Chimney + Cooling tower            | GAMMON                     | 55297890  | 0.00   | 0.00   | 0.00                 |
| 5            | A08     | Switch Yard                        | BHEL                       | 8678107   | 0.00   | 84112506   | 84112506             |
| 6            | B01     | DG Station                         | Jeevan Diesels             | 357089  | 0.00   | 0.00   | 0.00                 |
| 7            | C02     | Roads & Drains Phase-II- Gr-II     | NSK Builders Pvt. Ltd.     | 107310  | 6555973  | 0.00   | 6555973              |
| 8            | C02     | Gen. Civil works - Phase-II- Gr-I  | ECCI                       | 1499876   | 0.00   | 9696074  | 9696074              |
| 9            | C02     | Gen. Civil works- Phase-II         | RS Development & Co        | 6246988   | 0.00   | 0.00   | 0.00                 |
| 10           | C02     | Gen. Civil works- Phase-II- Gr-III | Diamond Infra Construction | 325000  | 0.00   | 2222915  | 2222915              |
| <b>Total</b> |         |                                    |                            | <b>191787604</b>  | <b>27585179</b>  | <b>1239442975</b>  | <b>1267028154</b>    |

13. It is observed from the Petitioner's ROP reply dated 17.9.2021 that LD amount of Rs.12670.28 lakh has been deducted from the capital cost in the revised Form 5B (consisting of Rs.124.83 Cr in Plant and Machinery Cost, Rs.0.66 Cr in Roads and Drains and Rs.1.19 Cr in Civil works). The liquidated damages of Rs.12670.28 lakh corresponds to total delay of 77 months and 71 months for Unit-I and Unit-II respectively. Hence, this LD amount has been prorated to the extent of the time overrun of 56 months and 42.5 months condoned for Unit-I and Unit-II respectively, which works out to Rs.8399.54 lakh (Rs.4607.38 lakh for Unit-I and Rs.3792.16 lakh for Unit-II). Accordingly, based on the delay in completion of each unit, Rs.3792.16 lakh and Rs.8399.54 lakh has been adjusted as on the COD of Unit-II and Station COD respectively.

14. It is further observed that the Petitioner has not submitted revised Form 9 E, after revision of Form 5B and therefore, the opening capital cost as on COD of each unit, has been worked out on the basis of the total capital cost considered in the order dated 24.7.2017 in Petition No. 146/GT/2015 and the adjustment of Rs. 646.45 lakh in lieu of LD in the aforesaid order has been reversed and the revised deduction of Rs.8399.54 Lakh has been made...



xxx

20. Accordingly, the opening capital cost, as on the COD of the units of the generating station are approved as under:

| <b>Particulars</b>   | <b>(Rs in lakh)</b>                    |                                   |
|--|--|-----------------------------------|
|  | <b>COD<br/>Unit-II<br/>(22.4.2015)</b> | <b>COD-Station<br/>(5.7.2015)</b> |
| Capital cost including IDC, Normative IDC and Liabilities            | 185536.99                              | 389398.64                         |
| Less: Liabilities  | 12538.50                               | 25076.97                          |
| Capital cost including IDC and Normative IDC excluding Liabilities   | 172998.49                              | 364321.67                         |
| Less: IDC  | 39512.39                               | 79551.02                          |
| Less: Normative IDC  | 17218.51                               | 38267.03                          |
| Capital cost excluding IDC, Normative IDC and Liabilities            | 116267.59                              | 246503.62                         |
| Less: Pro-rata reduction on overhead expenses IEDC                   | 2479.27                                | 5836.74                           |
| Less: Initial spares beyond 4% of plant and machinery                | 1017.23                                | 2034.46                           |
| Total Opening Capital cost excluding IDC, Normative IDC, Liabilities | 108978.93                              | 230232.89                         |
| Add: IDC allowed   | 27281.65                               | 58661.76                          |
| Add: Normative IDC allowed   | 5109.44                                | 13340.58                          |
| Less: Adjustment of LD recovered                                     | 3792.16                                | 8399.54                           |
| <b>Opening Capital Cost</b>  | <b>141370.02</b>                       | <b>302235.23</b>                  |

24. Further, the Petitioner, in the said Petition No. 367/GT/2020, had claimed reversal of LD in 2018-19, under the following heads:

|   | <b>Liquidated Damages claimed</b>  | <b>Amount<br/>(Rs. in lakh)</b> |
|---|--|---------------------------------|
| A | Release of LD of A0-6 Package (50% reduced in the final order for 2014-19 dated 24.7.2017, so only 50% is being claimed) | 276.49                          |
| B | Cost of arbitration as awarded in arbitration order in A0-6 Arbitration  | 20.41                           |
| C | Post award interest on total award amount as given in arbitration order in A0-6 Arbitration                              | 201.80                          |
| D | Interest on LD withheld awarded as per arbitration order in A0-6 Arbitration   | 97.27                           |
| E | <b>Total (A+B+C+D)</b>   | <b>595.97</b>                   |

25. The Commission, vide order dated 9.6.2022 in Petition No. 367/GT/2020, disallowed the claim of the Petitioner and has given liberty to the Petitioner to approach the Commission after the finalization of the arbitration. The relevant para of the said order dated 9.6.2022 is reproduced as under:





29. It is observed from the details of the LD deducted as furnished by the Petitioner, that the LD against the package mentioned in the table above is 'nil'. Further, the Petitioner has not submitted any documentary proof of the arbitration award etc. In case the arbitration proceedings are pending, the Petitioner is at liberty to approach the Commission after finalization and the same will be considered in accordance with law. In view of this, the additional capital expenditure claimed under this head, is not allowed.

26. The Review Petitioner, in the Review Petition, has submitted that the Commission has erred in disallowing the discharged liquidated damages withheld in the additional capitalization claim of the Review Petitioner. However, from the historical background of the Order dated 24.7.2017 in Petition No. 146/GT/2015 and Order dated 9.6.2022 in Petition No. 367/GT/2020, it could be inferred that the Commission, in its order dated 24.7.2017, had adjusted Rs 1917.88 lakh (including Rs 552.98 lakh towards A06 package) of LD in the capital cost of Unit-I and Unit-II of the generating station. However, the LD towards the A06 package was not considered for adjustment in the capital cost allowed in the said order dated 9.6.2022. Against this background, the claim of the Review Petitioner for Rs 595.57 lakh as additional capitalization on account of the reversal of LD towards the A06 package cannot be considered. In our view, the claim of the Review Petitioner is misconceived, and the review, on this count, is not maintainable.

### **C. Disallowance of Personnel charges in Water charges**

27. Regulation 29(1) (a) of the 2014 Tariff Regulations provides as follows:

*“Normative Operation and Maintenance expenses of thermal generating stations shall be as follows: (a) Coal based and lignite fired (including those based on Circulating Fluidized Bed Combustion (CFBC) technology) generating stations, other than the generating stations/units referred to in clauses (b) and (d):*

| Year    | Rs in Lakhs    |                |        |        |
|---------|----------------|----------------|--------|--------|
|         | 200/210/250 MW | 300/330/350 MW | 500 MW | 600 MW |
| 2014-15 | 23.90          | 19.95          | 16.00  | 14.40  |
| 2015-16 | 25.40          | 21.21          | 17.01  | 15.31  |
| 2016-17 | 27.00          | 22.54          | 18.08  | 16.27  |
| 2017-18 | 28.70          | 23.96          | 19.22  | 17.30  |
| 2018-19 | 30.51          | 25.47          | 20.43  | 18.38  |



The above norms of O&M expenses for thermal and hydro generating stations are excluding Water Charges. Water charges, as applicable, shall be allowed separately. Para 10 of the Explanatory Memorandum to the draft Regulation discussed the approach for arriving at O&M expenses states as follows:

*“Further Since water charges are to be approved and allowed separately the same has not been considered as a part of O&M expenses for thermal and Hydro Generating stations”.*

28. Para 29.31 of the Statement of Reasons and Objects (SOR) to the 2014 Tariff

Regulations stipulates as follows:

*“As regards the comment that the O&M expenses have been approved on the basis of escalating past years expenses though water charges are now being allowed separately, the Commission would like to clarify that the water charges for 2008-09 to 2012-13 have not been considered as a part of O&M expenses while determining the norms for O&M expenses for 2014-19.”*

29. The Commission, in paragraph 52 of the impugned order dated 9.6.2022, had disallowed the Personnel charges claimed in Water charges as under:

*“Personnel charges are actually being paid to the own employees of the Petitioner, which according to us, are covered under the normative O&M expenses allowed to the generating station. Hence, the claim of the Petitioner, under this head is not allowed”.*

### **Submissions of the Review Petitioner**

30. The Review Petitioner has mainly submitted as under:

- (a) The norms of O&M expenses specified by the Commission for the period 2014-19 for thermal and hydro generating stations, excluding Water Charges, are common for the generator who purchases (contracted water) or uses its own resource (aquifer). Therefore, a different treatment for the determination of the Cost of utilities shall not be adopted by stating that a portion of expenditure is covered under normative O&M expenses.
- (b) NLCIL has claimed the water charges in accordance with the provisions of Regulation 29(2) along with the auditor certificate as a supportive document for the claim in the truing up Petition.
- (c) The Personnel charges claimed are expenditures incurred towards the NLCIL personnel deployed in the raw water group to monitor the water requirements of different NLCL generating stations. These expenditures are specifically incurred towards water facilitation and claimed in terms of Regulation 29(2). Personnel charges claimed have not been included or covered under the O&M expenses of the generating stations.



### **Reply of the Respondent TANGEDCO**

31. Respondent TANGEDCO has pointed out that the claim for Rs. 9,21,57,792/- towards Personnel charges is illegal and may be dismissed as the persons employed in Water management are the employees of the Review Petitioner only, whose expenses are already covered under the O&M expenses of the generating station. The Respondent has submitted that the Review Petitioner is repeatedly misleading the Commission by making such illegitimate claims. While pointing out that Water charges have been made as an extra claim only in the 2014 Tariff Regulations, the Respondent has stated that the employees of the Review Petitioner have been looking after the Water group prior to the 2014 Tariff Regulations, and there is no proof that the review Petitioner has recruited Personnel exclusively to be deployed in Water management. It has also stated that as a special provision under the Head 'Water charges' has been made in the 2014 Tariff Regulations, the Review Petitioner has claimed the Personnel charges as extra, though the employees are serviced under the normative O&M expenses. The Respondent has further submitted that it is evident from the annexure that a special 'Raw Water Group' was created only in 2018, in which the employees are divided from the various divisions for all stations, including the generating station related to the present Review Petition viz., TPS II Expansion. The Respondent has also submitted that the intention of creating such a Raw water group using the existing employees of the generating station is to claim the Personnel charges under Water charges, and this will be tantamount to a double claim, as the employee costs are already serviced by the beneficiaries/end consumers by way of O&M expenses. Accordingly, the Review Petitioner has submitted that the claim of the Review Petitioner may be rejected.



### **Rejoinder of the Review Petitioner**

32. The Review Petitioner has clarified that it has submitted that the Personnel charges claimed are expenditures incurred towards Personnel of the Review Petitioner deployed in the Raw water group to monitor the water requirements of different generating stations of the Review Petitioner. It has been submitted that the Respondent has time and again raised this issue without understanding the fact the Review Petitioner has integrated Mines through which water beneath the lignite seam is supplied to thermal generating stations. The Review Petitioner has stated that there is always a difference in the cost between the own source of water and the contracted quantity of the water supplied by the State Governments, and while allowing the cost of the contracted quantities of water to be claimed separately, the same treatment has to be given to generating stations using own source of water also.

### **Analysis and Decision**

33. The matter has been examined. It is observed that the Review Petitioner has claimed an amount of Rs.1282.32 lakh towards Water charges, which includes an amount of Rs.921.58 lakh on account of Personnel charges. The Review Petitioner, in its rejoinder to the reply filed by KSEB, had earlier submitted the details of the creation of the Raw Water Group for TPS-I, TPS-I expansion, TPS- II, and TPS-II expansion in March 2018. It is evident from the list of the personnel deployed by the Review Petitioner that the personnel deployed in the Water cell are related to the plant and, hence, their salaries have been included in the normative O&M expenses allowed to the generating stations. In response to the contention of the Respondent TANGEDCO that the Review Petitioner has created a special 'Raw Water Group' only in 2018, the Review Petitioner has only clarified that the Personnel charges claimed are



expenditures incurred towards the Personnel of the Review Petitioner deployed in the Raw Water Group to monitor the water requirements of different generating stations of Review Petitioner. The list furnished by the Review Petitioner shows that its own employees are posted to the raw water group. It is pertinent to mention that the generating stations regulated by this Commission are located in different States and the rate of Water charges and the policies of water allocation are different in different States. In order to negate the anomaly arising out of this situation, the Commission, while framing the 2014 Tariff Regulations, has allowed the Water charges separately. In terms of this, the Water charges to be allowed, are for the contracted quantum and actual water consumption for the generating station only. The wages and salaries of own employees working in 'Raw Water Group,' including the Performance Related Pay, cannot, in our view, be considered/allowed in the Water charges. Even otherwise, the Raw Water Group was created only in 2018, but the Review Petitioner has claimed the Personnel charges retrospectively, which is not permissible. It is not the case of the Review Petitioner that for the employees working in the Raw Water Group the salaries are undertaken from a separate account. In light of the above, we find no reason to entertain the prayer of the Review Petitioner to include the Personnel charges in the Water charges. Accordingly, the review of the impugned order on this count is not allowed.

#### **D. Disallowance of higher Auxiliary Power Consumption**

34. The Commission, in paragraph 66 of the impugned order dated 9.6.2022, had disallowed the higher Auxiliary Power Consumption (APC) claimed by the Review Petitioner with the following observations:

*"....not furnished relevant details in support of its claim for higher APC of 15% due to additional equipment's (i.e., higher capacity air blowers, additional RO, DM Plant & Lime Handling system, increased no. of equipment's in water chemical treatment plant and lignite handling system etc.). Also, the month-wise APC furnished by the Petitioner also show*



*huge variation. The higher APC of the plant may also be on account of factors like frequent forced outage(s), planned outage, number of start stops and their duration, operation below normative plant availability factor, less scheduling and part load operation of the plant. In this background, the claim of the Petitioner for APC of 15% is not accepted".*

35. The Review Petitioner has submitted that though the Commission in para 66 of the impugned order had disallowed the higher Auxiliary Power Consumption (APC) claimed by the Review Petitioner in Commission's order dated 19.12.2018 in Review Petition No. 39/RP/2017 (in Petition No.146/GT/2015) filed by the Review Petitioner for this generating station, the Commission had granted liberty to the Review Petitioner vide para 64 of the order to claim higher auxiliary power consumption at the time of truing up of tariff. It has also been submitted that the CEA while furnishing recommendations on Operational norms for thermal generating stations, vide its letter dated 10.12.2018, had recommended the normative Auxiliary Power Consumption of 12.50% for TPS-II Expansion. The Review Petitioner has also submitted that the higher APC for CFBC-based lignite power stations is due to the increased deployment of auxiliary equipment, such as more high-capacity air blowers, more and higher capacity auxiliaries as the stream requires higher BMCR rating than the conventional lignite based boilers, additional RO DM Plant & Lime handling Plant system, more equipment's in Water Chemical Treatment plant, more stream with more equipment in the Lignite handling system than the conventional plant. In the above circumstances, the Review Petitioner has submitted that there are sufficient reasons for reviewing the impugned order dated 9.6.2022, or otherwise, the Review Petitioner will suffer serious financial prejudice if the above errors are not considered by this Commission.

### **Reply of the Respondent TANGEDCO**

36. The Respondent has submitted that the APC as per Regulation 36(E)(a) and 36(E)(d)(i) of the 2014 Tariff Regulations for TPS II Expansion is 10%, but the Review Petitioner had claimed higher APC of 15% in the main Petition. It has also been



submitted that the Commission, in the impugned order, had analyzed and pointed out the problems in the plant leading to high auxiliary consumption, i.e., frequent forced outages, planned outages, less scheduling, etc., and moreover, the monthly APC shows huge variation. The Respondent has also stated that the claim of the Review Petitioner in the present Petition that the higher APC for CFBC-based lignite power station is due to the increased deployment of auxiliary equipment's such as more number of high capacity air blowers, etc., has not been substantiated with any proof of details and is a baseless claim. It has been submitted that the reasons for high APC shall have to be studied in depth by the Review Petitioner, taking into account the observations made by the Commission in the impugned order, and efforts are to be taken to curtail the same. The Respondent has further submitted that the recommendations of CEA are dated 10.12.2018, and the Commission, after considering the said recommendations fixed the APC as 10.00% as per the Tariff Regulations. It has added that if the Review Petitioner is aggrieved by the APC of 10% specified, then the only forum where they can take up the issue is to challenge the said regulation before the Hon'ble High Court, but cannot seek any relaxation of APC through a Review Petition.

### **Rejoinder of the Review Petitioner**

37. The Review Petitioner, in its rejoinder, has clarified that the generating station is based on CFBC Technology and built mainly considering the environmental aspects for a reduction in emissions. It has also stated that the higher APC for CFBC-based lignite power stations is due to the increased deployment of auxiliary equipment's, such as more number of high-capacity air blowers, which keeps the medium always in a fluidized state, and these blowers are not available in conventional pulverized fuel boilers. The Review Petitioner has pointed out that the Commission had granted liberty



to the Review Petitioner in an order dated 19.12.2018 in Review Petition No. 39/RP/2017 to claim higher APC at the time of truing up of tariff. It has been argued that compared to the conventional lignite-based boilers, the number of Auxiliary equipments is more due to the CFBC technology, and the APC, at full load for the station, comes to 52 MW. It has been added that taking into account the common equipments in the Lignite Handling System, Fuel Oil pump house, PT plant, etc., the total APC works out to 65 MW during full load operation of the generating station, and hence the APC during full load operation of the station works out to 13.06%. It has also been submitted that CEA took cognizance of the matter on 10.12.2018 and recommended the normative APC of 12.5% for this generating station. The Review Petitioner has further submitted that due to the adoption of CFBC technology, the Installation of an Emission Control System (FGD) is not required thereby avoiding additional cost on account of the installation of the FGD system and consequent additional requirement of APC.

### **Analysis and Decision**

38. We have considered the matter. The normative O&M expenses allowed for the generating station is 10% for the period 2014-19, based on the CEA recommendations and considering the fact that a higher number of auxiliaries are required in CFBC technology, as compared to the conventional generating stations. Also, the tariff of the generating station was determined by an order dated 24.7.2017 in Petition No.146/GT/2015. Since the Review Petitioner in Petition No. 146/GT/2015 had not furnished any details for claiming higher auxiliary consumption, the Commission, vide its order dated 24.7.2017, had allowed the normative auxiliary consumption of 10% after directing the Petitioner to submit the actual auxiliary equipments and consumption at the time of truing up of tariff. Subsequently, in the Review Petition





No.39//RP/2017 filed by the Review Petitioner against this order, the Commission, vide its order dated 19.12.2018, had disposed of the Review Petition as under:

*The Commission in the said order has clearly granted liberty to the petitioner to submit the actual auxiliary consumption data at the time of truing up....*

*Hence, the contention of the petitioner that there is error apparent on the face of the order regarding consideration of Auxiliary Power consumption cannot be considered at this stage. As per direction in the impugned order, the claim of the petitioner for higher Auxiliary consumption shall be considered at the time of truing up after prudence check of the details furnished by the Petitioner”*

39. However, the Commission, in the impugned order dated 9.6.2022, had disposed of the prayer of the Review Petitioner with the following observations:

*“66. We have examined the matter. It is observed that the Petitioner has not furnished relevant details in support of its claim for higher APC of 15% due to additional equipment’s (i.e., higher capacity air blowers, additional RO, DM Plant & Lime Handling system, increased no. of equipment’s in water chemical treatment plant and lignite handling system etc.). Also, the month-wise APC furnished by the Petitioner also show huge variation. The higher APC of the plant may also be on account of factors like frequent forced outage(s), planned outage, number of start stops and their duration, operation below normative plant availability factor, less scheduling and part load operation of the plant. In this background, the claim of the Petitioner for APC of 15% is not accepted”. Accordingly, the APC of 10% in accordance with the 2014 Tariff Regulations is allowed.*

40. Thus, the Commission, in the impugned order, had observed that the details of the month-wise APC show a wide range of fluctuations. Though the month-wise APC fluctuations were furnished by the Review Petitioner, it did not furnish any justification for the variation in the APC and the actual APC consumed by the additional equipments. In view of this, the prayer of the Review Petitioner for higher APC was disallowed in the impugned order. Even otherwise, the APC of 10% allowed for the generating station for the period 2014-19 vide the impugned order is in terms of the 2014 Tariff Regulations notified by the Commission, considering the recommendations of the CEA. Similarly, the APC of 12.50% notified for the generating station for the period 2019-24 under the 2019 Tariff Regulations, was based on the recommendations of the CEA. That being so, the prayer of the Review Petitioner, if considered, would amount to a retrospective revision of the APC of the generating



station from 10% to 12.50% for the period 2014-19, which, in our view, is not permissible. We, therefore, find no reason to allow the prayer of the Review Petitioner, and review on this count is not maintainable.

41. Consequent upon the review being allowed on issue (A) vide paras 14 and 15 above, the tariff of the generating station, determined vide the impugned order dated 9.6.2022, has been modified, as stated in the subsequent paragraphs.

### **Discharge of liabilities**

42. Accordingly, the table under para 30 of the impugned order dated 9.6.2022 is modified as under:

|   |   | <i>(Rs. in lakh)</i> |          |         |         |                 |
|---|---|----------------------|----------|---------|---------|-----------------|
|   |   | 2015-16              | 2016-17  | 2017-18 | 2018-19 | Total           |
| A | Allowed vide order dated 24.7.2017 in Petition No. 146/ GT/ 2015                    | 6638.71              | 18438.26 | 0.00    | 0.00    | <b>25076.97</b> |
| B | Claimed liabilities corresponding to additional capital expenditure                 | 6638.71              | 5218.28  | 643.00  | 255.86  | <b>12755.85</b> |
| C | Liabilities corresponding to additional capital expenditure allowed during the year | 6638.71              | 5218.28  | 643.00  | 255.86  | <b>12755.85</b> |

### **Capital cost allowed for the period 2014-19**

43. Accordingly, the table under para 31 of the impugned order dated 9.6.2022 is modified as under:

| SI No |                                | 2015-16                         |                                      | 2016-17   | 2017-18   | 2018-19   |
|-------|--------------------------------|---------------------------------|--------------------------------------|-----------|-----------|-----------|
|       |                                | 22.4.2015 to 4.7.2015 (Unit-II) | 5.7.2015 to 31.3.2016 (Units I & II) |           |           |           |
| A     | Opening Capital Cost           | 141477.57                       | 302450.32                            | 309089.03 | 314307.31 | 314950.31 |
| B     | Additional Capital Expenditure | 0.00                            | 6638.71                              | 5218.28   | 643.00    | 255.86    |
| C     | Closing Capital Cost (A+B)     | 141477.57                       | 309089.03                            | 314307.31 | 314950.31 | 315206.17 |
| D     | Average Capital Cost ((A+C)/2) | 141477.57                       | 305769.67                            | 311698.17 | 314628.81 | 315078.24 |



### Debt-Equity Ratio

44. Also, the table under para 34 of the impugned order dated 9.6.2022 is modified as under:

|              | As on Station COD<br>(5.7.2015) |                | Net additional capital<br>expenditure |                | As on 31.3.2019  |                |
|--------------|---------------------------------|----------------|---------------------------------------|----------------|------------------|----------------|
|              | Amount                          | (in %)         | Amount                                | (in %)         | Amount           | (in %)         |
|              | (Rs. in lakh)                   |                | (Rs. in lakh)                         |                | (Rs. in lakh)    |                |
| Debt         | 211715.22*                      | 70.00%         | 8929.10                               | 70.00%         | 220644.32        | 70.00%         |
| Equity       | 90735.10*                       | 30.00%         | 3826.76                               | 30.00%         | 94561.85         | 30.00%         |
| <b>Total</b> | <b>302450.32*</b>               | <b>100.00%</b> | <b>12755.85</b>                       | <b>100.00%</b> | <b>315206.17</b> | <b>100.00%</b> |

\*After adjustment of LD deduction and initial spares deduction

### Return on Equity

45. Further, the table under para 37 of the impugned order dated 9.6.2022 is modified as under:

|  | <i>(Rs. in lakh)</i>                  |  |                 |                 |                 |
|--|---------------------------------------|--|-----------------|-----------------|-----------------|
|  | 2015-16                               |  | 2016-17         | 2017-18         | 2018-19         |
|  | 22.4.2015 to<br>4.7.2015<br>(Unit-II) | 5.7.2015 to<br>31.3.2016<br>(Units I & II) |                 |                 |                 |
| Normative Equity-Opening (A)                                       | 42443.27                              | 90735.10                                   | 92726.71        | 94292.19        | 94485.09        |
| Addition of Equity due to<br>additional capital expenditure<br>(B) | 0.00                                  | 1991.61                                    | 1565.48         | 192.90          | 76.76           |
| Normative Equity-Closing<br>(C=A+B)                                | 42443.27                              | 92726.71                                   | 94292.19        | 94485.09        | 94561.85        |
| Average Normative Equity<br>(D=(A+C)/2)                            | 42443.27                              | 91730.90                                   | 93509.45        | 94388.64        | 94523.47        |
| Return on Equity (Base Rate)<br>(E)                                | 15.500%                               | 15.500%                                    | 15.500%         | 15.500%         | 15.500%         |
| Effective Tax Rate (F)   | 21.342%                               | 21.342%                                    | 21.342%         | 21.342%         | 21.549%         |
| Rate of Return on Equity (Pre-<br>Tax) (G=E/(1-F))                 | 19.705%                               | 19.705%                                    | 19.705%         | 19.705%         | 19.758%         |
| <b>Return on Equity (Pre-Tax) –<br/>(for the period) (H= D*G)</b>  | <b>1690.97</b>                        | <b>13383.83</b>                            | <b>18426.04</b> | <b>18599.28</b> | <b>18675.95</b> |

### Interest on loan

46. Further, paras 39 (i), 39 (iii), and the table under para 40 of the impugned order dated 9.6.2022 are modified as under:

39. i) The gross notional loan for the purpose of tariff has been considered as 70% of the revised opening capital cost as determined in paragraph 20.



iii) Accordingly, the net normative opening loan works out to Rs. 99034.30 lakh as on 22.4.2015 and Rs. 210221.23 lakh as on 5.7.2015;

40. Interest on the loan has been worked out as under:

|  | 2015-16                         |                                      | 2016-17         | 2017-18         | 2018-19         |
|--|---------------------------------|--------------------------------------|-----------------|-----------------|-----------------|
|  | 22.4.2015 to 4.7.2015 (Unit-II) | 5.7.2015 to 31.3.2016 (Units I & II) |                 |                 |                 |
| Gross opening loan (A)                               | 99034.30                        | 211715.22                            | 216362.32       | 220015.12       | 220465.22       |
| Cumulative repayment of loan up to previous year (B) | 0.00                            | 1493.99                              | 13318.77        | 29598.40        | 46031.10        |
| Net Loan Opening (C=A-B)                             | 99034.30                        | 210221.23                            | 203043.55       | 190416.71       | 174434.11       |
| Addition due to additional capital expenditure (D)   | 0.00                            | 4647.10                              | 3652.80         | 450.10          | 179.10          |
| Repayment of loan during the year (E)                | 1493.99                         | 11824.78                             | 16279.63        | 16432.70        | 16456.17        |
| Net Loan Closing (F=C+D-E)                           | 97540.30                        | 203043.55                            | 190416.71       | 174434.11       | 158157.05       |
| Average Loan [G=(F+C)/2]                             | 98287.30                        | 206632.39                            | 196730.13       | 182425.41       | 166295.58       |
| Weighted Average Rate of Interest of loan (H)        | 9.8670%                         | 9.8670%                              | 9.7735%         | 9.6270%         | 9.3650%         |
| <b>Interest on Loan (I=H*G)</b>                      | <b>1960.80</b>                  | <b>15096.34</b>                      | <b>19227.42</b> | <b>17562.09</b> | <b>15573.58</b> |

### Depreciation

47. Further, the table under para 42 of the impugned order dated 9.6.2022 is modified as under:

(Rs. in lakh)

|   | 2015-16                         |                                      | 2016-17   | 2017-18   | 2018-19   |
|---|---------------------------------|--------------------------------------|-----------|-----------|-----------|
|   | 22.4.2015 to 4.7.2015 (Unit-II) | 5.7.2015 to 31.3.2016 (Units I & II) |           |           |           |
| Average capital cost (A)  | 141477.57                       | 305769.67                            | 311698.17 | 314628.81 | 315078.24 |
| Value of freehold land included above (B)                                   | 0.00                            | 0.00                                 | 0.00      | 0.00      | 0.00      |
| Aggregated depreciable value [C = (A-B) x 90%]                              | 127329.81                       | 275192.71                            | 280528.35 | 283165.93 | 283570.41 |
| Remaining Aggregate Depreciable value at the beginning of the year (D = C - | 127329.81                       | 273698.71                            | 267209.58 | 253567.52 | 237539.31 |



|   | 2015-16                         |                                      | 2016-17         | 2017-18         | 2018-19         |
|---|---------------------------------|--------------------------------------|-----------------|-----------------|-----------------|
|   | 22.4.2015 to 4.7.2015 (Unit-II) | 5.7.2015 to 31.3.2016 (Units I & II) |                 |                 |                 |
| cumulative depreciation upto previous year)   |                                 |                                      |                 |                 |                 |
| Weighted average rate of depreciation   | 5.2229%                         | 5.2229%                              | 5.2229%         | 5.2229%         | 5.2229%         |
| <b>Depreciation for the period (E)</b>  | <b>1493.99</b>                  | <b>11824.78</b>                      | <b>16279.63</b> | <b>16432.70</b> | <b>16456.17</b> |
| Cumulative depreciation at the end of the year, before adjustment of de-capitalization adjustment | 1493.99                         | 13318.77                             | 29598.40        | 46031.10        | 62487.27        |

### Working Capital for Receivables

48. The table under para 81 of the impugned order dated 9.6.2022 is rectified as under:

*(Rs. in lakh)*

|                             | 22.4.2015 to 4.7.2015 (Unit-II) | 5.7.2015 to 31.3.2016 (Units I & II) | 2016-17         | 2017-18         | 2018-19 up to 4.7.2018 | 2018-19 from 5.7.2018 to 31.3.2019 |
|-----------------------------|---------------------------------|--------------------------------------|-----------------|-----------------|------------------------|------------------------------------|
| Energy Charges (two months) | 1123.38                         | 8476.74                              | 12550.34        | 13062.80        | 3456.34                | 10478.16                           |
| Fixed Charges (two months)  | 1147.77                         | 8887.85                              | 12112.64        | 12102.85        | 3139.81                | 8923.68                            |
| <b>Total</b>                | <b>2271.15</b>                  | <b>17364.59</b>                      | <b>24662.99</b> | <b>25165.66</b> | <b>6596.15</b>         | <b>19401.84</b>                    |

### Interest on Working Capital

49. In addition, the table under para 83 of the impugned order dated 9.6.2022 is rectified as under:

*(Rs. in lakh)*

|   | 22.4.2015 to 4.7.2015 (Unit-II) | 5.7.2015 to 31.3.2016 (Units I & II) | 2016-17 | 2017-18 | 2018-19 (up to 4.7.2018) | 2018-19 (5.7.2018 to 31.3.2019) |
|---|---------------------------------|--------------------------------------|---------|---------|--------------------------|---------------------------------|
| Working capital for Fuel cost lignite for 45 days | 694.44                          | 5268.32                              | 7869.74 | 8213.42 | 2174.69                  | 6592.74                         |
| Working capital for Fuel Stock -Limestone         | 39.21                           | 287.21                               | 387.89  | 387.89  | 100.96                   | 306.06                          |
| Working capital for Secondary Fuel oil cost       | 16.66                           | 96.92                                | 130.53  | 130.53  | 33.97                    | 103.00                          |
| Working capital for O & M expenses (1 month)      | 106.99                          | 795.80                               | 1146.23 | 1239.82 | 353.23                   | 1003.91                         |



|  | 22.4.2015 to 4.7.2015 (Unit-II) | 5.7.2015 to 31.3.2016 (Units I & II) | 2016-17         | 2017-18         | 2018-19 (up to 4.7.2018) | 2018-19 (5.7.2018 to 31.3.2019) |
|--|---------------------------------|--------------------------------------|-----------------|-----------------|--------------------------|---------------------------------|
| Working capital for Maintenance Spares | 256.78                          | 1909.91                              | 2750.95         | 2975.56         | 847.74                   | 2409.37                         |
| Working capital for Receivables        | 2271.15                         | 17364.59                             | 24662.99        | 25165.66        | 6596.15                  | 19401.84                        |
| <b>Total Working Capital</b>           | <b>3385.23</b>                  | <b>25722.75</b>                      | <b>36948.34</b> | <b>38112.88</b> | <b>10106.74</b>          | <b>29816.92</b>                 |
| Rate of Interest                       | 13.50%                          | 13.50%                               | 13.50%          | 13.50%          | 13.50%                   | 13.50%                          |
| <b>Interest on Working capital</b>     | <b>457.01</b>                   | <b>3472.57</b>                       | <b>4988.03</b>  | <b>5145.24</b>  | <b>1364.41</b>           | <b>4025.28</b>                  |

### Annual Fixed Charges

50. Based on the above, the table under para 84 of the impugned order dated 9.6.2022 is rectified as under:

*(Rs. in lakh)*

|   | 2015-16                         |                                      | 2016-17         | 2017-18         | 2018-19         |
|---|---------------------------------|--------------------------------------|-----------------|-----------------|-----------------|
|   | 22.4.2015 to 4.7.2015 (Unit-II) | 5.7.2015 to 31.3.2016 (Units I & II) |                 |                 |                 |
| Depreciation                              | 1493.99                         | 11824.78                             | 16279.63        | 16432.70        | 16456.17        |
| Interest on Loan                          | 1960.80                         | 15096.34                             | 19227.42        | 17562.09        | 15573.58        |
| Return on Equity                          | 1690.97                         | 13383.83                             | 18426.04        | 18599.28        | 18675.95        |
| Interest on Working Capital               | 457.01                          | 3472.57                              | 4988.03         | 5145.24         | 5389.69         |
| O&M Expenses                              | 1283.88                         | 9549.57                              | 13754.75        | 14877.81        | 16285.58        |
| <b>Total annual fixed charges allowed</b> | <b>6886.65</b>                  | <b>53327.09</b>                      | <b>72675.87</b> | <b>72617.12</b> | <b>72380.98</b> |

51. Review Petition No. 33/RP/2022 in Petition No.367/GT/2020 stands disposed of in terms of the above

**Sd/-**  
**(Pravas Kumar Singh)**  
**Member**

**Sd/-**  
**(Arun Goyal)**  
**Member**

**Sd/-**  
**(Jishnu Barua)**  
**Chairperson**

