

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.60/GT/2024

Coram:

Shri Jishnu Barua, Chairperson

Shri Ramesh Babu V., Member

Shri Harish Dudani, Member

Date of Order: 8th November 2024

In the matter of:

Petition seeking revision of tariff of Koteshwar Hydroelectric Project (400 MW) for the period 2019-24 on account of interim trueing-up, limited to meet the liabilities as per the Arbitration award dated 17.12.2010 read with the orders of the Hon'ble Delhi High Court dated 13.12.2019, 12.7.2023, 28.7.2023 paid by THDCIL on 27.1.2020 and 31.8.2023, in terms of Regulation 13(3), Regulations 76 and 77 of the Tariff Regulations, 2019.

And

In the matter of:

THDC India Limited,
Pragati Puram, Bypass Road,
Rishikesh-249201, Uttarakhand

.....Petitioner

Vs

1. Punjab State Power Corporation Limited,
The Mall, Patiala – 147001 (Punjab)
2. Haryana Power Utilities,
Shakti Bhawan, Sector 6,
Panchkula – 134 109 (Haryana)
3. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14 Ashok Marg,
Lucknow – 226001 (UP)
4. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
Behind Nehru Place Bus Terminal,
New Delhi-110019
5. BSES Yamuna Power Limited,
3rd Floor, Shakti Kiran Building,
Karkardooma, Near Court,
New Delhi-110092



6. Tata Power Delhi Distribution Limited,
33 KV Grid Sub-Station Building, Hudson Lane,
Kingsway Camp, Delhi-110009
7. Chandigarh Administration,
1st Floor, UT Secretariat, Sector 9-D,
Chandigarh-160009
8. Uttarakhand Power Corporation,
Limited, Urja Bhawan, Kanwali Road,
Dehradun-248001
9. Himachal Pradesh State Electricity Board Limited,
Vidyut Bhawan, Shimla-171004
10. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Janpath, Jyotinagar,
Jaipur-302005 (Rajasthan)
11. Ajmer Vidyut Vitran Nigam Limited,
Old Powerhouse, Hatthi Bhatta, Jaipur road,
Ajmer-305001 (Rajasthan)
12. Jodhpur Vidyut Vitran Nigam Limited,
New Powerhouse, Industrial Area,
Jodhpur-342003 (Rajasthan)
13. Power Development Department,
Government of J&K, Civil Secretariat,
Jammu -180001 (J&K)
14. Madhya Pradesh Power Management Company Limited,
3rd Floor, Block No. 11, Shakti Bhawan,
Rampur, Jabalpur- 482008 (MP)
15. Rajasthan Urja Vikas Nigam Limited,
Vidyut Bhawan, Jiyoti Nagar,
Jaipur- 302005 (Rajasthan)
16. J&K State Power Trading Company Limited,
PDD Complex, Bemina,
Srinagar -190010 (J&K)

.... Respondents

Parties Present:

Shri M.G. Ramachandran, Senior Advocate, THDC
Ms. Anushree Bardhan, Advocate, THDC
Ms. Surbhi Kapoor, Advocate, THDC



Ms. Shirsa Saraswati, Advocate, THDC
Shri Mohit Jain, Advocate, BSES Discoms
Shri Sachin Dubey, Advocate, BSES Discoms
Shri Mohit K. Mudgal, Advocate, BSES Discoms
Shri Venkatesh, Advocate, TPDDL
Shri Nihal Bhardwaj, Advocate, TPDDL
Ms. Manu Tiwari, Advocate, TPDDL
Shri Ashutosh Srivastava, Advocate, TPDDL
Ms. Jaya, BSES Discoms

ORDER

This Petition has been filed by the Petitioner, THDC India Limited, with the following main prayers:

- (a) *The Hon'ble Commission may be pleased to undertake truing-up of tariff of Koteswar Hydroelectric Project (400 MW) for the period 2019-24, taking in to account the submissions made hereinabove and, in the forms, and annexures filed herewith permitting the petitioner to recover the Annual Fixed Cost of Rs.56558.58 lakh, Rs 56247.63 lakh, Rs 55847.87 lakh, Rs 55566.19 lakh & Rs 66387.42 lakh for the financial year 2019-20, 2020-21, 2021-22, 2022-23 and 2023-24 respectively.*
- (b) *Direct that the amount that THDCIL had to deposit on 27.1.2020 and 31.8.2023 in terms of the orders of the Hon'ble High Court of Delhi dated 13.12.2019, 12.7.2023, 28.7.2023 with regard to the Arbitral Award dated 17.12.2010, to be allowed as a revenue requirement and pass through in tariff subject to further adjustments to be made as per the proceedings regarding the arbitration which is pending before the High Court of Delhi.*

Background

2. The Petitioner, THDC India Limited (THDCIL), is a Joint Venture Company between Govt. of India and the Govt. of Uttar Pradesh. Subsequently, a Share Purchase Agreement was executed between NTPC Limited and the President of India on 25.3.2020 for the acquisition of legal and beneficial ownership of equity held by the President of India in THDCIL (which represents 74.496% of the total paid up share capital of THDCIL by NTPC Limited). THDCIL is now a subsidiary of NTPC Limited, having a shareholding pattern of 74.496% with NTPC Limited and 25.504% with the Govt. of Uttar Pradesh.

3. Koteswar Hydroelectric Project (400 MW), being a part of the Tehri Hydro Power Complex, comprises Tehri HPP Stage-I (1000 MW), Tehri Pumped Storage Plant (1000



MW), and downstream power station, i.e., Koteshwar Hydroelectric Project (400 MW) in Tehri Garhwal in the State of Uttarakhand. Thus, the entire Tehri Power Complex has an aggregate capacity of 2400 MW. The Tehri HPP Stage-I (1000 MW) has already been commissioned, and the Tehri Pumped Storage Plant (1000 MW) is under construction. The actual date of commercial operation of the units of the Koteshwar Hydroelectric Project are as under:

Unit-I	1.4.2011
Unit-II	26.10.2011
Unit-III	13.2.2012
Unit-IV	1.4.2012

4. The Petitioner has entered into PPAs with the Respondents for the capacity generated from the project. The power allocation from the generating station had been notified on 8.8.2007 by the Ministry of Power, Govt. of India. Accordingly, in Petition No.165/GT/2017 filed by the Petitioner, the Commission vide order dated 5.9.2018 approved the tariff of the generating station for the period 2011-14. Aggrieved by the order dated 5.9.2018, the Petitioner filed a review petition on various issues, and the same was disposed of vide Commission's order dated 16.4.2019. The Petitioner has also filed Appeal No.23/2019 against this order before the Appellate Tribunal for Electricity (APTEL), and the same is pending. Meanwhile, vide Commission's order dated 9.10.2018, the tariff of the generating station for the period 2014-19 was approved. Aggrieved by the said order, the Petitioner filed a review petition on certain grounds and the same was disposed of vide Commission's order dated 4.6.2019. Against this order also, the Petitioner has filed Appeal No.126/2021 before the APTEL and the same is pending.

Present Petition

5. The Petitioner, in support of the prayers in para 1 above, has submitted the following:

(a) The present petition is filed for determination of tariff for the period 2019-24 for the generating station by way of interim truing up, subsequent to the decisions dated 13.12.2019, 12.7.2023, and 28.7.2023 passed by the Hon'ble High Court, Delhi with regard to the Arbitral Award related to THDCIL v PCL ILC JV matter dated 17.12.2010, which adversely affected the cash flow of THDCIL. The sequence of events has been dealt with more fully hereunder:

Dates	Details
26.12.2001	THDCIL invited tender for Construction of Civil Works of Dam, Spillway and Powerhouse at Koteshwar with certain pre-qualification criteria for a party to participate regarding technical knowhow and financial capacity.
25.2.2002	M/s PCL-ILC JV participated in the Tender and submitted its proposal. It met the pre-qualification criteria due to the technical knowhow brought in by its JV partner M/s. Intertech Lendhydro, a Russian Consortium.
31.8.2002	THDCIL issued the Letter of Award to M/s PCL-Intertech Lenhydro Consortium JV for a total sum of Rs. 3345166092. The contract was for a period of 45 months from 31.8.2002 (i.e. 31.5.2006). Copy of the Letter of Award dated 31.8.2002 is annexed as Annexure-VI
14.11.2002	Formal contract agreement entered into between the parties. This was an item rate contract and the contract amount as per the bill of quantities and scope of work was Rs. 3345166092. Copy of the agreement is annexed as Annexure-VII
16.6.2007	M/s. PCL-ILC JV invoked clause 60 of GCC for seeking arbitration for first seven claims.
1.12.2007	M/s. PCL-ILC JV invoked the arbitration clause for claims 8 to 14.
10.1.2008	Parties agreed that the arbitral tribunal will adjudicate all the claims from 1 to 14.
8.2.2008	Date of filing of statement of claims by M/s. PCL-ILC JV.
12.4.2008	Date of filing of statement of defence by THDCIL.
7.11.2008	Petitioner filed the counter claims.
17.12.2010	The Arbitral Tribunal passed the arbitral award and awarded a sum of Rs. 71 crores plus revision of rates for scheduled items of work amounting to Rs. 111 crores (approx.) as on 31.5.2006 along with interest @12% for the pre-award period and @18% from the date of award till the date of payment. Copy of the Arbitral Award dated 17.12.2010 is annexed as Annexure-VIII
14.1.2011	Petitioner filed OMP (Comm.) 303 of 2020 under Section 34 of the Arbitration and Conciliation Act, 1996 before the Hon'ble Delhi High Court challenging the Arbitral Award dated 17.12.2010.
20.5.2019	PCL-ILC JV filed a Petition [OMP (Enf.) (Comm) 91 of 2019] under Section 36 of Arbitration and Conciliation Act, 1996 before the Hon'ble Delhi High Court for enforcement of the Arbitral Award dated 17.12.2010.
13.12.2019	The Hon'ble Delhi High Court in OMP (Enf.) (Comm) No. 91/2019 directed the Petitioner to make part deposit of Rs. 450 crores due under the arbitral award with the Registrar General of the Delhi High Court. Copy of the order dated 13.12.2019 is annexed as Annexure-IX



Dates	Details
27.1.2020	Petitioner complied with the direction and deposited Rs. 450 crores vide Demand Draft in favour of Registrar General, High Court of Delhi at New Delhi.
19.5.2020	The Registrar General of the Hon'ble Delhi Court directed the release of Rs. 450 crores to the M/s PCL-ILC JV upon furnishing bank guarantees for an equivalent amount.
12.7.2023	The Single Judge of the Delhi High Court vide judgement in O.M.P (Comm.) 303/2020 upheld the majority arbitral award, except for the grant of pre-award interest @12%. Copy of the order dated 12.7.2023 is annexed as Annexure-X
28.7.2023	The Hon'ble Delhi High Court in OMP (Enf.) (Comm) No. 91/2019 directed the Petitioner to verify the calculation of the outstanding decretal amount and deposit the same in the Registry before 31.8.2023. Further, it was directed that this amount shall be kept in an interest-bearing FDR and shall be subject to further order/s in these proceedings. Copy of the order dated 28.7.2023 is annexed as Annexure-XI .
22.8.2023	Petitioner filed Appeal [F.A.O(OS) (Comm.) 184/2023] under Section 37 of Arbitration and Conciliation Act, 1996 before the Hon'ble Delhi High Court against the said judgement dated 12.7.2023 in O.M.P(Comm.) No.303 of 2020 and to set aside the Arbitral Award dated 17.12.2010.
31.8.2023	Petitioner complied with the direction of the Hon'ble High Court vide Order dated 28.7.2023, as per its calculation of the outstanding decretal amount and deposited Rs. 1010.25 crores vide Demand draft in favour of Registrar General, High Court of Delhi.

- (b) Arguments in the appeal proceedings filed by THDCIL in FAO(OS) (Comm) No.184/2023 stand completed on 19.10.2023, and judgment has been reserved by the Division Bench of the Hon'ble High Court of Delhi. The enforcement matter OMP (Enf) (Comm) 91/2019 is pending.
- (c) Thus, the above substantial amount deposited by THDCIL has adversely affected the cash flow of THDCIL. THDCIL had disclosed the contingent liability and interest thereon as Rs 131545.55 lakhs as on 31.3.2019 in Petition No. 245/GT/2020 and in Petition No. 244/GT/2020, respectively.
- (d) The power to remove difficulties and the power to relax are well-known methods of legislative drafting. The Petitioner had not filed an interim truing up petition in 2021-22 under Regulation 13(3) of the 2019 Tariff Regulations as the annual fixed cost was not increased by more than 20% over the annual fixed cost as determined by the Commission for the respective years of the tariff period till 31.3.2021.
- (e) The cause has arisen subsequent to the Arbitral award dated 17.12.2010 and Hon'ble Delhi High Court's judgment dated 13.12.2019, 12.7.2023 and 28.7.2023 against the Arbitral award related to THDCIL v PCL ILC JV matter as explained above. The total awarded amount is Rs 1460.25 crore (approx.), i.e., (Principal amount of Rs 475.70 crore and Interest amount of Rs 984.55 crore).



- (f) THDCIL deposited the full decretal amount of Rs.450 crore as per the order dated 13.12.2019 and Rs.1010.25 crore as per the order dated 28.7.2023 before the Registrar, Delhi High Court. In light of the above facts and circumstances, THDCIL is seeking this Commission to invoke its power to relax and power to remove difficulty by undertaking the interim truing up process.
- (g) The basis of the power to relax and power to remove difficulties have been considered by the Hon'ble Supreme Court in Premium Granites & anr v State of Tamil Nadu & ors (1994) 2 SCC 691; Hindustan Paper Corporation Limited v Govt of Kerala (1986) 3 SCC 398 and Hindustan Steels Ltd V A.K.Roy (1969) 3 SCC 513.
- (h) The present petition is per proviso to Regulations 10, 13, 25, 26, 35(2), 76, 77 and other applicable regulations of the 2019 Tariff Regulations. The present petition has been filed along with the tariff filing forms, taking into consideration the liabilities of THDCIL, as per the Arbitral award dated 17.12.2010 read with the orders of the Hon'ble Delhi High Court dated 13.12.2019, 12.7.2023, 28.7.2023 and paid by THDCIL on 27.1.2020 and 31.8.2023. The rest of the aspects for the period 2019-24 for the generating station will be claimed /modified /submitted by THDCIL at the time of truing up of tariff proceedings under Regulation 13(1) of the 2019 Tariff Regulations.
- (i) Tariff forms for the period 2019-24 have been certified by the Auditors based on the actual additional capital expenditure, limited to meet the liabilities as per Arbitral award dated 17.12.2010 read with the orders of the Hon'ble Delhi High Court dated 13.12.2019, 12.7.2023, 28.7.2023 and paid by THDCIL on 27.1.2020 and 31.8.2023.
- (j) The annual fixed cost in respect of the generating station for the period 2019-24 based on the 2019 Tariff Regulations, taking into consideration the liabilities to meet the arbitration award dated 17.12.2010 read with the orders of the Hon'ble Delhi High Court and paid by THDCIL on 27.1.2020 and 31.8.2023 works out to Rs.56558.58 lakh, Rs 56247.63 lakh, Rs 55847.87 lakh, Rs 55566.19 lakh & Rs 66387.42 lakh for the years 2019-20, 2020-21, 2021-22, 2022-23 and 2023-24 respectively, as per the details given in Form-I.
- (k) The Commission may direct the Respondent beneficiaries to make payments to THDCIL for the bills raised by the Petitioner for the supply of power energy to them from the generating station.



Hearing dated 18.3.2024

6. The matter was heard on 'admission' on 18.3.2024, and the Commission, after hearing the submissions of the learned counsel for the Petitioner, 'admitted' the Petition and issued directions to the parties to complete their pleadings. In response, BRPL and TPDDL have submitted their replies vide affidavits dated 29.5.2024 and 20.5.2024, respectively, and the Petitioner has filed its rejoinder to the said replies vide affidavits dated 2.7.2024 and 31.5.2024.

Reply of the Respondents

7. The Respondents, TPDDL and BRPL, have, in their replies, mainly submitted the following:

Respondent TPDDL

(A) The relief(s) sought by the Petitioner in the present Petition is bereft of any merit and deserves to be dismissed for the following reasons:

(i) The invocation of the Commission's power to remove difficulties and to relax the regulations in effect is to amend the Tariff Regulations, 2019, which is beyond the scope of this Commission's power as intended in the current regulatory framework.

(ii) The Commission has consciously considered the middle of the control period 2019-24. i.e., 2021-22, to file the application for interim truing-up and not the last financial year, i.e., 2023-24, in order to streamline the tariff and to control any variation between the actual and approved tariff in the middle of the control period and not in the last financial year 2019-24

(iii) It can be inferred from Regulation 13(3) of the 2019 Tariff Regulations that the application for interim truing-up has to be filed if there is an increase of more than 20% in the AFC for all the years. However, in the present petition, there is an increase of 20% in AFC only for 2023-24. Therefore, the Petitioner cannot file an application for interim truing-up as it is not as per the terms of the 2019 Tariff Regulations.

(iv) The Petitioner has filed the interim true-up petition after a delay of two years, which is beyond the timeframe stipulated in Regulation 13(3) of the 2019 Tariff Regulations. Moreover, given that the tariff period 2019-24 is nearing its end, the Petitioner must file a fresh tariff petition for the truing-up exercise by 30.11.2024 as

per Regulation 13(2). Filing a fresh petition for final true-up at this juncture would prevent unnecessary duplication of proceedings and ensure regulatory efficiency.

(v) The beneficiaries, including this Respondent, cannot be burdened with the additional capital expenditure arising from the arbitral award dated 17.10.2010 and the subsequent orders passed by the Hon'ble Delhi High Court. These costs were incurred due to THDCIL's own failure to provide a conducive working environment and the necessary specifications, which directly led to financial and operational setbacks for the claimant.

(vi) It is inappropriate for the Petitioner to pass on the increased annual fixed cost, including the accrued interest to the beneficiaries due to the Petitioner's own delays in challenging the arbitral award and in seeking recourse from this Commission to claim the cost of the arbitral award.

(vii) The Petitioner has failed to make timely payments to the claimant, which has led to the increase in interest and carrying costs; the Respondents should not be held liable for this additional financial burden, which is a direct result of the Petitioner's management and operational lapses.

(viii) The Petitioner has not provided any substantial documentation to support its claim of increased annual fixed costs, particularly lacking details of the loans taken and the associated financial impact.

Preliminary objections

Re: Power to remove difficulties and Relax cannot be invoked by THDCIL

(ix) Regulation 13(3) of the 2019 Tariff Regulations categorically stipulates that an application for interim true-up must be filed within the year 2021-22 if AFC for the generating station increases by more than 20% over the costs determined by this Commission for the corresponding years of 2019-24. The explicit mention of the year 2021-22, during which to file, underscores a clear legislative intent to impose a strict timeline for such filings, ensuring that regulatory adjustments are both timely and predictable for effective financial and regulatory planning.

(x) The Petitioner inter alia has requested this Commission to use its "Power to Relax" and "Power to Remove Difficulty" despite being aware that there is no provision within the existing 2019 Tariff Regulations permitting the filing of interim true-up Petition beyond the stipulated timeframe.

(xi) The power to relax and the power to remove difficulties cannot be exercised to amend or modify the regulations. The 'power to relax' and 'power to remove difficulties' must be exercised in a conditioned and restricted manner, and such exercise of power should not change the basic structure, scheme, and essential provisions of the statute. [Reliance placed on the judgment of the Hon'ble Supreme



Court in M.U. Sinai Vs. Union of India [(1975) 2 SCR 640]. The APTEL, in its judgment dated 11.1.2022 in Appeal No. 101/2017 and Appeal No.110/2017, while relying on the judgment of the Hon'ble Supreme Court in M.U. Sinai case was inter alia pleased to hold that the power to remove difficulty cannot be invoked to amend the proviso to Regulation 29(1) substantially read with the proviso to Regulation 1 (2) of the 2014 Tariff Regulations.

(xii) Any relaxation of standard regulations should only occur in exceptional cases where non-relaxation would lead to hardship or injustice. However, the Petitioner has failed to establish its reasons for such an inordinate delay in the filing of the present Petition for the interim true-up. Regulation 77 providing for Power to Remove Difficulty is intended to address difficulties in implementing the regulations themselves, not difficulties arising from their application to particular circumstances (judgment of APTEL in Appeal No.130/2009 (RGPPL v CERC & anr relied upon)

(xiii) The challenges faced by the Petitioner were related to operational issues within the context of the regulations, not ambiguities or challenges in the regulations themselves. Thus, as per the above settled legal position to the present case, the present Petition seeking modification/amendments in the applicable Regulations under an exercise of power to relax/remove difficulties is not maintainable and is liable to be dismissed.

(xiv) it is a settled position in law that regulations promulgated by a Regulatory Commission have statutory force and are binding on all parties, including the Commission itself [*PTC India Ltd. v. CERC, (2010) 4 SCC 603*]. Thus, in terms of the settled position of law, this Commission must adhere strictly to the Regulations it has promulgated when determining tariffs and should dismiss the present Petition seeking interim true-up of tariff for the generating station as deemed non-maintainable for being contrary to the 2019 Tariff Regulations and seeking amendment/modification thereto.

(xv) The Petitioner was well aware of the liability of the payment of arbitral award and the requirement of filing the petition seeking interim true-up in 2021-22 in accordance with the 2019 Tariff Regulations. However, if the Petitioner has not visualized and factored in such regulatory charges, it is a matter of overlooking by the Petitioner, which cannot be relaxed by amending/modifying the prevalent regulations.

(xvi) In light of these regulatory requirements, and to maintain regulatory compliance and financial transparency, it would be most appropriate for the Petitioner to initiate a fresh petition. This new petition would be filed for ruing up of the tariff for the generating station from 1.4.2019 to 31.3.2024. This approach would allow for an accurate reflection of the financial activities and adjustments based on the audited accounts available up to 31.3.2024.



Respondent TPDDL cannot be burdened with the additional cost accrued on account of Petitioner's own fault

(xvii) The enforcement and execution of the arbitral award remain pending before the Hon'ble High Court of Delhi. Consequently, the additional capital expenditure claimed under this account has not been approved at this stage. Therefore, the Petitioner should only claim these expenditures after the final decision of the Hon'ble Court and in accordance with the applicable regulations

(xviii) The Petitioner has sought to impose on the beneficiaries the burden of meeting liabilities arising from the arbitral award and directives of the Hon'ble High Court of Delhi, which are attributable solely to the Petitioner. Thus, allowing utilities to pass on the costs of their inefficiencies to consumers contradicts the very purpose of regulation, which is to protect consumer interests while ensuring a sustainable and economical supply of electricity.

(xix) It is further evident that the Petitioner encountered significant delays in fulfilling its financial obligations under the arbitral award. This delay has led to an accumulation of interest charges, further exacerbating the financial burden on the beneficiaries, including this Respondent. The Petitioner's initial reluctance or delay in making these payments led to subsequent legal directives enforcing compliance. It was not until 27.1.2020, following the order dated 13.12.2019 from the Hon'ble Delhi High Court, that the Petitioner deposited Rs. 450 crores. Another payment was made on 31.8.2023, as directed by the High Court on 28.7.2023. These payments were significantly delayed considering the date of the original arbitral award in 2010, indicating that THDCIL had deferred addressing its financial obligations for nearly a decade.

(xx) In the present case, the Petitioner has sought reliefs despite the arbitral award establishing that numerous delays and cost overruns were primarily due to THDCIL's own managerial and operational inefficiencies. Furthermore, the current petition for interim true-up has been filed after an inordinate delay. Reliance is also placed on *Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Ltd.*, (2023) 10 SCC 545.

(xxi) The tariff charged by the Respondent is determined by DERC in accordance with the Electricity Act, 2003, read with the Rules and Regulations framed thereunder. Therefore, if this Commission allows the revision of tariffs for the period from 2019-24, on account of interim truing up to meet the liabilities paid by the Petitioner on 27.1.2020 and 31.8.2023, pursuant to the arbitration award and the orders of the Hon'ble Delhi High Court, such a decision would result in an onerous financial burden on the public. This is because the increased expenses of the Respondent would ultimately be passed on to consumers through higher tariffs, which would be detrimental to the public interest.



(xxii) The Petitioner has failed to provide any documentary evidence to verify whether the works awarded to the contractor were within the original scope, whether they were completed and capitalized before the cut-off date, or whether the amounts claimed are balance payments for works capitalized prior to the cut-off date.

Respondent BRPL

(xxiii) The present petition filed by Petitioner is not maintainable as per Regulation 13 (3) of the 2019 Tariff Regulations, as the same is time-barred. The Petitioner has filed the present petition on 29.12.2023; however, as per aforesaid regulation, a generating company can make an application for interim truing up of tariff in the year 2021-22. Since in the present case Petitioner has sought interim truing up beyond the prescribed duration, therefore, the same is time-barred and liable to be dismissed.

(xxiv) The power to relax under Regulations 76 is a judicial discretion, and the same cannot be invoked to contradict a specific provision where there is no ambiguity regarding the process of filing an interim truing up petition. Further, the Power to Remove difficulty under Regulation 77 of the Tariff Regulations, 2014, can be exercised with due care. The Hon'ble Supreme Court in Mahadeva **Upendra Sinai, etc. Vs. Union of India & Ors. [1975 AIR 797, 1975 SCR (2) 640]** has laid down the scope of the exercise of power to remove difficulty provided in a statute.

(xxv) The tariff for the period 2019-24 was over on 31.3.2024, and therefore, the Petitioner can file the truing up petition for the period 2019-24 along with the tariff for the period 2024-29, as provided under the applicable Tariff Regulations instead of filing the interim truing up petition, after the prescribed period.

No additional capitalization to be allowed without a prudence check

(xxvi) Without prejudice to aforesaid arguments, the claim of additional capitalization sought by the Petitioner by way of the present interim truing up cannot be allowed without prudence check. In the present interim truing up petition, the Petitioner has sought additional capitalization under Regulations 25 and 26 of the CERC Regulations, 2019 on account of liabilities incurred due to an arbitration award dated 17.12.2010 and a decision passed by Hon'ble High Court of Delhi on 12.7.2023.

(xxvii) In this regard, it is submitted that Regulations 25 and 26 of the CERC Regulations 2019 clearly provide that these expenses may be admitted subject to prudence check. Any liability on account of award of arbitration or statutory compliance of direction of any statutory authority or court of law only after applying the prudence check

Additional capitalization of Rs. 1460.25 crore cannot be allowed as the same was incurred due to the fault of Petitioner

(xxviii) As per the contract agreement dated 14.11.2022, the contract was awarded to the Contractor by the Petitioner at the cost of Rs. 334,51,66,092/- and the time duration for completion of the work was within 45 months. However, there was a delay in the timely completion of the project, and therefore, the contractor invoked the arbitration proceedings. Thereafter, the award was passed on 17.12.2010, whereby the Arbitrator awarded the majority of the claim in favour of the contractor and held the Petitioner responsible for the timely completion of the project

(xxix) It is clear that the cost of the project was substantially increased due to the fault of the Petitioner itself as the Petitioner delayed in granting land and other resources to the contractor. Further, the award passed by the Arbitrator was also upheld by the Hon'ble High Court vide order dated 12.7.2023 passed by the Single Judge of the Hon'ble Delhi High Court passed the Judgement in O.M.P (Comm.) 303/2020 filed by the Petitioner under Section 34 of the Arbitration and Conciliation Act, 1996. The judgment passed by the Hon'ble High Court and as per the award passed by the Arbitrator, the delay in completion of the project was entirely attributable to the Petitioner herein, and therefore, the additional capitalization claimed by the Petitioner is liable to be rejected.

(xxx) At the time when the arbitral award was passed by the Arbitrator, i.e., 17.12.2010, the amount payable by the Petitioner was Rs. 450 crores. However, since the Petitioner has not timely deposited the amount, an exorbitant amount on account of interest became due, and the total liability increased to Rs.1460.25 crore. Hence, any amount which is incurred due to the mismanagement and unwise decisions of the Petitioner, the consumers should not be burdened with the same.

Rejoinder of the Petitioner, THDCIL

8. Petitioner, THDCIL, in its rejoinder to the aforesaid replies of the Respondents, has mainly submitted the following:

(i) Petitioner has invoked this Commission's power to relax and power to remove difficulties in the present case. In this regard, reference is drawn to the judgment in Hindustan Paper Corporation Limited v. Government of Kerala (1986) 3 SCC 398. The intent of the clause of power to remove difficulties is to prevent any hardship and injustice to a party or would result in unjust results.

(ii) Petitioner has filed the present petition subsequent to the decisions dated 13.12.2019, 12.7.2023, and 28.7.2023 of the Hon'ble Delhi High Court, with regard to the Arbitral award related to THDCIL v/s PCL ILC JV matter dated 17.12.2010 which adversely affected the cash flow of the Petitioner.

(iii) It is wrong and denied that the Petition filed by the Petitioner is barred by time. The Commission has determined the tariff of the generating station for the period 2014-



19, vide its order dated 9.10.2018 in Petition No.117/GT/2018, in accordance with the 2014 Tariff Regulations and subsequent amendments thereof. The Commission later trued up the tariff of the generating station for the period 2014-19, vide its order dated 14.9.2022 in Petition No. 245/GT/2020 in accordance with the 2014 Tariff Regulations. Thereafter, the Commission has determined the tariff of the generating station for the period 2019-24 on the basis of the projected additional capital expenditure vide its order dated 3.10.2022 in Petition No. 244/GT/2020 in accordance with the 2019 Tariff Regulations.

(iv) Petitioner has time and again disclosed the contingent liability of the generating station. It had disclosed the contingent liability & Interest thereon as Rs. 131545.55 lakh as on 31.3.2019 in Petition 245/GT/2020 and also in Petition No. 244/GT/2020. Now, the Petitioner has also made payments in terms of the orders dated 13.12.2019, 12.07.2023, and 28.07.2023. The above substantial amount deposited has adversely affected the cash flow of the Petitioner.

(v) Petitioner had not filed any Petition for interim true-up of tariff in 2021-22 under Regulation 13(3) of the 2019 Tariff Regulations, as the annual fixed cost was not increased by more than 20% over the annual fixed cost determined by the Commission for the respective years of the tariff period till 31.3.2021. As the event arose in 2023-24, Petitioner filed this Petition on 29.12.2023. This cannot be construed to say that the interim truing-up petition filed is barred by limitation. Only when the annual fixed cost increased by more than 20% over the annual fixed cost, as determined by the Commission for the project, the Petitioner has rightly approached the Commission with this petition.

(vi) The total awarded amount is Rs. 1460.25 crore, which includes the principal amount of Rs.475.70 crores and the interest amount of Rs.984.55 crores. The Petitioner has deposited the full amount of Rs. 450 crores as per order dated 13.12.2019 and Rs.1010.25 crores as per order dated 28.7.2023 before the Registrar, Delhi High Court. The details and the supporting documents with regard to the above have been duly submitted along with the petition.

(vii) Reliance placed by the Respondent TPDDL on the judgment dated 25.3.2011 of APTEL in Appeal No.130/2009 is wrong and misplaced. The intent of the clause of 'power to remove difficulties' is to prevent any hardship and injustice to a party or would result in unjust results. The Commission may undertake the prudent check, and any further details that may be required will be duly submitted by Petitioner. The Petitioner, on 27.1.2020, duly complied with the direction of the Hon'ble Delhi High Court directing the Petitioner to make part deposit of Rs.450 crores and thereafter, complied with the order of the Hon'ble High Court dated 28.7.2023 by depositing Rs. 1010.25 crores in favour of the Registrar General, Delhi High Court on 31.8.2023. It is wrong and denied

that there are cost overruns due to the Petitioner's own managerial and operational inefficiencies

(viii) Petitioner has duly availed the legal course of remedy available to it by filing appropriate proceedings before the Hon'ble Delhi High Court from time to time and has also made payments in terms of the orders dated 13.12.2019 and 28.7.2023, as mentioned above. The Division Bench of the Hon'ble Delhi High Court, vide its judgment dated 24.4.2024, has dismissed the appeal filed by the Petitioner, and the Petitioner is in the process of filing an appeal before the Hon'ble Supreme Court against this order. But as on date, the Petitioner has incurred the liabilities (payment made by THDCIL on 27.1.2020 and 31.8.2023) on account of the Arbitral award dated 17.12.2010 read with the orders of Hon'ble Delhi High Court dated 13.12.2019, 12.7.2023, 28.7.2023.

Hearing dated 11.7.2024

9. During the hearing of the Petition on 11.7.2024, the learned counsel for the Petitioner made detailed oral submissions, as raised in its petition/rejoinders above. He, however, submitted that since substantial amounts deposited as above have adversely affected the cash flows of the Petitioner, the Commission, considering the exceptional circumstances of the case, may, in the interim, direct the payment of the Principal amount of Rs 475.70 crore by the Respondents. The learned counsel for the Respondent TPDDL also made detailed oral submissions, as mentioned in its reply above. The learned counsel for the Respondents, BRPL & BYPL, submitted that the reply filed in the matter may be considered. On a specific query by the Commission as to the status of the appeal filed by the Petitioner before the Hon'ble Supreme Court, the learned Senior counsel for the Petitioner submitted that the matter may be listed during August 2024. On another query by the Commission as to why the relief sought by the Petitioner cannot be considered in the truing-up tariff petition to be filed in terms of Regulation 13(2) of the 2019 Tariff Regulations, more so, keeping in view that the tariff period 2019-24 has come to an end, the learned Senior counsel submitted that since the final order in the truing-up petition [to be filed by November 2024 in terms of Regulation 13(2) of 2019 Tariff Regulations] would



take some more time and due to the cash flow problems faced by the Petitioner, the Commission, may consider the grant of interim relief and allow only the Principal component from the payments. The Commission, after hearing the parties, granted time to file their written submissions and listed the matter for further hearing.

Hearing dated 13.8.2024

10. During the hearing, the learned Senior counsel for the Petitioner, THDCIL, submitted that the Hon'ble Supreme Court in the SLP filed by the Petitioner challenging the Hon'ble Delhi High Court's order dated 24.4.2024 in FAO(OS)(Comm) No. 184/2023, has admitted the appeal on 26.7.2024 and has also stayed the execution proceedings against it, till further orders. He further submitted that since the total amount deposited by the Petitioner, in terms of the order of the Hon'ble High Court, is Rs 1460.25 crore (Principal amount of Rs 475.70 crore plus interest of Rs 984.55 crore) has adversely affected the cash flows of the generating station; the Commission may grant the relief as prayed for in the petition. He also submitted that the Petitioner has filed its note of arguments in the matter. The learned counsel for the Respondent TPDDL submitted that in addition to the oral submissions made on 11.7.2024, the written submission filed by it may be considered while passing the order in the petition. The Respondent BRPL sought time to file its written submissions in the matter. Accordingly, the Commission reserved its order in the matter.

Written submissions

11. The Petitioner has filed its note of submissions on 12.8.2024, and the Respondents TPDDL and BRPL have filed their written submissions on 1.8.2024 and 5.9.2024, respectively, mainly reiterating the submissions made in the petition /reply and rejoinder and hence the same is not elaborated herein, for the sake of brevity. The Respondent TPDDL has, however, added that the Petitioner cannot pass on the financial burden of an



arbitral award along with interest to the beneficiaries, including TPDDL, as the liabilities are not crystallized and the enforcement and execution of the arbitral award are still pending before the Hon'ble Delhi High Court and the Petitioner is actively contesting the said award before the Hon'ble Supreme Court. Respondent BRPL has pointed out that the Hon'ble Supreme Court vide its order dated 27.7.2024 has stayed the execution proceedings for recovery of the amount, and therefore, the present petition for interim truing up has become infructuous. The Petitioner, in the note of submissions, has added that while the beneficiaries, on the one hand, have submitted that the Petitioner ought to wait for the final decision in the SLP filed by it for crystallization of the liabilities and therefore, the truing up is premature, they have on the other hand stated that the interest amount paid is on account of the procedural delays on the part of the Petitioner.

12. Based on the above, we proceed to examine the submissions of the parties as stated in the subsequent paragraphs.

Analysis and Decision

13. As stated, the present Petition has been filed by the Petitioner seeking interim truing-up of the tariff of the generating station for the period 2019-24 on account of the liability of Rs 1460.25 crore incurred on it owing to the Arbitral award dated 17.12.2010 read with the orders dated 13.12.2019, 12.7. 2023 and 28.7.2023 of the Hon'ble Delhi High Court. The Petitioner has also submitted that it had not filed an interim truing-up Petition in 2021-22 under Regulation 13(3) of the 2019 Tariff Regulations, as the annual fixed cost had not increased by more than 20% as determined by this Commission for the respective years of the tariff period. It has, however, submitted that only when the annual fixed cost of the generating station increased by more than 20% over the annual fixed cost as determined by the Commission in 2023-24, the present Petition has been filed invoking the



Commission's power to relax and power to remove difficulties under Regulation 76 and Regulation 77 of the 2019 Tariff Regulations, for the interim truing up process. Referring to the judgment of the Hon'ble Supreme Court in HPCL v Govt. of Kerala (1986) 3 SCC 398, the Petitioner has argued that since substantial amounts deposited by it in terms of the Arbitral award, read with the orders of the Hon'ble Delhi High Court, has adversely affected its cash flows, same may be allowed as additional capitalization in terms of the provisions of Regulations 25 and 26 of the 2019 Tariff Regulations, subject to the prudence check.

14. *Per contra*, the Respondents TPDDL and BRPL have argued that the present Petition is not maintainable as per Regulation 13(3) of the 2019 Tariff Regulations, which provides for interim truing up of tariff in 2021-22 and is also time-barred. Referring to the judgment of the Hon'ble Supreme Court in M.U. Sinai v Union of India (1975) 2 SCR 640, the Respondents have contended that the 'power to relax' and the 'power to remove difficulties' must be exercised in a conditioned and restricted manner, and such exercise of power should not change the basic structure, scheme and essential provisions of the statute. Respondent TPDDL has referred to the APTEL judgment dated 25.3.2011 of in RGPPL v CERC & ors and contended that the Petitioner has failed to establish its reasons for such inordinate delay in filing the present Petition for interim truing up and, therefore, is liable to be rejected.

15. We have examined the above submissions. Before proceeding, we extract below some of the provisions of the 2019 Tariff Regulations:

Regulation 13 of the 2019 Tariff Regulations

13. Truing up of tariff for the period 2019-24:

(1) The Commission shall carry out truing up exercise for the period 2019-24 along with the tariff petition filed for the next tariff period, for the following:

a) the capital expenditure including additional capital expenditure incurred up to 31.3.2024, as admitted by the Commission after prudence check at the time of truing up:

b) the capital expenditure including additional capital expenditure incurred up to 31.3.2024, on account of Force Majeure and Change in Law.

(2) The generating company or the transmission licensee, as the case may be, shall make an application, as per Annexure-I to these regulations, for carrying out truing up exercise in respect of the generating station or a unit thereof or the transmission system or an element thereof by 30.11.2024.

(3) The generating company or the transmission licensee, as the case may be, may make an application for interim truing up of tariff in the year 2021-22, if the annual fixed cost increases by more than 20% over the annual fixed cost as determined by the Commission for the respective years of the tariff period:

xxxx

xxxxx.

(4) After truing up, if the tariff already recovered exceeds or falls short of the tariff approved by the Commission under these regulations, the generating company or the transmission licensee, shall refund to or recover from, the beneficiaries or the long term customers, as the case may be, the excess or the shortfall amount along with simple interest at the rate equal to the bank rate as on 1st April of the respective years of the tariff period in six equal monthly instalments

Regulation 25 (1) of the 2019 Tariff Regulations

25. Additional capitalization within the original scope and after the cut-off date:

(1) The additional capital expenditure incurred or projected to be incurred in respect of an existing project or a new project on the following counts within the original scope of work and after the cut-off date may be admitted by the Commission, subject to prudence check:

(a) **Liabilities to meet award of arbitration or for compliance of the directions or order of any statutory authority, or order or decree of any court of law;**

(b) Change in law or compliance of any existing law;

(c) Deferred works relating to ash pond or ash handling system in the original scope of work;

(d) Liability for works executed prior to the cut-off date;

(e) Force Majeure events;

(f) Liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments; and

(g) Raising of ash dyke as a part of ash disposal system.

xxxx

Regulation 76 of the 2019 Tariff Regulations

76. Power to Relax: The Commission, for reasons to be recorded in writing, may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person.

Regulation 77 of the 2019 Tariff Regulations

77. Power to Remove Difficulty: If any difficulty arises in giving effect to the provisions of these regulations, the Commission may, by order, make such provision not inconsistent with the provisions of the Act or provisions of other regulations specified by the Commission, as may appear to be necessary for removing the difficulty in giving effect to the objectives of these regulations.”

16. While in terms of Regulation 13(1) of the 2019 Tariff Regulations, the Commission shall carry out the truing-up exercise for the period 2019-24 along with the tariff petition for the next tariff period, the petition for which is to be filed by 30.11.2024 (in terms of Regulation 13(2), Regulation 13(3) provides that the generating company, may make an application for interim truing up of tariff in the year 2021-22 if the annual fixed cost increases by more than 20% over the annual fixed cost as determined by the Commission for the respective years of the tariff period. Admittedly, in the present case, the Commission had determined the tariff of the generating station for the period 2019-24 vide its order dated 3.10.2022 in Petition No.244/GT/2020, in terms of the provisions of the 2019 Tariff Regulations. Since the period for filing the interim truing-up in terms of the said regulations had already elapsed at the time of issuing the order dated 3.10.2022 in Petition No. 244/GT/2020 as referred above, the question of the Petitioner failing to file the interim truing up petition in 2021-22 does not arise. It is noticed that the Petitioner had disclosed the contingent liability and interest thereon as Rs.131545.55 lakh as on 31.3.2019 in its petitions (Petition No. 244/GT/2020 and Petition No. 245/GT/2020), which were disposed of by this Commission vide orders dated 3.10.2022 and 14.9.2022 respectively. It is only after the payment of the arbitral award amount of Rs 1460.25 crore, in terms of the directions of the Hon'ble Delhi High Court dated 13.12.2019 and 28.7.2023 in the enforcement case filed by the contractor, that the Petitioner approached this Commission

by way of this petition, seeking interim truing up of tariff of the generating station in 2023-24 (instead of 2021-22) in the exercise of the power to relax/power to remove difficulties.

17. Respondents TPDDL and BRPL have, however, objected to the exercise of the said power to relax/power to remove the difficulty on the ground that the same has the effect of amending the 2019 Tariff Regulations and on the strength of the judgment of the Hon'ble Supreme Court in M.U.Sinai v UOI & ors and the judgment of APTEL in RGPPL v CERC & ors. It is settled law, in terms of the judgment of the Hon'ble Supreme Court in Sinai's case, that the power to remove difficulty cannot be exercised to amend the provisions of the regulations substantially. However, we do not propose to exercise the said power in the present case. With regard to the exercise of the power to relax, APTEL, in its judgment in the RGPPL case, has observed that the said power can be exercised in an exceptional case and where non-exercise of the same would cause hardship and injustice to a party or would lead to unjust results. The relevant portion is extracted below:

“10.7. The above Regulations and the decision give the judicial discretion to the Central Commission to relax norms based on the circumstances of the case. However, such a case has to be one of those exceptions to the general rule. There has to be sufficient reason to justify relaxation. It has to be exercised only in exceptional case and where non-exercise of the discretion would cause hardship and injustice to a party or would lead to unjust result. In the case of relaxation of the Regulations the reasons have to be recorded in writing. Further, it has to be established by the party that the circumstances are not created due to act of omission or commission attributable to the party claiming the relaxation.”

18. The power to relax under Regulation 76 of the 2019 Tariff Regulations (as quoted under para 15 above) is similar to Regulation 13 of the 2004 Tariff Regulations notified by this Commission for the period 2009-2014. The scope of Regulation 13 of the 2004 Tariff Regulations was considered by APTEL in its judgment dated 22.1.2007 in Appeal No. 89/2006 (NTPC Ltd. Vs MPSEB & ors), wherein it held that power had been conferred in the Commission to relax the rigours of the 2004 Tariff Regulations in appropriate cases. The APTEL further held as under:



“In Bhinka vs. Charan Singh, AIR 1959 SC 960, it was held that headings or titles pre-fixed to a section can be referred to for construing the same. In Ralph Godrej Carriton, AIR 1955 559, it was held that a heading is to be regarded as key to the interpretation of the clause under examination. In Qualter Hall & Co. Ltd. vs. Board of Trade, 1961(3) AU E.R. 389, it was held that heading can be treated as preamble to the provision following it. These principles can also be utilized for construing the Regulations, which are quasi legislative in nature. Therefore, Regulation 13 can be construed in the light of its Heading. Reading the Regulation in the light of its Heading, it must be held that the power comprised in Regulation 13 is essentially the ‘power to relax’. In case any Regulation causes hardship to a party or works injustice to him or application thereof leads to unjust result, the Regulation can be relaxed. The exercise of power under Regulation 13 of the Regulations is minimized by the requirement to record the reasons in writing by the Commission before any provision of the Regulations is relaxed. Therefore, there is no doubt that the Commission has the power to relax any provision of the Regulations. “

19. Based on the ratio of the above judgments of APTEL, the Commission, by virtue of its power under Regulation 76 of the 2019 Tariff Regulations, is authorized to relax any of the provisions of the said regulations in individual cases, with reasons to be recorded in writing. The Petition is, therefore, maintainable.

20. Respondents have also submitted that since the tariff period is nearing its end, the Petitioner must file a fresh tariff Petition for truing up exercise by 30.11.2024, as per Regulation 13(2) of the 2019 Tariff Regulations, to prevent unnecessary duplication of proceedings and ensure regulatory efficiency. The Petitioner has stated that the substantial amount deposited has adversely affected its cash flows of the petitioner. In our view, the final truing up of the tariff Petition for the period 2019-24, along with the Petition for approval of tariff for the period 2024-29, even if filed by 30.11.2024, involves the process of preliminary scrutiny, removal of deficiencies (if any), the completion of pleadings by the parties and the disposal thereof, after the final hearing, and the same would take a considerable time. Any delay in considering the substantial amounts paid by the Petitioner would not only cause hardship and cash flow problems to the Petitioner but would also burden the beneficiaries/consumers by way of carrying costs. In light of the discussions above, we consider it a fit case to exercise the power under Regulation 76 of

the 2019 Tariff Regulations as prayed for by the Petitioner. Accordingly, in relaxation of Regulation 13(3) of the 2019 Tariff Regulations, we consider the Petition for interim truing-up of the tariff of the generating station in 2023-24 (instead of 2021-22) to meet the liabilities in compliance with the Arbitral award dated 17.12.2010 read with the orders of the Hon'ble Delhi High Court.

21. Having held that the Petition is maintainable and that the Petition for interim truing-up of tariff to meet the liabilities in respect of the arbitral award is to be considered in 2023-24, as above, we examine the claim of the Petitioner for additional capitalization in terms of the provisions of the regulations. Regulation 25(1)(a) of the 2019 Tariff Regulations (as quoted in para 15 above) provides that the additional capitalization, in respect of an existing project, within the original scope and after the cut-off date, incurred to meet liabilities towards the award of arbitration or for compliance with the directions or order of any statutory authority, or order or decree of any court of law may be admitted, subject to prudence check.

22. In the present case, a total amount of Rs 1460.25 crore, which includes the Principal amount of Rs. 475.70 crore and the interest amount of Rs 984.55 crore, deposited by the Petitioner as per the Arbitral award dated 13.12.2019 read with the orders of the Hon'ble Delhi High Court has been claimed by the Petitioner. It is noticed from records that against the order dated 12.7.2023 of the learned Single Bench of the Hon'ble Delhi High Court dismissing the appeal filed by the Petitioner challenging the Arbitral award dated 17.12.2010, the Petitioner had filed an appeal before the Division Bench of the Hon'ble Delhi High Court and the same was also rejected vide judgment dated 24.4.2024. Against this judgment, the Petitioner has filed SLP before the Hon'ble Supreme Court, wherein the Hon'ble Court on 27.7.2024, stayed the execution proceedings (filed by the contractor) for



recovery of the amount and the matter is pending. The Respondents TPDDL and BRPL on the one hand, referred to the pending appeal and submitted that the Petitioner should only claim the expenditures after a final decision of the Hon'ble Supreme Court, they had, on the other, submitted that the burden of the interest amount paid by the Petitioner, is on account of procedural delays on the part of the Petitioner and cannot therefore be imposed on the Respondent beneficiaries. In our considered view, Regulation 25(1)(a) of the 2019 Tariff Regulations provides for the admission of the additional expenditure incurred to meet the liabilities of award of arbitration or for compliance with the directions or order of any statutory authority or order or decree of any court of law. Since the arbitral award is pending consideration of the Hon'ble Supreme Court in the appeal filed by the Petitioner, we find no reason to entertain the submission of the Respondents that the additional cost (levy of interest) incurred is on account of the Petitioner's own fault. Nevertheless, keeping in view that the matter is being decided now, it is observed that the Petitioner has not claimed additional capitalization for the period 2019-23 and claimed additional capitalization of Rs. 1460.25 crore in the year 2023-24. Considering the submissions and deliberations as mentioned above, we are inclined to allow the additional capitalization of only the Principal amount of Rs 475.70 crore in 2023-24 on account of meeting the liabilities of the arbitral award dated 17.12.2010 read with the orders dated 13.12.2019, 12.7.2023 and 28.7.2023 of the Hon'ble Delhi High Court, under Regulation 25(1)(a) of the 2019 Tariff Regulations. We direct accordingly. The balance amount of Rs 984.55 crore shall, however, be considered at the time of truing-up of the tariff of the generating station in the petition to be filed by the Petitioner in terms of Regulation 13(1) of the 2019 Tariff Regulations read with the relevant provisions of the Tariff Regulations.

23. Consequent upon the consideration of the principal amount of Rs. 47570.13 lakh as additional capitalization in 2023-24, the tariff in respect of the generating station for the period 2019-24 is trued-up in terms of the provision of the 2019 Tariff Regulations. The claim of additional capitalization during the year 2023-24 of Rs. 47570.13 lakh is considered based on the parameters allowed in Petition No. 244/GT/2020, which would be trued up at the time of truing up the tariff for the period 2019-24.

Revision of tariff for the period 2019-24

24. The Commission vide its order dated 3.10.2022 in Petition No. 244/GT/2020, had approved the capital cost and annual fixed charges of the generating station for the period 2019-24 as under:

Capital Cost allowed

	<i>(Rs. In Lakh)</i>				
	2019-20	2020-21	2021-22	2022-23	2023-24
Opening Capital Cost	286012.08	287555.75	287915.47	288166.54	288171.17
Net Additional capital expenditure allowed during the year/ period	1543.67	359.72	251.07	4.63	1.25
Closing Capital Cost	287555.75	287915.47	288166.54	288171.17	288172.42

Annual Fixed Charges allowed

	<i>(Rs. in lakh)</i>				
	2019-20	2020-21	2021-22	2022-23	2023-24
Depreciation	13527.67	13602.34	13625.22	13636.41	13636.81
Interest on loan	11235.24	10050.09	8815.73	7592.94	6318.33
Return on Equity	13203.80	13248.51	13265.47	13273.30	13273.47
O&M Expenses	17268.39	18091.63	18954.12	19857.71	20804.39
Interest on Working Capital	1323.48	1255.05	1187.34	1205.83	1223.05
Total	56558.59	56247.63	55847.87	55566.19	55256.07

25. The capital cost and the annual fixed charges claimed by the Petitioner for the period 2019-24 are as follows:

Capital Cost claimed

	2019-20	2020-21	2021-22	2022-23	2023-24
Opening Capital Cost	286012.08	287555.76	287915.48	288166.55	288171.18



Net Additional capital expenditure during the year/ period	1543.68	359.72	251.07	4.63	146026.25
Closing Capital Cost	287555.76	287915.48	288166.55	288171.18	434197.43

Annual Fixed Charges claimed

	2019-20	2020-21	2021-22	2022-23	2023-24
Depreciation	13527.67	13602.34	13625.22	13636.41	16890.69
Interest on Loan	11235.24	10050.09	8815.73	7592.94	9481.74
Return on Equity	13203.80	13248.52	13265.47	13273.30	17648.59
Interest on Working Capital	1323.48	1255.05	1187.34	1205.83	1562.01
O & M Expenses	17268.39	18091.63	18954.12	19857.71	20804.40
Total	56558.58	56247.63	55847.87	55566.19	66387.42

26. After considering the Principal amount of Rs.47570.13 lakh, as per the Arbitral award, the additional capitalization for the year 2023-24 has been revised from Rs. 3 lakh to Rs.47573.13 lakh. Therefore, the annual fixed charges for the period 2019-24 stands revised, as shown in the subsequent paras:

Additional capital expenditure

27. The additional capital expenditure allowed for the period 2019-24 is as under:

	<i>(Rs in lakh)</i>				
	2019-20	2020-21	2021-22	2022-23	2023-24
Additional capital expenditure allowed within the original scope of work of project (Regulation 25 (A))	473.20	12.00	3.00	12.00	47573.13
Additional capital expenditure allowed under Regulation 26(1)(b) (B)	205.00	250.00	250.00	0.00	0.00
Additional capital expenditure allowed other than the original scope of work of project (C)	911.87	241.21	0.00	0.00	0.00
Total additional capital expenditure allowed (D)=(A)+(B)+(C)	1590.07	503.21	253.00	12.00	47573.13

28. The net additional capital expenditure allowed for the period 2019-24 is as under:

	<i>(Rs in lakh)</i>				
	2019-20	2020-21	2021-22	2022-23	2023-24
Additional capital expenditure allowed (a)	1590.07	503.21	253.00	12.00	47573.13
Less: De-capitalization considered (b)	408.96	143.49	1.93	7.37	1.75
Add: Undischarged liabilities discharged (c)	362.56	0.00	0.00	0.00	0.00



Net additional capital expenditure (c)=(a)-(b)+(c)	1543.67	359.72	251.07	4.63	47571.38
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Capital Cost approved for the period 2019-24

29. Accordingly, the capital cost allowed for the period 2019-24 is as under:

	<i>(Rs in lakh)</i>				
	2019-20	2020-21	2021-22	2022-23	2023-24
Opening capital cost (A)	286012.08	287555.75	287915.47	288166.54	288171.17
Net Additional capital expenditure allowed during the year (B)	1543.67	359.72	251.07	4.63	47571.38
Closing capital cost (C=A+B)	287555.75	287915.47	288166.54	288171.17	335742.55

Debt-Equity Ratio

30. The debt-equity ratio of 76.97:23.03, as allowed, vide order dated 14.09.2022 in petition no. 245/GT/2020, i.e., truing up order for the tariff period 2014-19, has been considered as on 31.3.2019, and accordingly, the debt-equity ratio arrived as on 31.3.2024, after net admitted additional capital expenditure in the ratio of 70:30, is 75.94:24.06 for the purpose of tariff.

	As on 31.3.2019		Net Additional Capitalization		As on 31.3.2024	
	Amount (Rs. in lakh)	(in %)	Amount (Rs. In lakh)	(in %)	Amount (Rs. in lakh)	(in %)
Debt	220146.53	76.97%	34811.32	70.00%	254957.85	75.94%
Equity	65865.56	23.03%	14919.14	30.00%	80784.70	24.06%
Total	286012.08	100.00%	49730.46	100.00%	335742.55	100.00%

Return on Equity

31. Accordingly, Return on Equity has been worked out and allowed as under:

Return on Equity at Normal Rate

	<i>(Rs in lakh)</i>				
	2019-20	2020-21	2021-22	2022-23	2023-24
Normative Equity-Opening (A)	65865.56	66076.90	66153.06	66228.38	66229.77
Addition of Equity due to additional capital expenditure (B)	211.34	76.16	75.32	1.39	14271.41



Normative Equity-Closing (C) = (A) + (B)	66076.90	66153.06	66228.38	66229.77	80501.18
Average Normative Equity (D) = (A+C)/2	65971.23	66114.98	66190.72	66229.07	73365.48
Return on Equity (Base Rate) (E)	16.500%	16.500%	16.500%	16.500%	16.500%
Effective Tax Rate (F)	17.472%	17.472%	17.472%	17.472%	17.472%
Rate of Return on Equity (Pre-Tax) (G) = (E)/(1-F)	19.993%	19.993%	19.993%	19.993%	19.993%
Return on Equity (Pre-Tax) annualized (H) = (D)x(G)	13189.63	13218.37	13233.51	13241.18	14667.96

Return on Equity at WAROI Rate

	2019-20	2020-21	2021-22	2022-23	2023-24
Normative Equity - Opening (A)	0.00	251.76	283.51	283.51	283.51
Addition of Equity due to additional capital expenditure (B)	251.76	31.75	0.00	0.00	0.00
Normative Equity-Closing (C) = (A) + (B)	251.76	283.51	283.51	283.51	283.51
Average Normative Equity (D) = (A+C)/2	125.88	267.64	283.51	283.51	283.51
Weighted average rate of interest on actual loan portfolio (E)	9.292%	9.296%	9.305%	9.350%	9.350%
Effective Tax Rate (F)	17.472%	17.472%	17.472%	17.472%	17.472%
Rate of Return on Equity (Pre-Tax) (G) = (E)/(1-F)	11.260%	11.264%	11.274%	11.329%	11.329%
Return on Equity (Pre-Tax) - Annualized (H) = (D) x (G)	14.17	30.15	31.96	32.12	32.12

Interest on Loan

32. Accordingly, Interest on the loan has been worked out as under:

	<i>(Rs in lakh)</i>				
	2019-20	2020-21	2021-22	2022-23	2023-24
Gross opening loan (A)	220146.53	221227.09	221478.90	221654.64	221657.89
Cumulative repayment of loan upto the previous year (B)	93089.15	106465.19	120007.70	133632.01	147264.66
Net Loan Opening (C) = (A) - (B)	127057.38	114761.90	101471.20	88022.63	74393.23
Addition due to additional capital expenditure (D)	1080.57	251.80	175.75	3.24	33299.96
Repayment of Loan during the period (E)	13527.67	13602.34	13625.22	13636.41	14762.37
Less: Repayment adjustment on a/c of de-capitalization (F)	151.63	59.84	0.90	3.76	0.85
Net Repayment of Loan during the period (G) = (E) - (F)	13376.04	13542.50	13624.32	13632.64	14761.52



Net Loan Closing (H) =(C) +(D) -(G)	114761.90	101471.20	88022.63	74393.23	92931.68
Average Loan (I) = (C+H)/2	120909.64	108116.55	94746.92	81207.93	83662.45
Weighted Average Rate of Interest of loan (J)	9.2923%	9.2956%	9.3045%	9.3500%	9.3500%
Interest on Loan (K) = (I)*(J)	11235.24	10050.09	8815.73	7592.94	7822.44

Depreciation

33. Accordingly, depreciation has been worked out and allowed as under:

	<i>(Rs in lakh)</i>				
	2019-20	2020-21	2021-22	2022-23	2023-24
Opening Gross Block (A)	286012.08	287555.75	287915.47	288166.54	288171.17
Net Additional Capital Expenditure during 2019-24 (B)	1543.67	359.72	251.07	4.63	47571.38
Closing Gross Block(C=A+B)	287555.75	287915.47	288166.54	288171.17	335742.55
Average Gross Block (D)=(A+C)/2	286783.92	287735.61	288041.00	288168.85	311956.86
Land Value (LV)	461.78	461.78	461.78	461.78	461.78
Depreciable Value (E=(D-LV) *90%)	257689.92	258546.45	258821.30	258936.37	280345.57
Remaining Depreciable value at the beginning of the year (F=E-Cum Dep at 'L' at the end of the previous year)	164600.77	152081.26	138813.61	125304.35	133080.91
Rate of Depreciation (G)	4.72%	4.73%	4.73%	4.73%	4.73%
Balance Useful Life (H)	33.00	32.00	31.00	30.00	29.00
Depreciation (I=D*G)	13527.67	13602.34	13625.22	13636.41	14762.37
Cumulative Depreciation at the end of the year (J=I+ Cumulative depreciation at 'L' at the end of the previous year)	106616.82	120067.53	133632.91	147268.42	162027.02
Adjustment on account of decapitalization (K)	151.63	59.84	0.90	3.76	0.85
Cumulative depreciation at the end of the year (L) = (J) - (K)	106465.19	120007.70	133632.01	147264.66	162026.17

*Cumulative Depreciation as on 31.3.2019 is Rs. 93089.15 lakh.

O&M Expenses

34. Accordingly, the O&M expenses allowed are as under:

	<i>(Rs in lakh)</i>				
	2019-20	2020-21	2021-22	2022-23	2023-24
Normative O&M expenses Regulation 35(2)(a) of the 2019 Tariff Regulations (A)	13452.46	14093.68	14765.46	15469.26	16206.61
Impact of pay revision of THDC staff (B)	2865.46	3002.14	3145.34	3295.38	3452.57

Total O&M Expenses allowed (A+B)	16317.92	17095.82	17910.80	18764.64	19659.18
Security Expenses allowed separately (C)	950.47	995.81	1043.31	1093.08	1145.22
Total O&M Expenses as allowed (including Water Charges and Capital Spares Consumed) (D) = (A+B+C)	17268.39	18091.63	18954.12	19857.71	20804.39

Interest on Working Capital

35. Accordingly, the interest on working capital has been worked out and allowed as under:

	<i>(Rs in lakh)</i>				
	2019-20	2020-21	2021-22	2022-23	2023-24
Working Capital for O&M expenses (one month)	1439.03	1507.64	1579.51	1654.81	1733.70
Working Capital for Maintenance Spares	2590.26	2713.74	2843.12	2978.66	3120.66
Working capital for Receivables	6953.92	6934.64	6885.35	6850.63	7299.02
Total Working Capital	10983.22	11156.02	11307.98	11484.09	12153.38
Rate of Interest (%)	12.05%	11.25%	10.50%	10.50%	10.50%
Total Interest on Working capital	1323.48	1255.05	1187.34	1205.83	1276.10

Annual Fixed Charges approved for the period 2019-24

36. Based on the above, the annual fixed charges approved for the generating station (after truing up) for the period 2019-24 are as under:

	<i>(Rs in lakh)</i>				
	2019-20	2020-21	2021-22	2022-23	2023-24
Depreciation	13527.67	13602.34	13625.22	13636.41	14762.37
Interest on loan	11235.24	10050.09	8815.73	7592.94	7822.44
Return on Equity	13203.80	13248.51	13265.47	13273.30	14700.08
O&M Expenses	17268.39	18091.63	18954.12	19857.71	20804.39
Interest on Working Capital	1323.48	1255.05	1187.34	1205.83	1276.10
Total	56558.59	56247.63	55847.87	55566.19	59365.38

Note: (1) All figures are on annualized basis. (2) All figures under each head have been rounded. The figure in total column in each year is also rounded. As such the sum of individual items may not be equal to the arithmetic total of the column.

37. The annual fixed charges approved as above are subject to truing up in terms of in terms of Regulation 13(1) of the 2019 Tariff Regulations. Accordingly, the Petitioner shall, at the time of final truing up of tariff, furnish all the relevant details along with the detailed item-wise calculations of the Principal amount bifurcated into the original amount (as per award dated 17.12.2010, as referred in Annexure E of submissions vide affidavit dated



02.07.2024) and the escalation amount (including calculations). Additionally, the interest amount shall also be bifurcated as pre-award and post-award periods, with the year-wise interest calculations. The annual fixed charges approved as above are subject to adjustment in terms of Regulation 13(4) of the 2019 Tariff Regulations and are also subject to the final decision of the Hon'ble Supreme Court in the pending appeal.

38. Petition No. 60/GT/2024 is disposed of in terms of the above.

Sd/-
(Harish Dudani)
Member

Sd/-
(Ramesh Babu V.)
Member

Sd/-
(Jishnu Barua)
Chairperson

