

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 20/RP/2023

in

Petition No. 698/GT/2020

Coram:

Shri Jishnu Barua, Chairperson

Shri Ramesh Babu V., Member

Shri Harish Dudani, Member

Date of Order: 18th June, 2025

In the matter of:

Petition for review of the Commission's order dated 17.4.2023 in Petition No. 698/GT/2020 pertaining to truing up of tariff of Farakka Super Thermal Power Station, Stage-I & II (1600 MW) for the period 2014-19.

And

In the matter of:

GRIDCO Limited
Vidyut Bhawan, Janpath,
Bhubaneswar- 751022

.... Review Petitioner

Vs

1. NTPC Limited,
NTPC Bhawan, Core-7, Scope Complex,
7, Institutional Area, Lodhi Road, New Delhi-110003.
2. West Bengal State Electricity Distribution Company Limited,
Vidyut Bhawan, Block-DJ, Sector-II, Salt Lake City Kolkata-700091.
3. Bihar State Power Holding Company Limited,
Vidyut Bhawan, Bailey Road, Patna – 800001
4. Jharkhand Vidyut Vikas Nigam Limited,
Engineering Bhawan, HEC, Dhurwa, Ranchi-834004
5. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6, Panchukla, Haryana -134109
6. Power Department, Govt. of Sikkim,
Kazi Road, Gangtok, Sikkim-737101
7. Tamil Nadu Generation and Distribution Corporation Limited,
NPKRP Maaligai, 800, Anna Salai Chennai -600002



8. Punjab State Power Corporation Limited,
The Mall, Patiala -147001
9. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14, Ashok Marg Lucknow-226001
10. Power Development Department (J&K),
Govt. of J&K Secretariat, Srinagar
11. Assam Power Distribution Company Limited,
Biulee Bhawan, Paltan Bazar, Guwahati -782001
12. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place New Delhi-110019
13. BSES Yamuna Power Limited,
Shakti Kiran Bldg., Karkardooma, Delhi
14. Tata Power Delhi Distribution Company Limited,
33 kV Sub-station Building, Hudson Lane,
Kingsway Camp Delhi-110009
15. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan Janpath, Jaipur-302005
16. Ajmer Vidyut Vitran Nigam Limited,
Old Power House, Hathi Bhafta, Jaipur Road, Ajmer-305 001
17. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area, Jodhpur-342 003

... Respondents

Parties Present:

Shri Rajkumar Mehta, Advocate, GRIDCO
Ms. Himanshi Andley, Advocate, GRIDCO
Shri Venkatesh, Advocate, NTPC
Shri Anant Singh Ubeja, Advocate, NTPC
Shri Kunal Veer Chopra, Advocate, NTPC
Ms. Vanshika Saraf, Advocate, NTPC
Shri Nitin Kala, Advocate, TPDDL
Shri Kunal Singh, Advocate, TPDDL
Shri Tanmay Jain, Advocate, TPDDL
Ms. Kanishka Rawat, Advocate, TPDDL
Shri Aditya Ajay, Advocate, BRPL & BYPL
Shri Rahul Kinra, Advocate, BRPL & BYPL
Ms. Isnain Muzamil, Advocate, BRPL & BYPL
Shri Sanjay Nair, Advocate, BRPL & BYPL



ORDER

Petition no. 698/GT/2020, was filed by the Respondent, NTPC Limited for trueing-up of tariff of Farakka Super Thermal Power Station, Stage – I & II (1600 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 17.4.2023 (in short the ‘impugned order’) disposed of the said petition. Aggrieved by the impugned order dated 17.4.2023, the Review Petitioner, GRIDCO, has filed this Review Petition on the ground that there is an error apparent on the face of the record on the following issue:

- a) *Computation of Interest on Working Capital (IoWC) on the basis of ‘as received’ data of GCV of coal for the months from January 2014 to March 2014, submitted by NTPC.*

Hearing of the Review Petition

2. The Review Petition was heard ‘on admission’ on 5.7.2023, and the Commission, after hearing the learned counsel for the Review Petitioner, ‘admitted’ issued notice on ‘admissibility’ with directions to the parties to complete pleadings in the matter. Thereafter, the Review Petition was listed for hearing on various dates viz 8.11.2023, 29.11.2023, 4.4.2024, 23.10.2024, 28.11.2024, 14.1.2025, but was adjourned on each occasion due to various reasons such as requests for adjournment and due to paucity of time, etc.

Hearing dated 6.2.2025

3. During the hearing, the learned counsel for the Review Petitioner and the learned counsel for the Respondent argued the matter at length. The Commission, after permitting the parties to file their short note of arguments, reserved its order in the Review Petition. In compliance thereof, the Review Petitioner and the Respondent NTPC and



Respondents BRPL & BYPL have filed their note of arguments on 25.2.2025, 27.2.2025, and 28.2.2025, respectively.

4. Based on the submissions of the parties and the documents on record, we proceed to examine the issue raised in the Review Petition in the subsequent paragraphs.

Computation of Interest on Working Capital (IoWC) on the basis of 'as received' data of GCV of coal for the months from January, 2014 to March, 2014, submitted by NTPC

Submissions of the Review Petitioner

5. The Review Petitioner, in the Review Petition, has mainly submitted as under:

a) Under the 2014 Tariff Regulations, one of the components for the determination of the Tariff is IoWC. Fuel cost is one of the factors in arriving at the working capital. As per Regulation 28(2) of the 2014 Tariff Regulations, the cost of fuel is to be arrived at based on the landed price of coal and GCV of fuel as per actuals for three months preceding the first month for which the tariff is to be determined. As per Regulation 30(6) of the 2014 Tariff Regulations, the GCV of coal is on an 'as received' basis.

b) In Para 77 of the Commission's order dated 10.3.2017 in Petition No. 316/GT/2014, the Commission observed that NTPC had not placed on record the GCV of coal on 'as received basis' though NTPC was statutorily required to furnish such information with effect from 1.4.2014 and directed for computation of fuel components and energy charges in the working capital by provisionally taking the GCV of coal on as 'billed basis' and allowing an adjustment for total moisture as per the envisaged formula.

c) The Energy Charge Rate (ECR) was calculated by the Commission provisionally based on 'as billed' GCV of coal for January 2014 to March 2014, which should have been adjusted by NTPC for total moisture based on the adjustment formula, and accordingly, the ECR should have been determined.

d) As per the directions in the tariff order dated 10.3.2017, in the truing-up petition, NTPC should have furnished the 'as received' GCV of coal calculated as per the adjustment formula, and the ECR (calculated by the Commission provisionally as per the above table) should have been revised accordingly.

e) In Form 15 of the truing-up petition, NTPC clearly stated as "*NTPC does not have infrastructure for measuring the representative figures of 'as received' GCV for the above months.*" From the above statement of NTPC, it is evident that NTPC had no infrastructure for sampling of coal on an 'as received' basis for the months of January 2014- March 2014.



f) However, the Commission in the impugned order dated 17.4.2023 has taken the view that NTPC had submitted the 'as received' GCV data for January 2014, February, 2014 and March, 2014 under 3rd Amendment to the 2009 Tariff Regulations, and floated the same in its website, although NTPC had not submitted the same either in the truing-up petition or in the additional submission.

g) Respondent NTPC, in Form-15 of the truing-up petition, clearly stated that it had no suitable infrastructure for measurement of representative GCV on 'as received' basis for the months of January 2014, February 2014, and March 2014; during this period. In the tariff order the Commission directed that NTPC would determine the 'as received' GCV of coal by using 'as billed' GCV of coal in the moisture adjustment formula, but in violation of the above order, NTPC has taken the so-called 'as received' GCV of coal on 'EM basis' (said to have been measured at their generating station end) in the said moisture adjustment formula to arrive at the 'as received' GCV of coal.

h) The data furnished by NTPC in the additional submission relates to an inferior quality (grade) of the coal than that received by them from the coal supplier. Since there was no infrastructure for sampling of coal on an 'as received' basis, NTPC was not able to determine 'as received GCV' for the months of January 2014, February 2014, and March 2014, and was determining GCV on an 'as fired' basis.

i) NTPC has assumed a lower GCV (said to be 'as received' GCV on EM basis), which results in a reduction of 938.02 kCal/kg, 1019.80 kCal/kg and 1478.61 kCal/kg of 'as received' GCV of coal for the months of January 2014, February, 2014 and March, 2014 respectively, taking the data on total moisture and EM, as furnished by NTPC. Such a reduction in GCV results in an increase of 66.70 paise/kWh in ECR.

j) In Para 91 of the impugned order dated 17.4.2023, the Commission has observed that the sampling of coal on 'as received' basis must be carried out from the loaded wagons at the generating stations either manually or through hydraulic augur as per IS:436 before the coal is unloaded. Since NTPC admittedly did not have infrastructure during January to March 2014 for such sampling of coal, the determination of GCV cannot be said to be on an 'as received' basis.

k) Moreover, there is an abnormal difference to the extent of 1580 kCal/kg between the 'as billed' GCV furnished with Form-15 of truing-up petition and the 'GCV of coal received (EM basis)' submitted by NTPC for the months of January, 2014, February, 2014 and March, 2014 in their additional submission dated 28.6.2021. In view of such a huge difference in equilibrated GCV as determined at the mine's end to that at the generating station end, it is clearly established that the data furnished by NTPC in its additional submission pertains to an inferior quality (grade) of the coal than that received by them from the coal supplier.



l) In the impugned order dated 17.4.2023, the Commission has deviated from the methodology as specified by it in the tariff order dated 10.3.2017 to arrive at the 'as received GCV' of coal. While in the above tariff order, the Commission had directed for determination of 'as received GCV' of coal, basing on the adjustment formula, in the Impugned truing-up order, it has adopted the so-called 'as received GCV' data furnished by NTPC, which were never submitted during the proceeding for tariff determination, nor shared with GRIDCO with the bills, nor furnished in the truing-up petition, nor reflected in the Form-15 of 2014 Tariff Regulations.

m) The Commission has considered the data submitted by NTPC in the additional submission, assuming that the same were submitted to be on 'GCV of coal as received basis' in terms of 3rd Amendment to the 2009 Tariff Regulations, in spite of the fact that NTPC admittedly had no infrastructure for sampling of coal for determination of GCV on an 'as received' basis for the months of January, 2014, February, 2014 and March, 2014. The Commission has even allowed a higher energy charge rate, i.e., 279.20 paise/kWh based on the assumed 'as received GCV' data, even though the claim of NTPC in the truing-up petition was 272.447 paise/kWh.

n) The determination of IoWC in the impugned order on the basis of as received GCV data of coal submitted by NTPC for the months of January to March 2014 shall result in serious prejudice to the consumers of electricity, who would have to bear the brunt of increased tariff, as the said data either pertains to inferior quality of coal or based on assumptions.

6. Accordingly, the Review Petitioner submitted that based on the above grounds, it is a fit case for review of the impugned order dated 17.4.2023.

Reply of the Respondent NTPC

7. The Respondent, NTPC, vide its reply affidavit dated 8.8.2023, submitted the following:

- i. The Review Petition is not maintainable as the Review Petitioner has failed to demonstrate any of the three essential ingredients of review, viz. (a) 'error apparent'; (b) 'sufficient cause'; and/or (c) 'discovery of new facts'.
- ii. The Hon'ble Supreme Court in various judgments has clarified that review is meant for the correction of a mistake within the limits of the law, not to revisit the court's earlier decision as if it were an appeal.



- iii. The Review Petitioner has not approached this Commission with clean hands and has disclosed that various appeals have been filed by the Review Petitioner before the APTEL, thereby raising a similar ground. The issue raised by the Review Petitioner in the present Review Petition qua the IoWC on the basis of 'as billed' GCV of coal for the period of January 2014 to March 2014 is an issue which falls for consideration in Appeal No. 258 of 2022.
- iv. The Review Petitioner has contended that that the Commission has erred while determining the IoWC vide the Order in Review on the basis of the assumed 'as received' GCV data for the period of January 2014 to March 2014, in as much as the 'as received' GCV data was neither furnished in the Truing Petition nor in the Additional Submissions filed by the Answering Respondent.
- v. The contentions raised by the Petitioner are entirely misconceived and devoid of any merits in as much as the Order in Review passed by the Commission while considering the measurement of GCV of Coal on 'as received' basis furnished by the Answering Respondent vide its Additional Submissions which is strictly in line with 3rd Amendment to the Tariff Regulations, 2009, read with Regulation 28 of the Tariff Regulation, 2014.
- vi. During the pendency of the said tariff petition, the Commission had directed NTPC to submit the GCV of coal on an 'as received' basis in accordance with Regulation 28(2) of the 2014 Tariff Regulations. Further, NTPC craves liberty to rely upon the additional submissions dated 28.6.2021, wherein NTPC has in a meticulous manner dealt with regard to the measurement of GCV on 'as received' basis for the purposes of computing the IoWC.
- vii. However, the Commission vide order dated 25.1.2016 passed in Petition No. 283/GT/2014 inter-alia held that the most appropriate method for computation of ECR is on the basis of the measurement of GCV of coal on 'as received' basis, which is in line with the 2014 Tariff Regulations. Being aggrieved by the said order, NTPC sought a review of the said order dated 25.1.2016 in Review Petition No. 11/2016, wherein the following order was passed:
- "17. In our view, the sampling of coal done from railway wagon top, even if it is not for the purpose of determination of energy charges as alleged by the petitioner, does not preclude the Commission from adopting the procedure of taking samples from railway wagons at the generating stations of GSECL, specially keeping in view the issue to be decided by the Commission in the said petition. Hence the submissions of the petitioner are not acceptable...."*
- viii. Since NTPC faced implementation challenges, it filed Petition No. 244/MP/2016 seeking removal of difficulties under Regulation 30(6), which remains pending. NTPC, in Petition No. 698/GT/2020 dated 18.1.2020, sought the truing up of the tariff for Farakka Stage I & II for 2014–19 and invoked the relaxation clause under the Tariff Regulations. NTPC also filed additional submissions dated 28.6.2021:



- Reaffirming its case for relaxation, and
 - submitting GCV data for January 2014–March 2014 as per the 3rd Amendment to the 2009 Tariff Regulations, in line with the Commission’s consistent practice in other tariff petitions.
- ix. Accordingly, the Commission relied upon NTPC’s submissions dated 28.6.2021 and passed the review order by computing the IoWC using the data furnished for January to March 2014 in terms of Regulation 30(6) read with Regulation 28 of the 2014 Tariff Regulations. Thus, the Review Petitioner’s claim that assumed data was used is incorrect. The obligation to provide GCV data on an ‘as received’ basis was introduced by the 3rd Amendment to the 2009 Tariff Regulations on 31.12.2012. However, the methodology and infrastructure for such measurement were only clarified by the Commission in its order dated 25.1.2016 in Petition No. 283/GT/2014. Until then, NTPC hosted data on its website based on manual sampling. NTPC had clearly stated in its Form-15 that it lacked the infrastructure to measure representative ‘as received’ GCV for January to March 2014.
- x. NTPC had furnished the requisite details vide its additional submissions dated 28.6.2021 at the stage of adjudication of the trueing petition, which was duly considered by the Commission in the review order. Therefore, once IoWC has already been computed based on actual data furnished by NTPC, the Review Petitioner’s allegation that assumed or inaccurate data was used has no merit.

Reply of the Respondents BRPL and BYPL

8. The Respondents BRPL and BYPL vide their common reply affidavit dated 16.12.2024 mainly submitted as under:

Re. Data provided by NTPC is bereft of explanation

a) In the order dated 10.3.2017, the Commission inter alia provisionally considered GCV of coal on ‘as billed basis’ and allowed an adjustment for TM as per a specific formula, while computing fuel components and the energy charges in the working capital. This was done provisionally on account of the unavailability of required data and was to be adjusted in light of the GCV of coal on ‘as received basis’.

b) NTPC, instead of providing GCV data on an ‘as received’ basis as per the directions of the Commission in order dated 25.1.2016, has provided GCV under the pretext of ‘as received’ GCV; however, the same is not supported by any justification. More so, NTPC in Form 15 of Petition No. 698/GT/2020 itself admitted to not having infrastructure for measuring the representative figures of ‘as received’ GCV for January 2014 to March 2014.



c) However, NTPC in its additional submissions dated 28.6.2021 provided a table with 'as received' GCV data without providing an explanation as to how such data was computed/obtained. Further, there is a substantial difference between the 'as billed' data for GCV of coal furnished by NTPC and the data for 'GCV of coal received (EM basis)' submitted by way of additional submissions, which relates to the inferior quality of coal than what was received from the supplier. As such, a prudence check may be conducted in the absence of an explanation as to how NTPC was able to provide the representative data on an 'as received' basis when admittedly NTPC did not have the requisite infrastructure.

Re. Adjustment formula provided in the order dated 10.3.2017 as an interim measure cannot be applied

d) The Commission, vide order dated 10.3.2017 in Petition No. 316/GT/2014, had devised a formula on an interim basis for the calculation of GCV of coal on 'as billed' basis with adjustment of moisture. The formula devised in the said order dated 10.3.2017 was on account of non-availability of required data, i.e., GCV of coal on 'as received' basis. The Commission decided to compute fuel component and energy charges provisionally, taking the GCV of coal on an 'as billed' basis. The aforesaid Interim Formula cannot be applied by the Commission in the present case, i.e., at the stage of true-up when a final order is to be passed.

e) GCV for true up of IoWC ought to be considered in terms of Regulation 30(6) of the 2014 Tariff Regulations instead of the formulae provided by the Commission in the order dated 10.3.2017, as the same would be against 2014 Tariff Regulations of the Commission as well as various orders passed by the Commission in this regard.

f) Accordingly, Review Petitioner's prayer for computation of 'as received GCV' in accordance with the formula in the order dated 10.3.2017 is untenable and liable to be rejected and NTPC may be directed to furnish data regarding GCV of coal on 'as received' basis as per directions contained in order dated 25.1.2016 along with detailed justification as to how the figures have been obtained.

Rejoinder of the Review Petitioner

9. The Review Petitioner vide its rejoinder affidavit dated 22.8.2023, mainly submitted as under:

Maintainability

(i) It is reiterated that the impugned order dated 17.4.2023 to the extent of Computation of IoWC on the basis of as received data of GCV of coal for the months of January 2014, February 2014 and March 2014 submitted by NTPC suffers from



‘errors apparent’ and also falls under the expression ‘for any other sufficient reason’ in Order XLVII Rule 1 CPC as defined by Hon’ble Supreme Court in various judgments.

(ii) GRIDCO has also filed Appeal No. 258/2022 before APTEL challenging the truing-up order in Petition No. 362/GT/2020, which is pending adjudication. Therefore, the appeal and the present Review Petition relate to different generating stations and separate orders of the Commission. There is no bar to maintaining both, even if the issues involved are similar.

Non-consideration of GCV of coal towards the Computation of loWC:

(iii) In the note of arguments dated 27.7.2022 with regard to truing-up of tariff of FSTPS I & II, the Review Petitioner had raised the issue of huge difference in GCV of coal to the extent of 1580 kcal/kg between billed GCV (equilibrated basis) and that measured by NTPC at their end (also on equilibrated basis) and submitted that NTPC appears to have measured the GCV at their end in respect of inferior grade of coal than that received by them from the mines end. The Review Petitioner had also pointed out the lack of Infrastructure at the generating station for sampling of coal on an ‘as received basis’. The above submissions of the Review Petitioner had not been considered in the impugned order dated 17.4.2023, nor considered in ‘Analysis and Decision’ by the Commission. It has been held by the Hon’ble Supreme Court that non-consideration of the submissions is a ground for review of the order. It is, therefore, a fit case for review of the impugned order dated 17.4.2023.

Non-consideration of the decision as per the tariff order in the truing-up order:

(iv) In the impugned order dated 17.4.2023, the Commission has ignored its direction in Para 77 of the tariff order dated 10.3.2017 in Petition No. 316/GT/2014 with regard to computation of fuel components and energy charges in the working capital by provisionally taking the GCV of coal on as ‘billed basis’ and allowing an adjustment for total moisture as per the adjustment formula envisaged in the said tariff order.

(v) The Commission has considered the assumed ‘as received GCV’ values of coal as furnished by NTPC towards computation of loWC, which is contrary to the judgment dated 18.10.2022 of the Hon’ble Supreme Court in Civil Appeal No. 4323 of 2015 (BYPL Vs DERC). It has been held in the said judgment that ‘truing up’ exercise cannot be done to retrospectively change the methodology/principles of tariff determination and reopening the original tariff determination order, thereby setting the tariff determination process to naught at the ‘true up’ stage.

Non-furnishing of ‘as received GCV’ data to GRIDCO as per 3rd Amendment to the 2009 Tariff Regulations

(vi) NTPC has not furnished the ‘as received GCV’ data of coal to the Review Petitioner with the bills of the respective months as per the 2nd Proviso of the 3rd Amendment to the 2009 Tariff Regulations. Instead, it has been stated in the reply filed by Respondent



NTPC that it had uploaded the data on its website, knowing fully well that the said data is not available on the NTPC website after a gap of nearly 9 years.

As received GCV data of coal submitted by NTPC is an assumed one:

(vii) The 'as received GCV' data of coal for the months of January 2014, February 2014 and March 2014 submitted by NTPC appeared to be assumed for the reason that if NTPC had actually measured the 'as received GCV' of coal for the months of January 2014, February 2014 and March 2014 it could have:

- *Furnished the said data with the bills for the above months as per 2nd Proviso to 3rd Amendment to 2009 Tariff Regulations;*
- *Provided the same during the 2014–19 tariff proceedings, wherein only 'as fired' data was furnished;*
- *Submitted the said data in the truing-up petition —instead, GCV data from October 2016 to March 2019 was filed, along with a prayer to reduce 100 kCal/kg for IoWC computation;*
- *Provided the said GCV data in Form-15 submitted with the truing-up petition.*

(viii) From the above, it is evident that NTPC had not determined the 'as received GCV' of coal in accordance with the 3rd Amendment to 2009 Tariff Regulations, until September 2016, and continued to use 'as fired' GCV.

No Infrastructure for measurement of 'as received GCV' of coal:

(ix) NTPC, in Form-15 of the truing-up petition, admitted that it lacked the infrastructure to measure representative 'as received' GCV figures for January to March 2014. Its claim that manual sampling and data hosting on its website commenced is untenable. The 3rd Amendment mandated the development of infrastructure—manual or hydraulic augur-for sampling on an 'as received' basis, which NTPC had not developed during the relevant period. Therefore, it could not have posted actual 'as received' GCV data.

(x) As per IS:436 (Part 1/Section 1) 1964, coal sampling must be carried out from loaded wagons on 'as received' basis either manually or through a hydraulic augur. The Commission has also endorsed this requirement.

(xi) The crux remains that NTPC had no infrastructure for such sampling and is now seeking to justify submission of assumed 'as received GCV' data for the relevant months to cover up its failure to establish such infrastructure.

(xii) This position was acknowledged by the Commission in Para 29(d) of its order dated 19.2.2016 in Petition No. 33/MP/2014 (relied on by NTPC), where the Commission noted that the absence of sampling and testing facilities on an 'as received' basis needs to be addressed.



Error apparent on the face of the record:

(xiii) In Para 38 of the reply filed by Respondent, NTPC has inter-alia, stated that:

“.....Thus, as logical sequitur, once this Hon’ble Commission has already computed the loWC on the basis of the data furnished by the Answering Respondent, the question of not having the adequate infrastructure does not arise in the present case.”

(xiv) The Commission’s computation of loWC based on ‘as received GCV’ despite NTPC’s admitted lack of infrastructure for such measurement constitutes an ‘error apparent’ on the face of the record.

Grade slippage from mine's end to the generating station end:

(xv) From October 2013, third-party sampling at the mines end ensures that GCV/grade of coal is reliably determined, there being no dispute on the same. The GCV issue arises solely at the generating station end, where NTPC conducted unilateral sampling and testing. The Commission in Para 44 of the order dated 19.2.2016 in Petition No. 33/MP/2014, observed as hereunder:

“Para 44.....CIL has already introduced third party sampling at mines end. There is a requirement to introduce third party sampling also at the generation end to find out the exact magnitude of grade slippage.”

(xvi) While some variation in GCV may occur due to differing test methods—‘equilibrated basis’ at the mine’s end and ‘total moisture basis’ at the station end—the recorded difference of up to 1580 kCal/kg for January to March 2014 (FSTPS-I & II) is abnormally high. This suggests either NTPC used inferior coal or submitted assumed ‘as received’ GCV values.

(xvii) Therefore, the Commission’s reliance on such GCV data to compute loWC amounts to an apparent error and warrants review. The Commission may instead apply the adjustment formula as laid down in the order dated 10.3.2017 in Petition No. 316/GT/2014. The impugned order, to the extent that the Commission had determined the loWC on the basis of ‘as received’ GCV data of coal, is liable to be reviewed. The Commission may determine the loWC on the basis of ‘as received GCV’ computed as per the following ‘adjustment formula’ laid down in the order dated 10.3.2017 in Petition No. 316/GT/2014:

$$GCV \times (1-TM)/(1-IM)$$

Where: GCV= Gross Calorific value of coal;

TM= Total moisture; and

IM= Inherent moisture.



Analysis and Decision

Computation of the Interest on Working Capital (IoWC) on the basis of 'as received' GCV of coal for the months from January 2014 to March 2014

Maintainability

10. Before we proceed to consider the issue raised by the Review Petitioner, we examine the submissions of Respondent NTPC that the issue raised by the Review Petitioner in the present Review Petition qua the IoWC on the basis of 'as billed' GCV of coal for the period of January 2014 to March 2014 is pending consideration of the APTEL in Appeal No. 258 of 2022 filed by the Review Petitioner against the order dated 21.4.2022 passed by this Commission in Petition No. 362/GT/2020. Accordingly, Respondent NTPC has submitted that when an issue which is sub-judice before a superior court, the lower court must refrain from considering the said issue till the adjudication of the matter in its entirety by the superior court. Per contra, the Review Petitioner has contended that the present Review Petition, is maintainable as there is no bar against the filing of appeal and Review Petition against different orders and for different generating stations, even if the issue involved is the same.

11. We have examined the submissions and agree with the submissions of the Review Petitioner in this regard. The pendency of an appeal on this issue before APTEL does not bar the filing and consideration of this issue in a review proceeding related to a Commission's order, in respect of a different generating station. Accordingly, the objections of the Respondent NTPC on the maintainability of the Review Petition are misconceived. Given that there are no interim orders/directions of APTEL barring the Commission from considering the issue involved herein, which has been raised in the Review Petition, we find no reason to reject the Review Petition as not maintainable.



Accordingly, we proceed to examine whether the issue raised by the Review Petitioner is maintainable on merits, as stated in the subsequent paragraphs.

Merits

12. The main contention of the Review Petitioner is that the Commission has considered the data submitted by NTPC in the additional submission, assuming that the same were submitted to be on 'GCV of coal on an 'as received' basis, in terms of the 3rd Amendment to the 2009 Tariff Regulations, in spite of the fact that NTPC admittedly had no infrastructure for sampling of coal for the determination of GCV on an 'as received' basis for the months of January, 2014, February, 2014 and March, 2014. *Per contra*, NTPC has contended that though the third amendment to the 2009 Tariff Regulations dated 31.12.2012, cast obligation upon the generating companies to publish/host the data pertaining to the GCV of coal on an 'as received' basis in terms of the second proviso to Regulation 2(6) of the 2009 Tariff Regulations, the same was silent on aspects of the methodology/ suitable infrastructure required for measuring the GCV of coal on 'as received' basis and despite this, NTPC commenced hosting the said data on its website based on manual sampling at that time. Pointing out that the necessary infrastructure for measuring the 'as received' GCV of coal came into existence only on 25.1.2016 (after the Commission's order in Petition No. 283/GT/2014), NTPC has clarified that, hence, in Form 15, it was mentioned that it did not have the infrastructure for measuring the figures of 'as received GCV' for the aforesaid months. While stating that the provisional GCV value of coal 'on billed' basis, as considered in the Commission's order dated 3.3.2017 in Petition No.280/GT/2014 (tariff approval of this generating station for the period 2014-19), was an adhoc interim arrangement as decided by this Commission, NTPC has submitted that pursuant to the directions of this Commission, through ROP of the hearing



of various other tariff petitions covering the generating stations of NTPC, to submit the details of the GCV on 'as received' basis for the months of January 2014 to March 2014 (as uploaded on its website and shared with the beneficiaries in terms of the third amendment to 2009 Tariff Regulations), NTPC furnished the details vide its additional submissions dated 28.6.2021 at the time of truing up of tariff, based on which the impugned order was passed. Accordingly, NTPC has argued that once the Commission had computed the loWC on the basis of the data furnished by NTPC, the question of the absence of adequate infrastructure does not arise.

13. We have examined the submissions. It is pertinent to mention that the 3rd amendment to the 2009 Regulations was silent on the methodology/infrastructure suitable for the measurement of GCV of coal on an 'as received' basis. It was only in compliance with the direction of the Hon'ble High Court of Delhi (in W.P. No. 1641/2014 filed by NTPC) that the Commission vide its order dated 25.1.2016 in Petition No. 283/GT / 2014 clarified that the measurement of GCV of coal on an 'as received basis' shall be taken from the loaded wagons at the unloading point either manually or through the Hydrolic Augur. However, as NTPC could not comply with the directions contained in aforesaid order, while filing Petition No.280/GT/2014 (tariff for 2014-19 for this generating station), the Commission vide its order dated 3.3.2017, computed the fuel components and the energy charges in the working capital by provisionally taking the GCV of coal on as "billed basis" and allowed an adjustment for total moisture as per the formula given thereunder. Thus, in order to decide the said issue finally, at the time of truing up of tariff of the generating stations of NTPC for 2014-19, including this station, the Commission, vide ROP of the hearing of the petitions, sought the additional information, directing NTPC to submit the details of the GCV on an 'as received' basis for the months of January 2014



to March 2014, which was uploaded on its website and shared with the beneficiaries in terms of the third amendment to 2009 Tariff Regulations. It is in pursuance of this, that NTPC submitted the requisite details vide additional submission dated 28.6.2021, which was considered by the Commission, passing the impugned order. In its additional submissions, NTPC had prayed that the average of an “as received” GCV of coal, measured by it, for the period from October, 2016 to March 2019 (30 months) i.e., after the creation of the necessary infrastructure in October 2016, may be considered for the purpose of arriving at the IoWC for the period 2014-19 in relaxation of the 2014 Tariff Regulations. However, the Commission, in the impugned order, rejected the said prayer as under:

“100. Regulation 28(2) of the 2014 Tariff Regulations provides that the computation of cost of fuel as a part of IWC is to be based on the landed price and gross calorific value of the fuel, as per actuals, for the three months preceding the first month for which the tariff is to be determined. Thus, calculation of IWC for the period 2014-19 is to be based on such values for months of January 2014, February 2014 and March 2014. The Petitioner has not been able to furnish these values at the time of determination of tariff for the period 2014-19 in Petition No. 316/GT/2014. In the present petition, the Petitioner has proposed that instead of GCV for January 2014, February 2014 and March 2014, the Commission should consider the average values for months of October 2016 to March 2019, since the measurement of ‘as received’ GCV has been done in accordance with directions of the Commission vide order dated 25.1.2016 in Petition No. 283/GT/ 2014. In our view, the proposal of the Petitioner to consider the retrospective application of 30 months’ (October 2016 to March 2019) average of ‘as received’ GCV data in place of ‘as received’ GCV of the preceding three months (January 2014 to March 2014) is not acceptable, keeping in view that the average GCV for 30 months may not be commensurate to the landed cost of coal for the preceding three months to be considered for calculating IWC in terms of Regulation 28(2) of the 2014 Tariff Regulations and that due to efflux of time (gap of 30 month), the quality of coal extracted from the linked mines would have undergone considerable changes. Also, the loss of GCV of 100 kCal/kg cannot be considered, as the same is not as per provisions of the 2014 Tariff Regulations.”

14. Accordingly, the Commission accepted the “as received” GCV of coal data submitted by NTPC (which was uploaded and shared with the beneficiary Discoms, including the Review Petitioner) for the purpose of IoWC calculations. This being so, the Review Petitioners’ submission that NTPC does not have adequate infrastructure (as



raised by it earlier also) merits no consideration. Having considered the data submitted by NTPC in the impugned order, on a prudence check, it cannot lie on the mouth of the Review Petitioner to again contend that the Commission has considered the NTPC assumed 'as received GCV' of coal for the IoWC computation. There is also no change in the methodology at the time of truing up of tariff, as contended by the Review Petitioner, considering the fact that the provisional GCV value of coal on 'as billed basis' considered by the Commission in the original order, was corrected at the time of truing up of tariff by considering the 'as received' GCV of coal for the said three months, for the purpose of computing the IoWC. The Commission, by a conscious decision, had considered the data submitted by the Respondent NTPC in the impugned order, and hence, there is no reason to review the impugned order on this count. The Review Petitioner and the Respondents, BRPL & BYPL, have also not shown any error apparent on the face of the impugned order, warranting the review of the impugned order. It is a settled proposition of law as enunciated in terms of the judgment of the Hon'ble Supreme Court in Parsion Devi Vs. Sumitra Devi (1997 8 SCC 715) that the review proceedings are not by way of an appeal and have to strictly confined to the scope and ambit of Order 47 Rule 1 of CPC 1908 and that the judgment may be open to review, inter alia, if there is a mistake or an error apparent on the face of the record and that an error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent requiring the court to exercise its power of review. These principles of review have also been enunciated by the Hon'ble Supreme Court in its judgment in Kamlesh Verma Vs. Mayawati and ors (AIR 2006 SC 75). It is pertinent to mention that a similar Review Petition (Petition No. 12/RP/2024) filed by the Review Petitioner, on the same issue, in respect of Farakka Super Thermal Power Station Stage-III of the Respondent NTPC, was



rejected by the Commission vide order dated 10.6.2025. In the above background, the submissions of the Review Petitioner and the Respondents, BRPL & BYPL, are rejected, and the Review Petition is accordingly held to be not maintainable.

15. Review Petition No. 20/RP/2023 in Petition No. 698/GT/2020 stands disposed of in terms of the above.

**Sd/-
(Harish Dudani)
Member**

**Sd/-
(Ramesh Babu V.)
Member**

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

