CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 6/RP/2024
in
Petition No. 223/GT/2021

Coram:
Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member

Date of Order: 22nd March, 2025

In the matter of:

Review of the Commission's order dated 8.12.2023 in Petition No. 223/GT/2021 pertaining to the truing-up of the tariff for the period 2014-19 and determination of tariff for the period 2019-21 in respect of Teesta Low Dam-IV Power Station (160 MW).

And

In the matter of:

NHPC Limited
NHPC Office Complex, Sector-33,
Faridabad, Haryana-121003 **…Review Petitioner**

Vs

West Bengal State Electricity Distribution Company Limited
Block 'DJ' Sector-11, Salt Lake City
Kolkata – 700 091 **…Respondent**

Parties Present:

Shri Venkatesh, Advocate, NHPC
Shri Kartikay Trivedi, Advocate, NHPC
Shri Bharath Gangadharan, Advocate, NHPC
Ms. Anushree Bardhan, Advocate, WBSEDCL
Ms. Surbhi Kapoor, Advocate, WBSEDCL
Ms. Ritika Singh, Advocate, WBSEDCL

ORDER

Petition No. 223/GT/2021 was filed by the Review Petitioner NHPC Limited, for truing-up of the tariff 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 determination of tariff for the period

2019-21 in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions) of Tariff Regulations, 2019 (in short, 'the 2019 Tariff Regulations) in respect of Teesta Low Dam-IV Power Station (160 MW) and the same was disposed of by the Commission vide order dated 8.12.2023 (in short, 'the impugned order'). This order was further revised vide the corrigendum order dated 9.1.2024, after correction of certain inadvertent errors in the calculation of the total additional O&M expenses for the period 2019-21. Aggrieved thereby, the Review Petitioner has filed the Review Petition, seeking review on the ground of error apparent on the face of the impugned order dated 8.12.2023 on the following issues:

(a) Unit-wise apportioning of the deducted IEDC amount, while calculating the unit-wise capital cost for tariff;
(b) Error in the adjustment of Infirm Power;
(c) Reduction of rate of Interest on Working Capital for two units declared under COD during 2015-16; and

(d) Non-consideration of the Weighted Average Rate of Interest for the actual loan for the computation of Normative IDC.

Hearing dated 4.4.2024

2. The matter was heard 'on admission,' and the Commission, after hearing the learned counsel for the Review Petitioner, 'admitted' the Review Petition on the issues raised in para 1 above and directed the issue of notice and for the parties to complete their pleadings in the matter. The Respondent has filed its reply on 16.5.2024 and the Review Petitioner has filed its rejoinder to same on 11.6.2024. The Review Petitioner has filed its short note of arguments on 9.1.2025.

Hearing dated 6.2.2025

4. The Review Petition could not be heard earlier on various dates due to the paucity of time. However, on 6.2.2025, the Commission, after hearing the learned counsel for the parties at length, reserved its order in the matter. However, based on the request, the parties were permitted to file their short note of arguments.

5. Based on the submissions of the parties and the documents on record, we proceed to examine the issues raised by the Review Petitioner, as stated in the subsequent paragraphs:

A. <u>Unit-wise apportioning of the deducted IEDC amount while calculating the unit-wise capital cost for tariff</u>

Submissions of the Review Petitioner, NHPC

6. The Review Petitioner, in the Review Petition, submitted the following:

(a) The Review Petitioner, in the truing-up petition, requested this Commission to consider the deduction of Rs. 200.51 Cr. only for the delay period of the project (i.e., January 2012 to August 2012 and March 2013 to December 2014) and further, to allow the extra deducted amount for Interest During Construction (IDC) of Rs. 57.20 Cr. and Interest Expenditure During Construction (IEDC) of Rs. 21.03 Cr., respectively.

(b) However, the Commission vide the impugned order disallowed IDC of Rs. 57.20 Cr and IEDC of Rs. 21.03 Cr, in addition to the deduction of Rs. 200.51 Cr. only for the delay period of the project (i.e., January 2012 to August 2012 and March 2013 to December 2014). Also, the Commission, vide the impugned order, while allowing the capital cost for the purpose of tariff as on the COD of the respective units of the generating station, erroneously deducted the full amount of IEDC i.e., Rs. 21.03 Cr in the COD date of the 1st unit itself, instead of deducting the unit-wise apportioned IEDC amount, which should have increased proportionally as on COD of every unit of the generating station.

(c) The IEDC amount that ought to have been disallowed and deducted from the hard cost by the Commission, after considering the proportion of the said amount as on the COD of each unit of the generating station, is tabulated below:

(Rs. In Lakh)								
Capital Cost allowed & ought to be allowed by CERC								
	11.03.2016		**31.03.2016**		**17.07.2016**		**19.08.2016**	
	Allowed	**Ought to be Allowed**	**Allowed**	**Ought to be Allowed**	**Allowed**	**Ought to be Allowed**	**Allowed**	**Ought to be Allowed**
Hard cost	32478.64	32478.64	64965.13	64965.13	97527.74	97527.74	130109.34	130109.34
IDC	8325.89	8325.89	16704.99	16704.99	25357.57	25357.57	34105.76	34105.76
NIDC	574.87	574.87	1145.32	1145.32	1615.64	1615.64	2029.95	2029.95
FC	62.13	62.13	124.26	124.26	200.60	200.60	276.94	276.94
Total Capital Cost	41441.53	41441.53	82939.70	82939.70	124701.55	124701.55	166521.98	166521.98
Less: Undischarged liability	284.45	284.45	568.90	568.90	853.35	853.35	1137.81	1137.81
Less: IEDC disallowed*	**2102.54**	**524.85**	**2102.54**	**1049.82**	**2102.54**	**1576.03**	**2102.54**	**2102.54**
Capital cost for the purpose of tariff	**39054.54**	**40632.23**	**80268.26**	**81320.98**	**121745.66**	**122272.17**	**163281.64**	**163281.64**

**The IEDC disallowed above ought to be in proportion to unit-wise hard cost*

(d) It can be construed that the Commission has fallen into error by disallowing the entire deduction of IEDC amount of Rs. 21.03 Cr from the Hard Cost as on the COD of the 1st unit, instead of the unit-wise apportioned deduction, thereby affecting the capital cost allowed for the purpose of tariff for the generating station. Accordingly, the Commission may revise the erroneous deduction of IEDC amount while calculating the unit-wise capital cost for tariff

Reply of the Respondent, WBSEDCL

7. The Respondent, in its reply affidavit, has submitted as under:

(a) The capital cost allowed for the purpose of the tariff as on the COD of the project, i.e., commissioning of all the four units, is Rs.1632.8164 crores, and the Commission disallowed the IEDC of Rs. 21.03 Crores on account of the delay of 29.3 months and deducted the full amount of Rs. 21.03 crores in the COD of the 1st unit in its order dated 24.1.2021 in Petition No.354/GT/2018. Having not challenged the said order dated 24.1.2021, it is erroneous on the part of the Review Petitioner to raise the issue of time overrun reconsideration at the time of truing up proceedings and when that was disallowed by this Commission, to come by way of this present review petition.

(b) The impugned order has rightly calculated the IEDC amount while disallowing Rs. 21.02 Crores and deducting the full amount of Rs. 21.03 Crores in the COD of 1st unit in terms of the order dated 24.1. 2021. There is no error in the order dated 8.12.2023 on the above aspect

Rejoinder of the Review Petitioner

8. In response, the Review Petitioner, in its rejoinder, has submitted the following:

(a) There is no prohibition either under the Regulations or in the order dated 24.01.2021, which impedes the Review Petitioner from raising its claim at the time of true up. The Commission *vide* order dated 24.1.2021 had granted liberty to the Review Petitioner for filing detailed submissions at the time of truing up of tariff stage. Accordingly, the Review Petitioner filed the true-up Petition and submitted the requisite audited data. However, this Commission *vide* the impugned order considered the full deduction of Rs. 21.03 Cr. of IEDC while calculating the unit-wise capital cost for different units (COD of respective units) in place of apportioned deduction. This resulted in a reduction in the unit-wise capital cost (3 units) and the consequential loss of the annual fixed charges. However, WBSEDCL, without understanding the submissions raised, has made bald and baseless averments.

Analysis and Decision

9. We have examined the matter. It is observed that the Commission, in its order dated 24.1.2021, granted liberty to the Review Petitioner to file detailed submissions with regard to IEDC at the stage of truing-up of the tariff of the generating station for the period 2014-19. The relevant portion is extracted below:

"68. IEDC disallowed as above, ***is subject to revision****, based on the detailed item-wise break-up of IEDC actually incurred as per proforma below, duly certified by Auditor, for*

the specific periods including those for which time overrun has been disallowed to be furnished by the Petitioner, at the time of truing up of tariff."

10. In view of this, there is no merit in the submission of the Respondent that the Review Petitioner cannot be permitted to raise the issue. The Commission, in an impugned order dated 8.12.2023, disallowed IDC of Rs. 57.20 crore and IEDC for Rs. 21.03 crore on the basis of the period of 29.3 months not being condoned in line with the order dated 24.1.2021 in Petition No. 354/GT/2018. As stated, the Commission, in the impugned order, deducted the IEDC as on COD of the 1st unit itself instead of apportioning the same unit-wise. As per the consistent methodology adopted by the Commission, for the purpose of allowing the IDC and IEDC, the same is to be apportioned on the basis of the capital cost as on the COD of the respective units. Hence, on the same analogy, the disallowed IEDC amounting to Rs. 21.03 Cr ought to be proportionate to the unit-wise hard cost. The inadvertent deduction of the entire IEDC amount from the hard cost as on COD of Unit-I, instead of the proportionate deduction, is, in our view, an error apparent on the face of the impugned order, and the same is required to be rectified. Accordingly, review on this count is maintainable.

B. <u>Error in the adjustment of Infirm Power</u>

Submissions of the Review Petitioner, NHPC

11. The Review Petitioner, in the Review Petition, submitted the following:

(a) The Review Petitioner filed Petition No.354/GT/2018 wherein, as per Regulation 18 of the 2014 Tariff Regulations, an amount of Rs. 100.36 lakh against the sale of infirm power was deducted from the capital cost claimed as on the COD of the generating station (i.e., 19.8.2016). Further, an additional amount of Rs. 7.41 lakh was earned by the Review Petitioner from the sale of Infirm Power, for which entry/adjustment has been made after the COD (i.e., on 31.3.2017), in the account head 410701, Main generating Equipment (i.e., the additionally capital expenditure) by the Review Petitioner (since the said sale amount was known after COD). The additional capital expenditure claimed by the Review Petitioner for the period 19.8.2016 (COD of last unit) to 31.3.2017, which was as per books of account, is after adjustment of said infirm power amount. A copy of the voucher dated 31.3.2017 qua the sale of infirm power post-COD is annexed herewith as Annexure P/5.

(b) The Commission, after considering the aforesaid facts, vide its order dated

24.1.2021, directed that since the total sale of infirm power by the Review Petitioner amounts to Rs. 107.77 lakhs [i.e., Rs. (100.36 + 7.41) lakh], and Rs. 100.36 lakh had already been adjusted in the capital cost, the additional amount of Rs. 7.41 lakh will be additionally adjusted in the capital cost. Accordingly, the Hard Cost and the additional capital expenditure allowed by the Commission in the order dated 24.1.2021 are as under:

	11.3.2016	**31.3.2016**	**17.7.2016**	**19.8.2016**
Hard Cost on pro rata basis	32480.49	64968.84	97533.3	130116.75
Less: Un accounted revenue from sale of Infirm Power	1.85	3.71	5.56	7.41
Hard Cost	32478.64	64965.13	97527.74	130109.34
Add Cap for period 19.8.2016 to 31.3.2017				3557.64

(c) It can be construed that the Commission deducted Rs. 7.41 lakh from the hard cost claimed by the Review Petitioner, whereas the add cap claimed (for the period 2016-17) by the Review Petitioner is after adjustment of the said amount, thus resulting in the double deduction of Rs. 7.41 lakh.

(d) Thus, the Review Petitioner, in the true-up petition, annexed the voucher dated 31.3.2017 for perusal of the Commission and to bolster the claim of “accounted revenue from sale of Infirm Power” i.e., Rs. 7.41 lakh, while praying that the disallowance of the hard cost *vide* order dated 24.1.2021 may be considered while carrying out the true up in the impugned order. However, the Commission erroneously failed to consider that the cost of Rs. 7.41 lakh has already been adjusted from the additional capital expenditure by the Review Petitioner, and the same has inadvertently led to a double deduction of the said amount.

(e) It is a settled position of law that a regulatory commission, while exercising its regulatory powers, must take into consideration all the material placed on record and, thereafter, pass a reasoned order specifically denying or accepting the claims raised before it. (relied upon the judgment of the Hon’ble Supreme Court in *Gulam Abbas vs. Mulla Abdul Kadar,* (1970) 3 SCC 643, wherein the Hon'ble Court considered the effect of a circular, dealing with the law of limitation held that such a circular qualified as 'law' in force within the territory of the State, which materially affected the result of the suit. It was held that non-consideration of the same would amount to an 'error of law apparent on the face of the record.'

(f) Therefore, this Commission has erred by making a double deduction of the sale of infirm power, by not considering the voucher dated 31.3.2017 and to continue to treat the sums as unaccounted. In light of the said facts and circumstances, it is submitted that the capital cost allowed by the Commission is liable to be reviewed and the same be revised as tabulated below:

	(Rs. in lakh)
Capital Cost allowed by Commission	
	19.8.2016 to 31.3.2017
Opening capital cost (a)	163281.64
Add: ACE	3557.64
Closing capital Cost (b)	166839.28

Average capital cost	165060.46
Capital Cost ought to be allowed by Commission	
Opening capital cost (a)	163281.64
Add: ACE	3557.64
Add: Adjustment of infirm power in terms of order	**7.41**
Closing capital Cost (b)	166846.69
Average capital cost	165064.17

Reply of the Respondent, WBSEDCL

12. The Respondent, in its reply, has submitted the following:

(a) The Review Petitioner initially stated that a revenue of Rs. 107.77 lakh earned from the sale of infirm power had been deducted from the claimed capital cost of the Project as on the COD (19.8.2016). However, in a subsequent affidavit dated 6.3.2020, the Review Petitioner revised this figure, stating that the total revenue from the sale of infirm power as on COD is Rs.100.36 lakhs only. The Commission has recorded in its order that the reason for this difference was not provided. Additionally, the Commission also noted that the DIA report also indicated an amount of Rs. 107.77 lakh towards the sale of infirm power. Accordingly, this Commission, in para 71 of the order dated 24.1.2021, adjusted the full amount of Rs. 107.77 lakhs as the revenue earned from the sale of infirm power from the capital cost.

(b) Further, in the impugned order dated 8.12.2023, it has been noted that the Review Petitioner has accounted for Rs.7.41 lakh as of 31.3.2017, and as this Commission has adjusted an amount of Rs.107.77 lakh for the sale of infirm power as of the COD of the station and the said amount of Rs. 7.41 lakhs, has already been accounted for in the capital cost by the order dated 24.1. 2021. Having not challenged the said order dated 24.1.2021, it is erroneous on the part of the Review Petitioner to raise the issue of infirm power and any double deduction on account of Rs. 7.41 lakhs at the time of truing up proceedings when even that was disallowed by this Commission, then to come by way of this present review petition.

(c) The Review Petitioner, in Petition No. 223/GT/2021, has annexed a voucher dated 31.3.2017 to substantiate its claim regarding Rs. 7.41 lakh vis a vis the infirm power. It is submitted that the voucher annexed by the Review Petitioner is dated 11.3.2021, which is after this Commission's order dated 24.1.2021. Therefore, the adjustment of Rs. 7.41 lakhs made in the capital cost seems to be after the order dated 24.1.2021 and only on 11.3.2021. The same has to be verified by this Commission, and a prudence check has to be undertaken. There is no error in the impugned order on this aspect.

Rejoinder of the Review Petitioner

13. In response, the Review Petitioner, in its rejoinder, has clarified as under:

(a) There is no bar on the Review Petitioner to seek a review of the findings in the impugned order based on a true-up proceeding. It is relevant to note that the amount to the tune of Rs. 7.41 lakh was earned by the Review Petitioner from the sale of infirm power, for which entry/ adjustment had been made after the COD (i.e., on 31.3.2017). Accordingly, a voucher dated 31.3.2017 *qua* the sale of infirm power post COD was submitted for the kind consideration of this Commission.

(b) Moreover, the income from the generation of electricity (pre-commissioning) amounting to Rs. 107.77 lakh had already been accounted for in the balance sheet for the year 2016-17. However, despite having the aforesaid information, this Commission failed to consider that despite the deduction of the full amount of Rs. 107.77 lakhs for 2016-17, this Commission deducted Rs. 7.41 lakhs as 'unaccounted' revenue from the sale of infirm power, whereas, the said amount was already accounted for by the Review Petitioner from the capital cost, thereby, resulting in a double deduction of Rs. 7.41 lakh.

(c) In so far as the contentions of WBSEDCL *qua* the veracity of the voucher is considered, the same is dated 31.3.2017, and the date of 11.3.2021 is the run date of the voucher, extracted from the ERP system, which has been printed while submitting the documents to this Commission. Apart from the contention that the Review Petitioner has not challenged these findings when the order dated 24.1.2021 was passed, the Respondent has not denied that the claims of the Review Petitioner are incorrect or made any submissions against it. Therefore, in light of the aforesaid submissions, the contentions raised by the Respondent are liable to be dismissed

Analysis and Decision

14. We have examined the matter. As per the Review Petitioner, an amount of Rs. 100.36 lakh from the sale of infirm power was deducted from the capital cost as on the COD of the generating station (19.8.2016), and subsequently, an additional amount of Rs. 7.41 lakh was earned from the sale of infirm power, for which an entry/adjustment was made after the COD (i.e., on 31.3.2017). As per the consistent methodology followed by the Commission, the total revenue from the sale of infirm power is to be adjusted in the capital cost as on COD. Accordingly, in an order dated 24.1.2021 in Petition No. 354/GT/2018, the Commission correctly deducted the total amount of Rs.107.77 lakh (Rs.100.36 lakh + Rs.7.41 lakh). Further, in the impugned order, the Commission had not considered the deletion of Rs.7.41 lakh, arising from the adjustment of revenue earned from the sale of infirm power as of 31.3.2017, as claimed by the Review Petitioner. It is clarified from record that the said amount of Rs 7.41 lakh was deducted only once, i.e., as on the COD (19.8.2016), and that there is no double

deduction.

15. Further, the Review Petitioner has submitted that the revenue for an amount of Rs. 7.41 lakh from the sale of infirm power, for which entry/adjustment has been made after the COD (i.e., on 31.3.2017), in the account head 410701, Main generating Equipment, i.e., in the additional capital expenditure (Form 9A) is after the adjustment of said infirm amount. On perusal of the claim of the Review Petitioner for additional capital expenditure in Form 9A and the additional information submitted in the form of a voucher dated 31.3.2017, it is observed that there is no indication/mention of the above adjustment of Rs. 7.41 lakh from the additional capital expenditure claimed. In other words, it is not clear whether the additional capital expenditure claimed under the Head 410701, i.e., Main generating Equipment (as per form 9A), was made only after the adjustment of Rs.7.41 lakh towards infirm power. Accordingly, the additional capital expenditure was allowed as claimed by the Review Petitioner in Form 9A. As such, we find no merit in the claim of the Review Petitioner with regard to the adjustment of Rs.7.41 lakh from the additional capital expenditure. In view of this, there is no error apparent on the face of the impugned order and the review on this count is not maintainable.

C. <u>Reduction of rate of Interest on Working Capital for two units declared under COD during 2015-16</u>

Submissions of the Review Petitioner

16. The Review Petitioner, in the Review Petition, submitted the following

(a) The Review Petitioner, in the truing up Petition, requested the Commission to reconsider the rate of Interest on Working Capital (IOWC) as 13.5%, which was the appropriate and applicable rate of interest as per clause (3) of Regulation 28 of the 2014 Tariff Regulations. However, the Commission, in para 57 of the impugned order, has erroneously applied an interest rate @12.80% for all the units from 17.7.2016, including the two units which have already been declared under commercial operation during 2015-16

(b) On a bare perusal of Regulation 28, it can be construed that the rate of interest on working capital shall be considered in accordance with the bank rate as on

1.4.2014, during the period 2014-15 to 2018-19 in which the generating station or unit thereof is declared under commercial operation. In view of the aforesaid Regulation, this Commission correctly determined that since Units-1 and 2 of the generating station were commissioned during the year 2015-16 (i.e., on 11.3.2016 and 31.3.2016, respectively), the rate of interest in respect of these two units should be considered as 13.50% (i.e., the SBI base rate as on 1.4.2015) and since Units-III and IV have been commissioned during the year 2016-17 (i.e., on 17.7.2016 and 19.8.2016 respectively), therefore, the rate of interest for these two units should be considered as 12.80% (i.e., SBI base rate as on 1.4.2016).

(c) However, while calculating the IOWC, the Commission has erroneously applied the interest rate @12.80% for all units from 17.7.2016, including the two units that have already been declared under commercial operation during 2015-16 (i.e., Unit I and II) in contrast to the explanation mentioned above. In view of the aforesaid, it is prayed that this Commission may review its findings in respect of IOWC in the impugned order and hold at the actual IOWC, as under:

Interest on working capital claimed	13.50%
Interest on working capital allowed by the Commission	12.80%
As per explanation @ Para. 57 of the impugned order, IOWC to be allowed	
Interest on working capital applicable for the two units declared under COD during 2015-16 (Unit- I & II)	13.50%
Interest on working capital applicable for the two units declared under COD during 2016-17 (Unit-III & IV)	12.80%

Reply of the Respondent, WBSEDCL

17. The Respondent, in its reply, has submitted that clause (3) of Regulation 28 of the 2014 Tariff Regulations makes it clear that once the generating station or project consisting of all the units gets commissioned (i.e., Project commissioning), the rate of interest on working capital shall be considered as the bank rate as on 1.4.2014 or as on 1st April of the year during the tariff period 2014-15 to 2018-19 in which the generating station is declared under commercial operation, whichever is later. Thus, once the generating station has achieved COD, the working capital is the same for all the units of the generating station as per the above methodology, and thereafter, there cannot be any rate of interest of working capital for individual units. It is stated that in the present case, the entire project was commissioned on 19.8.2016, and thus, the applicable rate of interest on working capital, post the commissioning of the whole project, will be the rate as applicable on 1.4.2016 i.e.12.80%. Accordingly, the Respondent has submitted

that there is no error in the impugned order on this aspect.

Rejoinder of the Review Petitioner

18. In response, the Review Petitioner, in its rejoinder, has clarified as under:

(a) On a reading of the reasoning of the Commission, this Commission correctly determined that since Units-1 and 2 of the generating station were commissioned during the year 2015-16 (i.e., on 11.3.2016 and 31.3.2016, respectively), the rate of interest in respect of these two units should be considered as 13.50% (i.e., the SBI base rate as on 1.4.2015) and since Units-III and IV have been commissioned during the year 2016-17 (i.e., on 17.7.2016 and 19.8.2016 respectively), therefore, the rate of interest for these two units should be considered as 12.80% (i.e., SBI base rate as on 1.4.2016).

(b)However, while calculating the IOWC, this Commission erroneously applied the interest rate @12.80% for all units from 17.7.2016, including the two units that have already been declared under commercial operation during 2015-16 (i.e., Unit I and II). This discrepancy is contrary to the explanation provided earlier, which warrants a re-examination of the interest rate applied for calculating IOWC.

Analysis and Decision

19. We have considered the submissions. Regulation 28 (3) of 2014 Tariff Regulations provides as under:

> *"Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.4.2014 or as on 1st April of the year during the tariff period 2014-15 to 2018-19 in which the generating station or a unit thereof or the transmission system including communication system or element thereof, as the case may be, is declared under commercial operation, whichever is later."*

20. The Commission in para 57 of the impugned order decided as under:

> *"57. Since Units-I and II of the generating station has been commissioned during the year 2015-16 (i.e. on 11.3.2016 and 31.3.2016 respectively), the rate of interest in respect of these two units have been considered as 13.50% i.e. SBI base rate as on 1.4.2015 plus 350 points. In respect of the Units-III and IV which have been commissioned during the year 2016-17 (i.e. on 17.7.2016 and 19.8.2016 respectively), the rate of interest for these two units have been considered as 12.80% i.e. SBI base rate as on 1.4.2016 plus 350 points. Accordingly, in terms of the above regulations, interest on working capital is worked out as under…...*"

21. In our considered view, once the generating station or project consisting of all the units gets commissioned, the rate of interest on working capital is the same for all the units of the generating station. Consequently, there cannot be any separate rate of interest on working capital for the individual units. Although the said Regulation provides for considering the bank rate as on 1st April of the year in which a unit /generating station,

whichever is later, declares COD, the following applies:

- For Unit-I and Unit-II, commissioned during 2015-16, the bank rate as of April 1, 2015, plus 350 basis points (i.e., 13.50%) has been applied.
- For Unit-III and Unit-IV, commissioned during 2016-17, the bank rate as of April 1, 2016, plus 350 basis points (i.e., 12.80%), has been applied from the COD of Unit-III and the COD of the generating station.

22. The aforesaid methodology has been consistently followed by the Commission in its various orders, using the bank rate as on 1st April of the year of COD of unit/ generating station (i.e., 1.4.2015 for U-I & U-II and 1.4.2016 for U-III and station), in accordance with the said Regulations. We, therefore, find no reason to review the impugned order on this count. Accordingly, review on this count fails and the prayer of the Review Petitioner is rejected.

D. Non-consideration of Weighted Average Rate of Interest for the actual loan for computation of Normative IDC

Submissions of the Review Petitioner

23. The Review Petitioner, in the Review Petition, submitted the following:

(a)The Review Petitioner, in its tariff petition, considered the 'Weighted Average Rate of Interest' for the 'actual loan' drawn by the Review Petitioner for the period from 2003-04 to 2006-07 for computation of the Normative IDC (NIDC), due to unavailability of the actual loan in this project. However, this Commission has erroneously considered the 'Equivalent SBI Base rate" for the period 2003-04 to 2006-07.

(b)The Tariff Regulations are silent on the present issue. However, with respect to the present Project, internal funds were deployed from 2003-04, whereas the commercial loan was deployed in March 2008. Accordingly, the Weighted Average Rate of Interest (WAROI) applicable to the Review Petitioner, as a whole, ought to have been considered by this Commission for the period w.e.f. 2003-04 to 2006-07 for the computation of Interest on normative loans. The same is also in line with the methodology used by this Commission in the past.

(c) Reliance is placed on the Commission's order dated 12.1.2024 in Petition No. 453/GT/2020, wherein this Commission, in respect of Kishanganga Hydro Power Station of the Review Petitioner, allowed the NIDC on the basis that the WAROI shall be applicable to the Review Petitioner as a whole. The Review Petitioner duly provided the details of the calculations of the interest taken in Form 14 along with the truing-up Petition, in respect of the WAROI applicable to the Review Petitioner as a whole till 2006-07. Further, since the Review Petitioner began to withdraw the commercial loan in March 2008, it has taken the interest rate of the commercial loan into account while calculating the Normative IDC.

(d)It is also pertinent to note that while this Commission noted that the SBI 'Base Rate' was first released only on 1.7.2010, which is subsequent to the period for which the computation pertained to, however, this Commission erroneously proceeded to adjust the 'BPLR' with the spread (based on the difference between SBI BPLR and SBI Base Rate as on 01.07.2010) to arrive at an equivalent SBI 'Base Rate' instead of considering the actual interest rate duly submitted by the Review Petitioner.

(e) Therefore, the same has led to a reduction of the Normative IDC for the Review Petitioner by Rs. 56.47 lakhs up to SCOD, which should have been allowed on 'actuals. The methodology adopted by this Commission for calculating the Normative IDC is against the principles enshrined under the Act as well as the Tariff Policy, 2016, which mandates that reasonable return on investments should be allowed to the developer. Accordingly, it is prayed that the Commission may review the issue and grant the Review Petitioner NIDC as prayed for in the Review Petition

Reply of the Respondent, WBSEDCL

24. The Respondent, in its reply, has submitted the following:

(a) There is no error apparent on the face of the record in this regard. This Commission has rightly adjusted the 'Annual Weighted Average SBI Benchmark Prime Lending Rate' i.e. 'BPLR' with the spread (based on the difference between SBI BPLR and SBI Base Rate as on 1.7.2010 to arrive at an equivalent SBI 'Base Rate for the above period from 2003-04 to 2006-07.

(b) Reliance placed by the Review Petitioner on the decision of this Commission in the Kishanganga HEP dated 12.1.2024 is not applicable to the facts of the present case. The COD of the said project was on 24.5.2018, and during the said period, the 2014 Tariff Regulations were prevalent. However, for the period in question in the present case, i.e., from 2003-04 to 2006-07, no such regulation was in play (as also stated by the Review Petitioner), and in light of the same, the methodology adopted by this Commission cannot be said to be erroneous. There is no error in the order dated 8.12.2023 on this aspect.

(c) The claims raised by the Review Petitioner in the Review Petition are in the nature of an appeal in disguise, and the same cannot be permitted by this Commission. The review sought by the Review Petitioner is contrary to the well-settled principles of law, and the Respondent craves leave to refer to the following decisions of the Hon'ble Supreme Court on the scope and application of the Review Petition.

Rejoinder of the Review Petitioner

25. In response, the Review Petitioner, in its rejoinder, has clarified as under:

(a) The project specific loan in respect of the generating station has been utilized since March 2008. Review Petitioner has consistently utilized the funds from its own resources for project execution since 2003-04 in accordance with the relevant Tariff Regulations. Accordingly, while calculating the Normative IDC, the Review Petitioner considered the weighted average rate of actual rate of interest of the

Corporation for the period 2003 to 2007 as per the 2014 Tariff Regulations. In this respect, this Commission ought to have applied its own methodology under the 2014 Tariff Regulations rather than adopting a novel methodology that does not find a place in any of the Tariff Regulations.

(b) As of today, it is a settled position that any equity deployed over and above 30% shall be entitled to Normative interest at the weighted average rate of the actual loan portfolio. Therefore, to this extent, the Review Petitioner rightly requested this Commission to allow the Normative IDC at the weighted average rate of actual rate of interest of the Corporation for the period 2003 to 2007. It was in this regard, reliance was placed on the order dated 12.1.2024. However, this Commission adopted a different methodology by considering the "Equivalent SBI Base rate" for the period from 2003-04 to 2006-07, thereby deviating from the stipulations of the 2014 Tariff Regulations.

(c) It is pertinent to note that while the Commission noted that the SBI ‘Base Rate’ was first released only on 1.7.2010, which is subsequent to the period for which the computation pertained. However, the Commission erroneously proceeded to adjust the ‘BPLR’ with the spread (based on the difference between SBI BPLR and SBI Base Rate as on 1.7.2010) to arrive at an equivalent SBI ‘Base Rate’ instead of considering the actual Interest rate duly submitted by NHPC. Therefore, the same led to a reduction of Normative IDC for the Review Petitioner by Rs. 56.47 lakhs up to SCOD, which should have been allowed on actuals.

Analysis and Decision

26. We have considered the submissions of the parties. With respect to the consideration of the SBI base rate for the period from 2003-04 to 2006-07 due to the unavailability of actual loan for computing normative IDC instead of considering the weightage average rate of interest of the review petitioner’s company as a whole, the Commission, in para 19 of the impugned order, observed as under:

“19. Further, the Petitioner’s claim towards ‘Notional IDC’ for the period prior to the first date of drawl of ‘actual loan’, the Petitioner has submitted that ‘Weighted Average of Actual Rate of Interest’ for the ‘actual loan’ drawn for the Petitioner has been considered as ‘Weighted Average Rate of Interest’ during 2003-04 to 2006-07, due to unavailability of actual loan in this project. However, the Commission while computing the IDC is of the view that ‘Annual Weighted Average SBI Base Rate’ as applicable for the relevant financial year is to be considered for the purpose of calculating ‘Normative IDC’ during 2003-04 to 2006-07, in line with computation of ‘Notional IDC’ for the period from ‘Investment Approval’ date till infusion of ‘Actual Loan’ in order dated 18.7.2023 in Petition No. 421/GT/2020. Further, ‘Base Rate’ was first released on 1.7.2010, therefore the ‘Annual Weighted Average SBI Benchmark Prime Lending Rate’ i.e. ‘BPLR’ is adjusted with the spread (based on difference between SBI BPLR and SBI Base Rate as on 1.7.2010) to arrive at an equivalent SBI ‘Base Rate’. Therefore, Rs.4.067 crore is allowed out of the total deduction of Rs.12.76 crore after rectification of the above documents.”

27. Since the SBI base rate for the period 2003-04 to 2006-07 has been considered for calculating the Normative IDC, as per the prevailing practice, we find no error apparent on the face of the record warranting review. Accordingly, a review on this count is not maintainable.

Revision of tariff

28. Consequent upon Issue A being allowed (in para 10 above), the relevant paras of the impugned order stands revised as under:

Capital Cost as on COD of units/Station

29. The table under para 24 of the impugned order is revised as under:

(Rs. in lakh)

	11.3.2016	**31.3.2016**	**17.7.2016**	**19.8.2016**
Hard cost	32478.64	64965.13	97527.74	130109.34
IDC	8325.89	16704.99	25357.57	34105.76
NIDC	574.87	1145.32	1615.64	2029.95
FC	62.13	124.26	200.60	276.94
Total Capital Cost	**41441.53**	**82939.70**	**124701.55**	**166521.98**
Less: Undischarged liability	284.45	568.90	853.35	1137.81
Less: IEDC disallowed	525.64	1051.27	1576.91	2102.54
Capital cost allowed for the purpose of tariff	**40631.44**	**81319.53**	**122271.29**	**163281.64**

Capital cost allowed

30. Accordingly, the capital cost allowed in the table under para 36 of the impugned order is revised as under:

(Rs. in lakh)

	11.3.2016 to 30.3.2016	**31.3.2016 to 31.3.2016**	**1.4.2016 to 16.7.2016**	**17.7.2016 to 18.8.2016**	**19.8.2016 to 31.3.2017**	**2017-18**	**2018-19**
Opening capital cost	40631.44	81319.53	81319.53	122271.29	163281.64	166839.28	167525.17
Add: ACE	0.00	0.00	0.00	0.00	3557.64	685.89	2814.87
Closing capital cost	40631.44	81319.53	81319.53	122271.29	166839.28	167525.17	170340.04
Average capital cost	40631.44	81319.53	81319.53	122271.29	165060.46	167182.22	168932.60

Return on Equity

31. The ROE computed and allowed in the table under para 41 of the impugned order stands revised as follows:

(Rs. in lakh)

	11.3.2016 to 30.3.2016	**31.3.2016 to 31.3.2016**	**1.4.2016 to 16.7.2016**	**17.7.2016 to 18.8.2016**	**19.8.2016 to 31.3.2017**	**2017-18**	**2018-19**
Opening Equity (A)	12189.43	24395.86	24395.86	36681.39	48984.49	50051.78	50257.55

Addition of Equity due to ACE (B)	0.00	0.00	0.00	0.00	1067.29	205.77	844.46
Closing Equity (C) =(A)+(B)	12189.43	24395.86	24395.86	36681.39	50051.78	50257.55	51102.01
Average Equity (D)=(A+C)/2	12189.43	24395.86	24395.86	36681.39	49518.14	50154.67	50679.78
Base rate (%) (E)	16.500%	16.500%	16.500%	16.500%	16.500%	16.500%	16.500%
Effective Tax rate (%) (F)	21.342%	21.342%	21.342%	21.342%	21.342%	21.342%	21.549%
Effective ROE rate (%) (G) =E/(1-F)	20.977%	20.977%	20.977%	20.977%	20.977%	20.977%	21.032%
Return on Equity (H)=(D)*(G) (Pro-rata Basis)	**139.73**	**13.98**	**1500.20**	**695.68**	**6403.20**	**10520.94**	**10658.97**

Interest on Loan

32. Accordingly, the Interest on loan worked out in the table under para 44 of the impugned order is also revised as under:

(Rs. in lakh)

	11.3.2016 to 30.3.2016	31.3.2016 to 31.3.2016	1.4.2016 to 16.7.2016	17.7.2016 to 18.8.2016	19.8.2016 to 31.3.2017	2017-18	2018-19
Gross opening loan (A)	28442.01	56923.67	56923.67	85589.90	114297.15	116787.49	117267.62
Cumulative repayment of loan upto previous year (B)	0.00	57.09	62.80	675.28	957.79	3557.34	7825.63
Net Loan Opening (C=A-B)	28442.01	56866.58	56860.87	84914.63	113339.35	113230.16	109441.98
Addition due to additional capital expenditure (D)	0.00	0.00	0.00	0.00	2490.35	480.12	1970.41
Repayment of loan during the year (E)	57.09	5.71	612.47	282.52	2599.55	4272.58	4319.90
Less: Repayment adjustment on account of de-capitalization (F)	0.00	0.00	0.00	0.00	0.01	4.29	7.88
Net Repayment of loan during the year (G=E-F)	57.09	5.71	612.47	282.52	2599.54	4268.30	4312.02
Net Loan Closing (H = C+D-G)	28384.92	56860.87	56248.39	84632.11	113230.16	109441.98	107100.37
Average Loan (I= (C+H)/2)	28413.46	56863.72	56554.63	84773.37	113284.76	111336.07	108271.18
Weighted Average Rate of Interest of loan (J)	8.81%	9.24%	9.23%	8.59%	8.60%	8.34%	7.74%
Interest on Loan (K= I*J)	**136.79**	**14.36**	**1530.24**	**658.38**	**6005.64**	**9285.43**	**8380.19**

Depreciation

33. Accordingly, the depreciation computed in the table under para 46 of the impugned

order is revised as under:

(Rs. in lakh)

	11.3.2016 to 30.3.2016	**31.3.2016 to 31.3.2016**	**1.4.2016 to 16.7.2016**	**17.7.2016 to 18.8.2016**	**19.8.2016 to 31.3.2017**	**2017-18**	**2018-19**
Opening Gross block (A)	40631.44	81319.53	81319.53	122271.29	163281.64	166839.28	167525.17
Net Additional capital expenditure during 2014-19 (B)	0.00	0.00	0.00	0.00	3557.64	685.89	2814.87
Closing gross block (C=A+B)	40631.44	81319.53	81319.53	122271.29	166839.28	167525.17	170340.04
Average gross block (D)=(A+C)/2	40631.44	81319.53	81319.53	122271.29	165060.46	167182.22	168932.60
Value of Free Hold Land	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Depreciable Value (E= (D-Land value) *90%))	36568.30	73187.58	73187.58	110044.16	148554.41	150464.00	152039.34
Remaining Depreciable Value at the beginning of the year (F=E-Cum Dep at 'L' at the end of previous year)	36568.30	73130.48	73124.77	109368.89	147596.62	146906.66	144213.71
Rate of Depreciation (G)	2.57%	2.57%	2.57%	2.57%	2.57%	2.57%	2.57%
Balance useful Life (H)	35.00	35.00	35.00	35.00	35.00	34.38	33.38
Depreciation (I=F/H) (Pro-rated)	**57.09**	**5.71**	**612.47**	**282.52**	**2599.55**	**4272.58**	**4319.90**
Cumulative Depreciation at the end of the year (J=I+ Cum Dep at 'L' at the end of previous year)	57.09	62.80	675.28	957.79	3557.34	7829.92	12145.53
Less: Depreciation adjustment on account of de-capitalization (K)	0.00	0.00	0.00	0.00	0.01	4.29	7.88
Cumulative Depreciation at the end of the year (L)	57.09	62.80	675.28	957.79	3557.34	7825.63	12137.65

Interest on Working Capital

34. Also, the Interest on working capital worked out and allowed in the table under para 57 of the impugned order stands revised as under:

(Rs. in lakh)

	11.3.2016 to 30.3.2016	**31.3.2016 to 31.3.2016**	**1.4.2016 to 16.7.2016**	**17.7.2016 to 18.8.2016**	**19.8.2016 to 31.3.2017**	**2017-18**	**2018-19**
Working capital for Maintenance Spares (15% of operation	13.95	1.40	149.72	69.26	629.67	1089.29	1161.62

and maintenance expense)							
Working capital for O&M Expenses (one month of O&M Expenses)	7.75	0.78	83.18	38.48	349.82	605.16	645.34
Working capital for Receivables (two months of fixed cost)	73.24	7.44	796.68	359.69	3292.16	5374.28	5336.25
Total working capital	94.95	9.61	1029.58	467.44	4271.65	7068.74	7143.22
Rate of Working Capital	13.50%	13.50%	13.50%	12.80%	12.80%	12.80%	12.80%
Interest on Working Capital	**12.82**	**1.30**	**138.99**	**59.83**	**546.77**	**904.80**	**914.33**

Annual Fixed Charges for the period 2015-19

35. Based on the above, the annual fixed charges approved for the generating station for the period 2015-19 (11.3.2016 to 31.3.2019), as summarized in the table under para 58 of the impugned order, stands revised as under:

(Rs. in lakh)

	11.3.2016 to 30.3.2016	**31.3.2016 to 31.3.2016**	**1.4.2016 to 16.7.2016**	**17.7.2016 to 18.8.2016**	**19.8.2016 to 31.3.2017**	**2017-18**	**2018-19**
Depreciation	57.09	5.71	612.47	282.52	2599.55	4272.58	4319.90
Interest on Loan	136.79	14.36	1530.24	658.38	6005.64	9285.43	8380.19
Return on Equity	139.73	13.98	1500.20	695.68	6403.20	10520.94	10658.97
Interest on Working Capital	12.82	1.30	138.99	59.83	546.77	904.80	914.33
O&M Expenses	93.03	9.30	998.14	461.76	4197.81	7261.94	7744.14
Annual Fixed charges	**439.46**	**44.65**	**4780.06**	**2158.17**	**19752.97**	**32245.70**	**32017.53**

<u>Tariff for the period 2019-21</u>

36. As stated, the tariff for the period 2019-21 was determined vide the impugned order dated 8.12.2023, and the same was revised vide corrigendum order dated 9.1.2024. The tariff determined for the said period is, however, subject to truing up in terms of the 2019 Tariff Regulations. There is no change in the approved closing capital cost as on 31.3.2019, but the consequential impact in tariff due to the changes/revision in the cumulative depreciation amount and the cumulative repayment amount for the period

37. 2019-21 shall, however, be dealt with at the time of truing up of tariff of the generating station for the period 2019-24.

38. Review Petition No. 6/RP/2024 is disposed of in terms of the above.

Sd/-	***Sd/-***	***Sd/-***
(Harish Dudani)	**(Ramesh Babu V.)**	**(Jishnu Barua)**
Member	**Member**	**Chairperson**