TELANGANA STATE POWER COORDINATION COMMITTEE

From
The Executive Director (Comml),
TSPCC,
Vidyut Soudha,
Hyderabad - 500082.

To
The Secretary,
TSERC,
11-4-660, 5th floor,
Singareni Bhavan, Red Hills,
Hyderabad – 500 004.

Lr.No.ED (Comml)/SE(IPC)/DE-1/F. STPP/D.No. 194 /22, Dt:12-01.2023

Sir,

Sub: TSSPDCL – O.P.No. 77 of 2022 filed by M/s SCCL – Submission of Replies – Reg.

Ref: O.P.No. 77 of 2022 filed by M/s SCCL.

* * *

The reply of TSDISCOMs in the O.P.No. 77 of 2022 filed by M/s SCCL is herewith submitted in 6 sets, for taking further necessary action.

Yours faithfully,

Encl: As stated.

B.V. Shanthi Seshu 12/1/23

Executive Director (Comml)/TSPCC
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The CGM (IPC)/TSSPDCL, Corporate Office, Mint Compound, Hyderabad.
The CGM(IPC&RAC)/TSNPDCL, Corporate Office, Nakkalagutta, Waranagal.

BEFORE THE TELANGANA STATE ELECTRICITY REGULATORY COMMISSION AT HYDERABAD

O.P.No.77 OF 2022

Between:

M/s. Singareni Collieries company Limited (SCCL),
Kothagudem Collieries, BhadradriKothagudem Dist.,
Telangana – 507 101

..... Petitioner

AND

1. Southern Power Distribution Company of Telangana Limited, #6-1-50, Corporate Office, 1st Floor, Mint Compound, Hyderabad – 500 063.

2. Northern Power Distribution Company of Telangana Limited, # 2-5-31/2, Corporate Office, Vidyut Bhavan, Nakkalagutta, Warangal – 506 001

..... Respondents

REPLY FILED BY THE RESPONDENTS/TSDISCOMS

IN THE MID-TERM REVIEW PETITION, O.P.NO. 77 OF 2022

I, B.V Shanthi Seshu, W/o. Shri Sunder Rao, aged about 59 years, Executive Director (Commercial)/TSPCC, Vidyut Soudha, Hyderabad do hereby solemnly affirm and state as under:

I am working as Executive Director (Commercial)/TSPCC, Vidyut Soudha, Hyderabad and hence well acquainted with the facts of the case and have been authorized to swear this affidavit.

1. It is submitted that the Petitioner, SCCL has mainly prayed for the following reliefs in the subject Petition.
   (a) to consider the submissions made by it in the present Mid-term Review Petition.
   (b) to approve the revised ARR (Aggregate Revenue Requirement) and the Tariff during the years FY 2019-20, FY 2020-21 & FY 2021-22, along with interest as per Clause 7.15 of the TSERC Regulation 1 of 2019 and to revise the tariff for FY 2022-24 in respect of 2x600 MW Singareni Thermal Power Plant (STPP).

2. The Petitioner has summarized its claim of Annual Fixed Charges over and above the approved charges during MYT 2019-24 in the present Mid-term Petition as extracted below:

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Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Total Claim (Rs. Crs.)	93.54	208.99	141.30	160.96	178.17
Net Ex-bus Generation (MU)	8671.23	6895.33	8807.57	8421.43	8444.50

3. As could be seen from the summary of the claim in the Mid-term Review Petition, the Petitioner has claimed a total sum of **Rs.782.96 Crores** for the entire Control period FY 2019-24 towards Additional Annual Fixed Charges over and above the charges approved in the Order dated 28.08.2020 (TSERC determined Multi-Year Tariff (MYT) for FY 2019-24 in the Petition, O.P.No.5 of 2019 and batch).

4. To arrive at the Additional Fixed Charges for the Control period FY 2019-2024, the Petitioner has once again sought this Hon'ble Commission to approve the Additional Capitalization in respect of certain Capital works earlier proposed by it in the O.P.No.5 of 2019 and batch (Capital Investment Plan Petition O.P.No. 9 of 2020) proposed after the Cut-off date, which had been disallowed by this Hon'ble Commission, but with a direction to the Petitioner to submit some of the works relating to Additional Capitalization in the Mid-term Review. The Hon'ble Commission stated in the order dated 28.08.2020 (Para 6.1.2) that it would consider the impact of such Additional Capitalization on Tariff during Mid-term Review (or) Tariff determination for the next Control period as the case may be.

5. It is submitted that this Hon'ble Commission had noted the Cut-off date of STPP Project as 31.03.2019 in its order dated 28.08.2020 (page No.85). Further, the Hon'ble Commission has accorded in-principle approval for FGD system (estimated expenditure of Rs. 645.32 Crore for **So_x** emission control) & **No_x** emission control (Rs.38.00 Crore) claimed by SCCL aggregating to Rs.683.32 Crore of Capital Investment during FY 2019-24, **subject to Prudence check** of the cost of the FGD System (for **Sox** control) and In-furnace Modification works (for **Nox** control) and true up of the same in the relevant year after commissioning of the same.

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6. The Hon'ble Commission has, however disallowed the other Additional Capitalization works proposed by SCCL/Petitioner in the MYT Tariff Petition for FY 2019-24, such as procurement of O&M Modules (for Rs.301.18 Cr.), Railway Siding works (Rs.131.03 Cr.), Spill-over works (now claimed @ Rs.199.77 Cr.) for the reason that the Capital Investment for these works were not allowable in terms of the Article/Clause No. 7.19 of TSERC Regulation 1 of 2019, since the works proposed under Additional Capitalization were beyond the Original Scope of work and also after the Cut-off date.

7. Despite the categorical disallowance of the aforesaid Capital Investment works, the Petitioner is trying to re-claim the additional Capitalization works, after the Cut-off date by furnishing the year-wise Audited Annual Accounts Statement and prayed the Hon'ble Commission to admit the said works to the extent of discharge of liabilities by actual payments. Apart from the Additional Capitalization works, the Petitioner has also claimed Additional O&M Expenses over and above the O&M expenses (component of Fixed Charge) approved by the Commission on the ground of Uncontrollable factors impacting its revenues, which will be discussed in the subsequent Paras.

8. Before discussing on the merit of the Claims, the kind attention of this Hon'ble Commission is drawn to the relevant provision of TSERC Regulation 1 of 2019 with regard to Mid-term Review as extracted below:

"……

3.12.2 ……. The scope of the Mid-term Performance Review shall be a comparison of the actual operational and financial performance vis-a-vis the approved forecast for the first three years of the control period; and revised forecast of Aggregate Revenue Requirement expected revenue from existing Tariff, expected revenue gap, for the fourth and fifth year of the control period. ……"

9. In terms of the above provision, the scope of the Mid-term Review is limited to Performance Review vis-a-vis the Approved Forecast in respect of Operational and Financial parameters (actual) vis-a-vis the approved Multi-Year Tariff for FY 2019-2024. However, the Petitioner under the pretext of Mid-term Review is trying to re-seek the Additional Capitalization (and suggesting for re-determination of certain Fixed charge components) which was already disallowed, as the Additional Capitalization for works not within Original Scope of

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works and after Cut-off date, would have significant financial impact on the Respondent DISCOMs/Consumers.

10. Now, the individual claims of the Petitioner are discussed below:

(a) Revision of Capital Cost due to discharge of liabilities (BTG & BOP)

(b) Revision of Capital due to Spill over works beyond 31.03.2019.

11. **Revision of Capital cost due to discharge of liabilities (BTG & BoP) –**

(i) The Petitioner re-claimed the un-discharged liabilities towards BTG (Rs.33.96 Crore) &BoP (Rs.85.26 Crore) aggregating to Rs. 119.22 Crore, which were not allowed by this Hon'ble Commission and furnished the year-wise Audited Accounts Statement indicating the Capital expenditure and the liabilities for STPP during 2019-22.

(ii) The Petitioner stated that the un-discharged liabilities were paid and sought for approval of the same in terms of the Clause 7.19.1 (j) of TSERC Regulation 1 of 2019, which is extracted below:

"……

7.19.1 (j) Any liability for works admitted by the Commission after the Cut-off date to the extent of discharge of such liabilities by actual payments….

……"

(iii) As could be seen from the above provision, the pre-requisite for allowing the any expenditure/claim after the Cut-off date is that the works must have been admitted/approved by the Hon'ble Commission like the in-principle approval accorded by the Commission for FGD System works for emissions control. Then only the aforesaid provision can be invoked. Whereas the Hon'ble Commission did not allow the un-discharged liabilities in its order dated 28.08.2019 while undertaking Prudence Check in True-up Petition (O.P.No.4 of 2019).

(iv) The Petitioner's justification for pass through of un-discharged liabilities, having been paid / discharged, is based on the Audited Annual Accounts furnished by it.

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(v) Regarding the actual payments made by the Petitioner towards discharge of liabilities as per the financial Statement of Audited Accounts, the Respondents submit a Case law of Hon'ble Supreme Court in **2002(8) SCC 715** (West Bengal Regulatory Commission vs. CESC Ltd.), based on which Ld. APTEL in its judgment dated 10th August 2010 in **Appeal No.37 of 2010** (Copy of APTEL's order annexed as **Annexure - I**) held as extracted below:

.....

Summary of our findings:

51. (i) The order passed by this Tribunal dated 09.02.2009 is the order of Remand with a limited direction to the State Commission to take the true up exercise only in regard to FY 2007-08. In our view this is a limited Remand order remitting the matter to state Commission.....

.....

(ii) The second issue relates to the State Commission not adopting the financial statement of audited accounts by the Comptroller and Auditor General of India. This contention is untenable. The audited accounts is followed specifically as to whether the expenditure has been actually incurred or not. The audited accounts do not deal with the prudence of the expenditure. The question whether expenditure is allowed or not has to be considered only by the State Commission while truing up. The Auditor will verify whether the expenditure has been actually incurred or not. On the other hand the State Commission is bound to apply its mind to make a prudence check whether the expenditure is to be allowed or not. Therefore, the State Commission is not bound by the certificate of the Auditors.

(iii) The State Commission has correctly disallowed certain expenditure, ARR of the Appellant which may be rejected only on controllable expenditure. Since the Appellant has failed in its duty by not controlling the same and so the State Commission cannot pass the burden on to the consumers. Segregating the prior period charges into controllable expenditure and un-controllable expenditure is well recognised principle. Further, the

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prior period charges claimed by the Appellant are expenditure incurred by it during FY 2002-03. This was never claimed in the past. It is a settled law that the stage of truing up is not to reopen the basis of re-determination of tariff and it is only comparing the estimated figures at the beginning of the year with the actual figure at the end of the FY. It is not open to the Appellant to raise such an issue for the first time after many years.

....."

(vi) The ratio decided in the aforesaid judgment is equally applicable to the present case of the Mid-term Review, under which the Petitioner is re-claiming the Additional Capitalization of works, not allowed earlier by the Hon'ble Commission in the MYT Petition for FY 2019-24.

(vii) Further, the Mid-term Review cannot be the basis for re-determination of MYT 2019-24, in terms of the APTEL's judgment.

(viii) In light of the above, the Hon'ble Commission is prayed to disallow the claim of the Petitioner for revision of Capital cost due to discharge of liability for BTG & BOP works.

12. **Revision of Capital cost due to Spill over works beyond 31.03.2019** –

(i) The Petitioner claimed Rs.199.78 Crore for the Control period 2019-24 and stated that this Hon'ble Commission had not allowed the Spill over works in the Tariff computation MYT 2019-24.

(ii) The Hon'ble Commission recorded that SCCL not considered the additional Capitalization pertaining to these Spill over works and therefore not allowed any sum towards the said works.

(iii) Based on the Commission's observation, the Petitioner has claimed the revision of Capital Cost in the Mid-term Review Petition.

(iv) The Petitioner submitted the summary of Spill over expenditure including the actual amounts paid, as below:

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Actual Expenditure (Rs. Crores) (133.55)			Projected Spill over expenditure (Rs. Crore)
FY 2019-20	FY2020-21	FY2021-22	**FY2022-24**
76.51	32.85	24.19	66.22

(v) The claim of the Petitioner is not tenable in terms of the ratio decided in APTEL's judgment (Prudence check is the criteria but not audited figures) cited in the foregoing para and deserves no consideration since any consideration of Additional Capitalization would amount to re-determination of MYT Tariff for 2019-24 and is not in consonance with the provisions of the TSERC Regulation 1 of 2019.

13. Emergency work in respect of Railway Siding works:

(i) The Petitioner stated that it had submitted proposal for overhead electrification works and signalling and telecommunication works for Railway siding in Capital Investment Plan for FY 2019-24 but this Hon'ble Commission had not approved the same on the ground that the works were proposed after the Cut-off date.

(ii) The Petitioner also stated that Hon'ble Commission sought details of expenditure details, CCDAC grant etc., and sought for allowing the Capital expenditure treating the work as "Emergency work" under the Clause 7.8 of TSERC Regulation 1 of 2019.

(iii) The Petitioner submitted that the Coal Controller, Ministry of Coal, Govt. of India, sanctioned Rs.196.00 Crores as a grant/assistance to STPP Project, out of which a sum of Rs.121.1974 Crores was so far released by CCDAC (Coal Conservation and Development Advisory Committee). The Hon'ble Commission has already allowed Rs.80.00 Crore as Additional Capitalization for Railways Siding during FY 2018-19. The Petitioner has adequate funds for executing the Railway Siding works. Except stating that an amount of Rs.23.82 Crore was paid to South Central Railway (SCR) as a deposit for execution of the said work, the Petitioner has not justified the 'Emergency' nature of work in respect of Railway Siding works. As the Railway Siding work is an independent activity, which has not affected the generation of power

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from STPP, this work cannot qualify as 'Emergency work' for invoking the provision of Article/Clause 7.8 of the TSERC Regulation 1 of 2019.

(iv) There is no merit in the claim of the Petitioner for treating the Railway Siding work as Emergency work that too the work execution taken up after the Cut-off date (31.03.2019).Therefore, the Hon'ble Commission is prayed to disallow the claim of the Petitioner under this head of account.

14. Now the Respondents submit the reply in respect of each of the Annual Fixed Charge (Capacity Charge) & Energy charge components, claimed by the Petitioner as below:

(i) <u>Computation of Return on Equity (ROE)</u>

1. The TSERC Tariff Regulation 1 of 2019, at Article 11.2.1 has stipulated the ROE (Return on Equity) for Thermal generating Stations @ 15.5% per annum as Base Rate for the 30% equity deployed by the Petitioner in the STPP Project and admitted by the Hon'ble Commission vide its True-up order dated 28.08.2020 in O.P.No.4 of 2019, upto the Cut-off date (31.03.2019).

2. For computing the tax on RoE, the Base Rate of ROE shall be grossed up with the effective income tax rate of respective financial year and the said provision also stipulates that in case a generating company paying MAT (Minimum Alternate Tax), **the Base rate of RoE (15.5%)** shall be grossed up as below:

   Rate of pre-tax Return on Equity = Base Rate/(1-t)
   where t = effective income tax rate for the corresponding financial year.

3. The generating companies which were set up before March 2017 and generating power, are eligible to claim **'Tax Holiday'** for 10 consecutive years under **Section 80-IA 4(iv)** of the Income Tax Act 1961 and hence these Companies can claim tax deduction on gains/profits up to 100%.

4. Despite the 'Tax Holiday' provision, yet the generating companies are liable to pay concessional income tax called 'Minimum Alternate Tax' (MAT) under Section 115 JB of the Income Tax Act and the tax paid by the generating company till the 10 consecutive years, will get accrued and it can be offset against the regular Income tax payments from 11th year onwards. The

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Petitioner's Project, STPP is eligible to claim concessional tax/MAT for 10 years from Project COD i.e., 02.12.2016.

5. The MAT rate notified for FY 2019-20 onwards is 15% plus Surcharge @ 12% and 4% as Health & Education Cess. The effective tax will be [15% + 12% of (15%)] x 4% = 17.472%, consequently the grossed up RoE will be 18.782%.

6. As such, the effective tax rate applicable to the Petitioner's Project is 17.472%, whereas the Petitioner has claimed the regular income tax rate @ 22% under Section 115 BAA, with Surcharge of 10% and 4% as Health & Education surcharge, which works out to 25.625%.

7. Instead of availing concessional tax rate @ 17.472%, the Petitioner has grossed up the Base rate of 15.5% with 25.625% from FY 2020-21 onwards, which would result in higher RoE payable @ 20.84% on the 30% equity amount and consequently higher RoE payment will eventually burden the Respondent DISCOMs/Consumers.

8. Even the Ld. CERC has allowed MAT rate for NTPC projects @ 17.472%, in Petition No.425/GT/2020, a copy of CERC order is herewith attached as **Annexure –II.**

9. The Hon'ble Commission is prayed to limit the RoE grossing up with concessional MAT rate for the entire Control Period instead of regular income tax rate claimed by the Petitioner.

(ii) **Computation of Interest on loan**

1. The Petitioner has stated that it had undertaken loan refinancing/ restructuring which resulted in instantaneous reduction of interest to the tune of 3.05% with an associated restructuring cost of Rs. 77.84 Crores and once again prayed the Hon'ble Commission to consider the sharing of gains to it (or) allow the refinancing chares (Rs. 77.84 Crores) to be borne by the beneficiary (TSDISCOMs).

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2. In this regard, the kind attention of this Hon'ble Commission is drawn to the observation recorded in the TSERC order dated 28.08.2020 in O.P.No.4 of 2019 & O.P.No. 5 of 2019 & batch (at page-67) as extracted below:

"……

4.18.5 The Commission also directed SCCL to submit the computations to substantiate that the refinancing of loans has resulted in net savings in interest in compliance to Regulation 26(7) of CERC (Terms and Conditions of Tariff) Regulations, 2014. In reply, SCCL submitted that the interest rates shave reduced from 11.69% to 9.91%, 9.38% and 9.14% in FY 2016-17, FY 2017-18 and FY 2018-19 respectively and the interest rates claimed in true-up is after considering the sharing of savings on account of loan refinancing.

4.18.6 From the submissions, it is clear that only the interest rates have been reduced and this cannot be treated as loan refinancing as claimed by SCCL.

……"

3. This TSERC Order dated 28.08.2020 has attained finality since the Petitioner has not filed any appeal against this order and as such there is no merit in the contention raised by the Petitioner.

(iii) Claim for Depreciation

1. Depreciation depends on the GFA (Gross Fixed Asset) of the Capital cost admitted by the Hon'ble Commission.

2. This Hon'ble Commission has accorded in-principle approval for execution of works under FGD & No_X emission norms compliance, under Additional Capitalization allowed after Cut-off date, subject to the Prudence Check of the expenditure for the works to be carried out after commissioning of the FGD system. Till the FGD System works are Capitalized, there should not be any changes in the approved Additional Capitalization for MYT 2019-24 and the depreciation sums already approved by this Hon'ble Commission vide its order dated 28.08.2020 in O.P.No. 5 of 2019 should continue without any change.

3. The Hon'ble Commission may kindly verify the depreciation sums claimed by the Petitioner.

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(iv) Interest on Working Capital

1. Before allowing the Interest on Working Capital for the Petitioner's Project, the Working Capital is to be worked out and then the rate of interest would be allowed on the same.

2. The sub-components of Working Capital component as per Article-13 of the TSERC Regulation 1 of 2019, are (a) Cost of Coal for one month (Non-Pithead) corresponding to Target availability and cost of Limestone for one month (b) Cost of Secondary Fuel Oil for one month of generator corresponding to target availability (c) Maintenance Spares @ 20% of O&M expenses (d) O&M expenses for one month (e) 2 months of receivables of capacity charges and Energy charges for sale of electricity calculated on target availability etc.

3. The major sub-component of Working Capital is cost of coal required for one month generation corresponding to 85% target availability, which works out to 491.5 Metric Tons per month. Since the Petitioner itself is supplying coal to its Thermal Power Project under Bridge Linkage (Short term linkage), and is charging additional 20% price on the Basic Coal Price applicable to Power Sector.

4. Therefore, the coal cost for 1 month would be higher by additional 20% price and thus the Working Capital increases and the interest on such higher Working Capital would be still higher. As such, the Hon'ble Commission is prayed to disallow the additional 20% price on the basic cost of coal being charged under the Working Capital claimed by the Petitioner and limit the Interest on Working Capital.

(v) Operating and Maintenance (O&M) Expenses :

Scope of Review Petition vs. Mid-term Review -

1. Before making submissions on claiming additional O&M Expenses over and above the approved O&M expenses in the MYT 2019-24, the Petitioner extracted the O&M definition from TSERC Tariff Regulation 1 of 2019 and stated that it would claim the Water charges, Tariff filing fees and audit fees separately.

2. The Petitioner has also made its submissions regarding the Power of Review of MYT Tariff Order by citing the legal principle in the case of Inderchand Jain Vs. Motilal (2009) 14 SCC 663.

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3. By citing the aforesaid case law, the Petitioner seeks to draw analogy between the Power of Review and the Scope of Mid-term Review, for seeking the enlargement of Scope of Mid-term Review, the contexts of which are entirely different and not comparable.

4. The Review of an Order under Order 47 Rule 1 of CPC, review can be undertaken by a Court only when there is a discovery of new and important matter of evidence which was not within the knowledge of the aggrieved Person (or) on account of some mistake or error apparent on the face of the record (or) for any other sufficient reason. Whereas the Scope of Mid-term Review as contemplated at Clause 3.12.2 in the TSERC Regulation is for a comparison of the actual Operational and Finance Performance vis-à-vis the Approved Forecast for the first 3 years of the Control Period and a true-up for balance Control Period.

5. The Petitioner's submission on analogy drawn between Review of an order and Mid-term Review petition is absolutely not correct.

6. Under the pretext of Mid-term Review, the Petitioner seemingly suggesting to the Hon'ble commission for re-determination of MYT Tariff for 2019-24, which is not permissible in terms of the provisions of the TSERC Tariff Regulation 1 of 2019.

The Petitioner submitted the following list of O&M items, the variation of which are claimed as beyond the control of STPP as discussed below:

I) <u>Expenditure for Safety & Security :</u>

1. The Petitioner, SCCL, has stated that it had deployed higher CISF (Central Industrial Security Force) personnel in its power plant based on the recommendation of High Level Committees, since its Power Plant, STPP falls under the High Security Zone which has been categorized as "Hyper Sensitive Zone" by the Ministry of Home Affairs (MHA). It is also stated that the Ministry of Home Affairs categorized the Mancherial District (where STPP Project is located) as one of the "Most affected LWE (Left Wing Extremism) Districts".

2. Stating the above, the Petitioner prayed the Hon'ble Commission to allow it to claim Rs.35.3 crore towards additional O&M expenses as "Uncontrollable item" during the control period FY 2019-20 to FY 2021-22, which burden

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would continue in the balance period of the Control period i.e. FY 2022-23 to FY2023-24 also.

3. To support its claim, the Petitioner has cited the finding of the Ld. Appellate Tribunal in Appeal No.256 of 2016, wherein the Tribunal held that "*..... there is more reason to exercise the discretionary power vested with the Commission to deal with the exceptional expenses incurred by the Utility by analyzing the reason.....*"

4. In this regard it is submitted that the Petitioner's claim is not tenable. As per the Article/Clause 6.7.5 of the TSERC Regulation 1 of 2019, O&M expenses are Controllable factor (SCCL claimed it as uncontrollable factor i.e. beyond its control). Further, the Office Memorandum of the Ministry of Home Affairs was dated 22nd February 2019 regarding the grant of Risk & Hardship allowances to CAPF (Central Armed Police Force) which includes CISF (Central Industrial Security Force) in certain High Attitude and LWE (Left Wing Extremism) areas. Further another notification viz. CISF circular No.10/2019 dated 9th August 2019 was issued regarding the Re-categorization of Districts into Hypersensitive, Sensitive and Non-classified LWE affected CISF units located in various States and did not include the 'Mancherial' district, where the SCCL's STPP project is located. Moreover, the said communication was addressed to the concerned State Governments to deal with the Law & Order problems in the entire district, but not specific to STPP Project alone.

5. Further, the aforementioned Communications of the Ministry of Home Affairs, were issued during February 2019 and August 2019, and therefore the Petitioner ought to have claimed the additional expenditure in the main Multi-Year Tariff Petition, O.P.No.5 of 2019, which was filed by it before the Hon'ble Commission on 29th/30th March 2019 (after the date of notification of MHA) as per the records available but not proposed which indicates that the Petitioner had not anticipated any security threat to its Power Plant despite the said notifications. However, the Petitioner seeks to raise fresh issues based on the earlier MHA communications. As such, the Petitioner's present claim of additional O&M expenses towards deployment of higher CISF personnel, during this mid-term review Petition is not tenable as the Scope of the mid-term Review is limited to the extent of comparison of actual operational and financial performance vis-a-vis the approved forecast for first three years of the Control period.

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6. In this context, the Respondents are filing the press notification dated 5th February 2019 issued by the Ministry of Home Affairs, Govt. of India (Copy annexed as **Annexure-III**) to State Governments regarding the Naxal Affected Districts, which stated that *"The Government of India has approved Special Central Assistance (SCA) Scheme for the most LWE affected districts, under which funds are provided to states for filling the critical gaps in public infrastructure & services which are of urgent nature....."*

7. In terms of the above press notification issued by Ministry of Home Affairs to the State Governments, the Petitioner can approach the Telangana State Government, and seek the funding assistance, out of the Special Central Assistance for deploying advanced technology Surveillance equipment rather than claiming the additional expenditure from the DISCOMs, since Normative O&M expenses were already approved by this Hon'ble Commission vide its order dated 28.08.2020 in O.P.No. 5 of 2020 and any additional O&M expenses over and above the approved O&M expenses under the claim of uncontrollable factor is not justified.

8. Further, the APTEL's judgment cited by the Petitioner is not applicable in the present case, since considering variation in O&M expenses as uncontrollable factor, will be a deviation to the provisions (Article /Clause 6.7.5) of TSERC Regulation 1 of 2019 and it will also cause a burden on the end consumers.

9. In light of the above, the Hon'ble Commission is prayed to disallow the claim towards additional O&M expenses towards deployment of Higher CISF Personnel.

II) The expenditures on Annual Coal Mill overhauling which were not there during the base period :

1. The Petitioner's 2nd additional claim under the Operation & Maintenance expenditures (O&M Expenses) is relating to the Annual Coal Mill overhauling, which has been claimed @ **Rs. 18.83 crore** during the control period, FY 2019-20 to FY 2021-22. The justification given by the Petitioner is that the initial/mandatory spares purchased with the main equipment and the spares were consumed in the first 2½ year from annual mill overhauling. Therefore there was no impact on O&M expenditure due to Mill overhauling during 2016-17 to 2018-19. The Petitioner stated that the expenditure towards O&M drastically

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increased beyond 2018-19 after stored Initial Spares for coal Mill beyond 2018-19 were consumed intoto. The Petitioner also stated that this event was unforeseen and uncontrollable event, which is claimed as beyond the control of the Petitioner and prayed the Hon'ble Commission to include the additional expenditure due to Annual Mill overhaul in the O&M expenses approved by the Hon'ble Commission in the order dated 28.08.2020.

2. In this regard, it is submitted that the TSERC Regulation 1 of 2019 has provided the list of uncontrollable factors at Article/Clause 6.6 as extracted below:

"……

6.6 Uncontrollable Factors

The "**uncontrollable factor**" shall comprise the following factors, which were beyond the control of and could not be mitigated by the petitioner as determined by the commission.

6.6.1 Force Majeure events

6.6.2 Change in Law

6.6.3 Variation in fuel cost on account of variation in price of primary and/or secondary fuel prices.

6.6.4 Variation in market interest rates for long term loan

6.6.5 Variation in foreign rates

6.6.6 Non-Tariff income

……"

3. As could be seen from the aforementioned list, Annual Mills overhaul/ failures has not been figured and hence it cannot be qualified as uncontrollable factor and the annual maintenance works fall under the sub-component Repairs & Maintenance of O&M expenses, which has already been approved under the Normative O&M expenses. The Petitioner has already stated that the impact on O&M expenditure due to the Annual Mill overhaul during 2016-17 to 2018-19 was almost Nil, which means to the extent there was a saving to the Petitioner but not shared the gains with the Beneficiaries.

4. Since the Petitioner's claim is not in consonance with the provisions of the TSERC Regulation 1 of 2019, therefore, the Hon'ble Commission is prayed to disallow the additional O&M expenditure claimed by the Petitioner under the Mill Annual overhauling.

III) **Additional consumption of Capital Spares since not addressed during MYT Tariff**:

P. V. Shanthi Sagar
Executive Director (Comml.)
TSPCC, Vidyut Soudha,
HYDERABAD - 500 082.

1. The Petitioner stated that CERC Tariff Regulations 2014 allowed Ceiling norm of Initial Spares as 4% of the cost of Plant and Machinery while this Hon'ble Commission allowed only 2.5% Ceiling , which had led to under-capitalization of Initial Spares for STPP to the extent of Rs.100.96 Crores. The Petitioner further stated that it had purchased significant quantity of Capital Spares in FY 2019-2020 for operating its Power Plant at Normative Availability. The Petitioner filed the Audited Statement of Capital Spares consumed for FY 2019-22, as extracted below:

Financial Year	**Cost of Capital spares consumed (Rs. Crores)**
2019-20	2.03594
2020-21	2.01931
2021-22	10.867

2. The Petitioner also stated that CERC in its Tariff Regulations 2014 allowed Capital Spares expenditure separately over & above the Normative O&M expenses, whereas TSERC Regulation 2019 has not allowed this Spares expenditure and claimed that the TSERC Regulation 1 of 2019, Clause 3.12.5 gave liberty to it to apply for including this additional expenditure as "uncontrollable factor" and therefore sought this Hon'ble Commission for inclusion of Capital Spares as Uncontrollable Variable in the O&M expenditure in this Mid-term review and consequently sought to allow additional O&M cost based on the justification given by it.

3. Finally, the Petitioner claimed the **revised O&M expenditure** by including the additional expenditure towards (i) Safety and Security (ii) Expenditure towards Annual Coal Mill Overhauling and (iii) Expenditure towards additional consumption of Capital Spares as below:

Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
O&M expenditure (Rs. Cr.) approved in the Order dated 28.08.2020 (Normative)	**204.18**	**212.94**	**222.08**	**231.61**	**241.55**
	Total Approved = Rs.1112.36 Crs				
Revised O&M expenditure (Rs. Crs) sought for approval now	**227.65**	**249.95**	**281.76**	**300.80**	**315.84**
	Total Approved = Rs.1376.00 Crs				

B. V. Shanthi Latha
Executive Director (Comml.)
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HYDERABAD - 500 082.

4. **Additional O&M expenses now sought for approval = Rs. Crore (1376-1112.36) = Rs.263.64 Crs**

5. The Petitioner's claim is not in accordance with the uncontrollable event/factors listed at Clause 6.6 of TSERC Tariff Regulation 1 of 2019.

6. Further, the Petitioner seeks to include the Spares as **uncontrollable factor** for claiming the additional O&M expenditure, by invoking the Article/Clause 3.12.5 of TSERC Regulation No. 1of 2019, which is extracted below:

"……

3.12.5.. Where the petitioner believes, for any variable not specified under Clause 6.7, that there is a material variation or expected variation in performance for any year on account of uncontrollable factors, it may apply to the Commission for inclusion of such variable.

……"

7. In fact, the Clause 6.7 (**Controllable factors**) under the Sub-clause 6.7.5 of the TSERC Tariff Regulation 2019 has provided for variation in Operation &Maintenance Expenses (O&M).

8. The O&M expenses under Clause 19 of the said Regulation is a summation of 3 components, namely

$O\&M_n = ((R\&M_n + EMP_n + A\&G_n)$ X 99%

Where $R\&M_n$= **Repair & Maintenance costs** of the Applicant for the n_{th} year

EMP_n =**Employe ecost**

$A\&G_n$ = **Administrative & General Costs**

9. Further the TSERC Regulation 1 of 2019 has stipulated the definition of Operation and Maintenance Expense ('O&M Expense') as extracted below:

"……

*2.59. **"Operation and Maintenance expense"** (or "**O&M expense**") in respect of a Generating Entity means the expenditure incurred on operation and maintenance of the Generating Station or Unit of Generating Entity, or part thereof,*

B. V. Shanthi Latha
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*and includes the expenditure on manpower, repairs, **Spares**, consumables, insurance and overheads, but excludes fuel expenses and water charges and shall be as determined in clause 19 of this Regulation.*

....."

10. The O&M expense definition has already **factored for Spares** and therefore the Petitioner's claim invoking the Clause 3.12.5 for seeking inclusion of the Capital Spares as **uncontrollable factor,** is not sustainable. Further, the Petitioner's claim that *"the rate of failure of equipment increased in plant age..."* clearly indicates the STPP plant which got commissioned on 02.12.2016, has just completed 6 years of service out of the useful life of 25 years and the STPP Plant cannot be said to be an age-old plant. Therefore, the claim of the petitioner that *"failure of equipment increased with the increase in plant age"* is not justifiable.

11. It is submitted that any proposal for inclusion of any variable as **uncontrollable factor** in the TSERC Tariff Regulation, would entail the amendment of the Tariff Regulation and without such amendment/enabling provision in the Regulation, the claim of the Petitioner is not maintainable.

12. Also, the Petitioner has not furnished the **actual O&M expenses** incurred by it from FY 2019-20 to FY 2022-23, **as required under the provisions** at Clause 3.12.2 which stipulated for a comparison of the actual operational and financial performance vis-à-vis the approved forecast for the first three years of the control period, for undertaking the Mid-term Performance review by this Hon'ble Commission. Without fulfilling the conditions stipulated in the Scope of Mid-term Review, the Petitioner is seeking approval for additional expenditure towards Capital Spares as pass through in the approved O&M expenses, which claim lacks merit.

13. Therefore, the Petitioner's claims are not in accordance with the TSERC Tariff Regulation 1 of 2019 and deserve to be disallowed as explained by the Respondents.

(vi) Energy Charges

1. The Petitioner stated that "the energy charges have been computed based on Regulation 21 of Generation Tariff Regulation 2019-24".

B.V. Shanthi Sree
Executive Director (Comml.)
TSPCC, Vidyut Soudha,
HYDERABAD - 500 082.

2. Whereas the TSERC Regulation 1 of 2019 at Article/Clause 21.5 stipulated as extracted below:

"……

Total **Energy Charges** payable to the Generating Entity for a month shall be :

[(Energy Charge rate in Rs./Kwh) X **Scheduled energy** (ex-bus) for the month in Kwh]

21.6 **Energy Charges rate** (ECR) in Rupees per Kwh on ex-power plant basis shall be determined to three decimal places in accordance with the following formula

21.6.1 – for Coal based stations

$$ECR = [(GSHR – SFCXCVSF) X LPPF/ CVPF + SFC X LPSFi + LC X LPL \times \frac{100}{(100-Aux)}]$$

……"

3. As could be seen from the above formulae, the energy charges for a month shall be calculated by multiplying the Energy charges unit rate with **Scheduled Energy** delivered during the month.

4. In terms of the above, only Scheduled energy delivered to TSDISCOMS during the month shall be taken into account for calculating the energy charges but not the Ex-bus Energy.

5. Whereas the Petitioner has not disclosed how it had calculated the Energy Charges, whether by considering Scheduled Energy (or) Ex-bus energy.

6. Since the Petitioner had claimed the Incentive amount by considering the actual ex-bus generation units upto 31.03.2022, it is deemed that the Petitioner had calculated the Energy Charges by considering the actual ex-bus generation units instead of **Scheduled Generation units**. As such, the Hon'ble Commission is prayed to limit the Energy Charges claimed by the Petitioner upto the Scheduled generation delivered monthly during each year of the Control period in terms of the TSERC Regulation 1 of 2019.

B.V. Santhi Sree
Executive Director (Comml.)
TSPCC, Vidyut Soudha,
HYDERABAD - 500 082.

(vii) Incentive:

1. The Petitioner SCCL has claimed that STPP (Singareni Thermal Power Plant) had worked out the quantum of Incentive by considering the actual ex-bus generation upto 31.03.2022.

2. Whereas the TSERC Regulation 1 of 2019 at Article/Clause 21.4 stipulated that **".....PLF Incentive to a Generating Station shall be payable at the rate specified in CERC Regulations 2014 as applicable during the control period..."**

3. Whereas the CERC Tariff Regulations 2014 defined Incentive as "Incentive to a generating station or unit thereof shall be payable at a flat rate of 50 Paise/Kwh for ex-bus Scheduled energy corresponding to Scheduled generation in excess of ex-bus energy corresponding to Normative Annual Plant Load Factor (NAPLF)as specified in Regulation 36 (B).

4. The Normative Annual PLF as fixed by Ld. CERC is 85%, which has also been adopted by Ld. TSERC as Target PLF @ 85%.

5. In terms of the definition for Incentive given by CERC, the excess Scheduled energy beyond 85% PLF shall only be eligible for payment at the rate of 50 Paise/Kwh but not for excess ex-bus generation (Kwh) as claimed by the Petitioner, since the Petitioner's claim is not in accordance with the TSERC/CERC Tariff Regulations.

6. The Hon'ble Commission is prayed to limit the Petitioner's Incentive claim for excess Scheduled Energy delivered beyond the Target PLF of 85% during any financial year.

(viii) Additional Auxiliary Energy Consumption for FGD System -

1. The Petitioner, SCCL has sought the Hon'ble Commission to approve the Additional Auxiliary Power Consumption @ 1.5% towards FGD (Flue Gas Desulphurization) System being commissioned over and above the approved Auxiliary Consumption of 5.75% for the MYT 2019-20 to FY 2023-24 as per the DPR (Detailed Project Report).

R.V. Shanthi Sekhar
Executive Director (Comml.)
TSPCC, Vidyut Soudha,
HYDERABAD - 500 082.

2. The Petitioner also stated that the work on installation of FGD had commenced on 28.12.2021.

3. It is submitted that the Petitioner, in respect of additional Capital Spares, security expenses etc., has cited the relevant provisions of CERC Regulations/APTEL's orders to justify its claim. However, the Petitioner seemingly ignored the relevant CERC Regulations regarding the additional Auxiliary Consumption, as explained below.

   i) CERC vide its amendment Regulations dated 25.08.2020 called "Central Electricity Regulatory Commission (Terms and conditions of Tariff) (First Amendment) Regulations, 2020, has fixed the norms of Auxiliary Energy Consumption for emission control System /Aux_{em}) of thermal generating stations, in respect of Wet Lime Stone based FGD System (For mitigating the emission of **Sox**) **as 1% of gross generation.**

   The Copy of CERC 1st Amendment Regulation is attached as **Annexure-IV** for kind perusal of this Hon'ble Commission.

   ii) For mitigation of emissions of Nitrogen Oxides ($DeNO_x$), CERC has fixed the additional auxiliary consumption for two methods (a) Selective Non-Catalytic Reduction System NIL (b) Selective Catalytic Reduction System @ 0.2%. However, the petitioner has not proposed either of the two methods for mitigation of **NO_x.** Instead it had proposed In-furnace modifications for **NO_x** compliance, which does not require any auxiliary equipment. **Hence no additional auxiliary consumption is required to be allowed for $DeNO_x$ compliance.**

   iii) The Petitioner had proposed the Capital Investment Plan for FGD system by using Wet Lime Stone in the Petition, O.P.No. 9 of 2020 and this Hon'ble Commission granted in-principle approval subject to approval of Technology and Prudence Check of the expenditure for the FGD works after commissioning.

   iv) Summing up the above for **SO_x& NO_x emission norms compliance**, the Hon'ble Commission is prayed to adopt the CERC fixed Additional Auxiliary Consumption, for FGD System **as 1% of gross generation.**

R.V.Shamtha Reddy
Executive Director (Comml.)
TSPCC, Vidyut Soudha,
HYDERABAD - 500 082.

15. In light of the above submissions, the Hon'ble Commission is prayed to disallow the Additional Capitalization & Additional O&M expenses over and above the approved O&M expenses and also limit the individual Fixed charge & Energy charge components claimed by the Petitioner in accordance with the provisions of the TSERC Regulation 1 of 2019 as well the CERC Tariff Regulations (first amendment) & as per the MAT rates allowed by the Central Commission for safeguarding the consumer's interest as mandated under Section 61(d) of the Electricity Act 2003.

B.V. Shanthi Sree

RESPONDENTS (TSDISCOMS)

Executive Director (Comml.)
TSPCC, Vidyut Soudha,
HYDERABAD - 500 082.

BEFORE THE TELANGANA STATE ELECTRICITY REGULATORY COMMISSION AT HYDERABAD

O.P.No.77 OF 2022

Between:
M/s. Singareni Collieries company Limited (SCCL),
Kothagudem Collieries, Bhadradri Kothagudem Dist.,
Telangana – 507 101

..... Petitioner

AND

1. Southern Power Distribution Company of Telangana Limited, #6-1-50, Corporate Office, 1st Floor, Mint Compound, Hyderabad – 500 063.

2. Northern Power Distribution Company of Telangana Limited, # 2-5-31/2, Corporate Office, Vidyut Bhavan, Nakkalagutta, Warangal – 506 001

..... Respondents

AFFIDAVIT

I, B.V. Shanthi Seshu, W/o. Shri Sunder Rao, aged about 59 years, Occ: Executive Director (Commercial)/TSPCC, Vidyut Soudha, Hyderabad, R/o. Hyderabad do solemnly affirm and says as follows:

1. I am the Executive Director (Commercial)/TSPCC, I am competent and duly authorized by the Respondents 1&2 to affirm, swear, execute and file this preliminary objections.

2. I have read and understood the content of the accompanying Affidavit drafted pursuant to my instructions. The statements made in the accompanying Affidavit now shown to me are true to my knowledge derived from the official records made available to me and are based on information and advice received which I believe to be true and correct.

B.V. Shanthi Seshu
DEPONENT
Executive Director (Comml.)
TSPCC, Vidyut Soudha,
HYDERABAD - 500 082.

VERIFICATION:

The above named Deponent solemnly affirm at Hyderabad on ____ January 2023 that the contents of the above Affidavit are true to my knowledge no part of it is false and nothing material has been concealed there from.

Solemnly affirmed and signed before me

SUPERINTENDING ENGINEER
Investment Promotion Cell
TSTRANSCO,
Vidyut Soudha, Hyderabad - 82

B.V. Shanthi Seshu
DEPONENT
Executive Director (Comml.)
TSPCC, Vidyut Soudha,
HYDERABAD - 500 082.

APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)

Appeal No. 37 of 2010

Dated 10th August, 2010

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member

Appeal No. 37 of 2010

In the matter of:

Meghalaya State Electricity Board
Lumjingsghai, Short Round Road,
Shillong-793 001
Meghalaya … Appellant

Versus

1. **Meghalaya State Electricity Regulatory Commission**
New Administrative Building, 1st Floor, Left Wing,
Lower Lachumiere,
Shillong-793 001
Meghalaya … Respondent-1

2. **Byrnihat Industries Association**
13th Mile, Tamulikuchi,
Byrnihat-793 101
Ri Bhoi District, Meghalaya … Respondent-2

Counsel for Appellant	**Mr. Amit Kapoor &** **Ms. Poonam Verma** **Mr.Abhishek Munot**
Counsel for Respondent -1	**Mr. Mr. S.N.Mitra for Res.1** **Ms Payal Chawla for R.1**
Counsel for Respondent-2	**Mr. M.G. Ramachandran,** **Mr. Anand K.Ganesan and** **Ms. Swapna Seshadri for** **Byrnihat Industries Association** **Ms Ranu Gupta and Mr. Gaurav**

JUDGMENT

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON

1. Meghalaya State Electricity Board is the Appellant herein. Meghalaya State Electricity Regulatory Commission (State Commission) is the Respondent-1. Byrnihat Industries Association is the Respondent-2.

2. The Appellant has filed the present Appeal as against the order impugned dated 10.09.2009 passed by the State Commission, truing up the Appellant's account for the FY 2007-08 and FY 2008-09.

3. The relevant facts that are required for the disposal of this Appeal are as follows.

4. The Appellant Board is a distribution licensee. It filed the Petition before the State Commission for determination of the distribution tariff for the FY 2007-08. The State Commission passed the order on 17.12.2007 on the projected Annual Revenue Requirement (ARR).

5. Thereupon, Appellant filed the Petition for determination of distribution tariff for the FY 2008-09. Accordingly, the State Commission by the order dated 30.09.2008 passed the tariff order determining the distribution tariff for the said year.

6. As against this order dated 30.09.2008 passed by the State Commission, Byrnihat Industries Association (R-2) the consumer association filed an Appeal before this Tribunal in Appeal No. 132 of 2008. After hearing the parties, the Tribunal passed the final order in the said Appeal on 09.02.2009

remitting the matter to the State Commission by giving a direction to undertake the true up exercise in respect of FY 2007-08.

7. In pursuance of the said order, the State Commission directed the Appellant by the order dated 06.07.2009 to submit its report for the truing-up exercise in respect of FY 2007-08 to enable it to comply with the orders of the Tribunal. Accordingly, the Appellant submitted the report in respect of the truing-up exercise of account for FY 2007-08 and the relevant documents before the State Commission on 09.07.2009. On 13.07.2009, the State Commission intimated the Appellant as well as Byrnihat Industries Association (R-2) that the Remanded proceedings would be heard on 29.07.2009 by the State Commission.

8. After receipt of the said intimation, Byrnihat Industries Association (Respondent-2) filed the reply on 28.07.2009 before the State Commission requesting the State Commission to take up the true-up exercise in respect of both FY 2007-08 as well as

for FY 2008-09. However, the Appellant raised objection to this course stating that the State Commission cannot go into the true-up exercise in respect of FY 2008-09 and it should confine itself to true-up exercise for the FY 2007-08 alone as per the order of the Tribunal dated 09.02.2009. Despite this objection the State Commission directed the Appellant to submit the break up of the power purchase relating to the period for FY 2008-09 as well. Accordingly same was submitted. Ultimately, the State Commission passed the impugned order on 10.09.2009 and gave finding on the following 2 aspects:-

(i) The truing-up in the Appellant's account for the FY 2007-08 and FY 2008-09.

(ii) The downward revision of electricity tariff for the FY 2008-09 was retrospectively given effect to w.e.f. 01.10.2008.

9. On being aggrieved, the Appellant has filed this Appeal.

10. The following are the grounds urged by the Learned Counsel for the Appellant.

(i) The order impugned is beyond the scope of Remand Order dated 09.02.2009. The Tribunal remitted the matter back to the State Commission, with a specific direction to undertake the truing-up exercise of the Appellant's accounts for the FY 2007-08 only but, contrary to this direction, the State Commission carried out the truing-up exercise not only for the FY 2007-08 but also for FY 2008-09.

(ii) It is settled law that it is mandatory for the State Commission to follow and adopt the financial statements, duly audited by the Comptroller & Accountant General. But on the other hand, the State Commission disallowed the various amounts of net prior period charges, such as employee's cost, depreciation, income-tax, administrative

expenditure, etc., after ignoring the certificate issued by the Comptroller & Accountant General and included the amount as revenue gain by 2% reduction of AT&C losses for the FY 2007-08 which is not in consonance with the financial statement duly audited by the Comptroller & Auditor General.

(iii) The State Commission has wrongly given retrospective effect for adjustment of FY 2008-09 by revising the tariff downwards for the FY 2008-09.

11. In elaboration of the above grounds, the Appellant has made detailed submissions as given below:

(A) The Tribunal by the order dated 9.2.2009, remitted the matter with a specific direction to undertake truing up exercise in respect of FY 2007-08 only. The said order did not direct the State Commission to simultaneously

undertake truing up exercise for the FY 2008-09. In violation of this order, the State Commission has done the truing up for the FY 2008-09.

(B) Actually, the Appellant abstained from filing any submissions relating to the truing up of the account for the FY 2008-09. As a matter of fact, the Appellant in his statement filed before the State Commission on 12.08.2009 specifically mentioned that the Electricity Board craves liberty not to reply to the respondent's contention since it refers to the allegations of the objectors relating to the FY 2008-09 since the issue before the State Commission is relating to truing up exercise for the FY 2007-08 only.

(C) Further, even in the impugned order the State Commission has recorded that the Remand proceedings were restricted to the extent of truing up of the accounts for the FY 2007-08. In the impugned order, State Commission itself recorded that the

Electricity Board, the Appellant, had not made any submissions with regard to the truing up of the accounts for the FY 2008-09, either in its reply dated 12.08.2009 or in its oral submissions during the hearings conducted on 29.07.2009 and 26.08.2009. Despite this factual position as admitted by the State Commission in the impugned order, it has wrongly gone ahead and trued up the Appellant's accounts not only for the FY 2007-08 but also for the FY 2008-09. There is neither a finding in the impugned order nor any interim order passed by the State Commission giving the reasonings as to why it undertook the truing up for the FY 2008-09 also.

(D) When a matter is remanded by the Appellate Court to a lower court or the lower authority, with a limited direction, the scope of adjudication shall be limited to the directions as prescribed in the Remand Order. It is not open to such authority to do anything which is

beyond the scope of the Remand. This is well settled law laid down by this Tribunal, the High Courts and Supreme Court.

(E) The truing up exercise is a post-facto verification of actual expenses and revenues as against the projected expenses and revenue in tariff order. Therefore, the truing up exercise of the actual financial data for FY 2008-09, i.e. from 01.04.2008 to 31.03.2009 could be made only when the tariff for the next financial year is determined separately. Therefore, the impugned order, exercising the truing up both in respect of the FY 2007-08 and other year i.e. FY 2008-09 is not sustainable.

(F) The State Commission has failed to follow the accounts, duly audited by the CAG. It is mandatory for the State Commission to adopt and follow the figures which have been duly audited by the CAG. But in this case the State Commission while truing up of the

Appellant's financial accounts in respect of the FY 2007-08 has disallowed an amount of Rs. 8.54 crores on account of net prior period charges even though the same has been duly acknowledged and found legitimate in the accounts, duly audited by the CAG and wrongly included an amount of Rs. 17.26 crores as revenue gains by 2% reduction of AT&C loss which is not in consonance with the financial statement audited by the CAG. The total amount which has been acknowledged and audited by the CAG is Rs. 21.96 crores but the State Commission has allowed only Rs. 13.42 crores and disallowed the balance amounts. In doing so, the State Commission has wrongly classified the net prior period charges into 2 categories namely, controllable charges and uncontrollable charges. There is no basis for such a wrong calculation of prior period charges into 2 categories.

(G) Further, the amount of Rs. 17.26 crores has been wrongly included under the head “Revenue Gain for reduction of AT&C losses”, even though no such accounts were projected by the Appellant in the ARR petition filed in June 2007 and the CAG did not recognize the said amount in the audited accounts. It is true that in the decision of the Hon’ble Supreme Court in 2002 (8) SCC 715 (*West Bengal Regulatory Commission vs. CESC Ltd.*) it is held that audited accounts are not binding upon the Commission. However, in the very same judgment, the Hon’ble Supreme Court specially observed that the State Commission is bound to give due weightage to the audited accounts. Admittedly, this has not been done in this case. Further, the Tribunal in the judgment dated 04.05.2009 reported in 2009 ELR (APTEL) 538 (*Indian Tea Association vs. Assam State Commission*) has clarified about the binding nature of audited accounts in the absence of any reasonings

given by the State Commission for its deviance. Therefore, the impugned order is wrong in this respect.

(H) The State Commission in the impugned order revised the tariff downward for the FY 2008-09 and directed the same to be given retrospective effect from 01.10.2008. It also directed that such retrospective adjustment be implemented against future energy charges of all affected consumers with a view to ensure that all excess amounts recovered by the Appellant are fully adjusted by 31.03.2010. The State Commission by the impugned order directed the Appellant to take effective steps to adjust the excess amount billed and collected during the tariff period between 01.10.2008 and 31.03.2010. Thus, it is clear that this is a specific direction that the Appellant has to give effect to the adjustment by 31.03.2010. The Appellant being a public body, will not retain any

amount which is unjustified and shall account for any surplus amount. The State Commission itself in its order dated 24.02.2010 in the Review Petition has observed that each time the financial accounts are trued up, the tariff may not be revised from a retrospective date. Since the Appellants audited accounts for the FY 2008-09 are now available, the State Commission may be directed to conduct the true up in respect of the FY 2008-09 to be done on the basis of the CAG's Report. Consequently any revenue surplus be adjusted while working out the ARR of the prospective year FY 2010-11.

(I) In fact, the State Commission, while truing up for the FY 2007-08 has adopted the right approach of comparing the Appellant's expenditure as well as the revenue earned during the FY 2007-08. After considering the 2 heads, i.e. revenue and expenditure, the Learned State Commission in that order concluded

that it is not necessary to revise the tariff for the FY 2007-08 retrospectively. However, the State Commission while truing up in respect of the FY 2008-09 has wrongly considered the trued up expenditure as well as the ARR approved by the State Commission through the tariff order dated 30.09.2008. Therefore, this Tribunal may direct the State Commission to consider the audited data of Appellant's accounts for the FY 2008-09 and to true up the same in accordance with law.

12. In reply to the above submissions made by the Appellant, the learned counsel appearing for the Byrnihat Industries Association (R-2) has made the following submissions:

(i) It is true that the truing up was to be done by the State Commission in pursuance of the order passed by the Tribunal by the order dated 09.02.2009 directing to exercise truing-up for the year 2007-08

only. However, the said order did not prohibit the State Commission to undertake truing up exercise in respect of FY 2008-09 also. Actually the proceedings were initiated by the State Commission in the month of July 2009 as per the Remand order dated 09.02.2009 passed in the Appeal filed by the R-2 herein challenging the tariff order in respect of FY 2008-09. During the said proceedings, the State Commission found that the provisional accounts with the actual data for the FY 2008-09 were very much available to enable the State Commission to re-determine the tariff. On that basis, the Appellant was directed by the State Commission to submit its report for truing up for both the years namely FY 2007-08 and FY 2008-09.

(ii) Even though the Appellant mentioned in his reply objecting to the request of the Respondent to true-up in respect of the FY 2008-09 also, the

Appellant mentioned in the said reply agreeing that it would provide the details for true-up exercise in respect of FY 2008-09 also, if so ordered. This reply was filed on 12.08.2009. In pursuance of the same, the State Commission on 21.08.2009 directed the Appellant to submit the report in respect of the FY 2008-09 as well. Accordingly, the Appellant submitted such report. As such, the Appellant did not raise any objection before the State Commission, while submitting the said report. In such circumstances, the State Commission has done the true up exercise in respect of both the years. There is nothing wrong in it.

(iii) The Appeal proceedings before the Tribunal in Appeal No. 132 of 2008 filed by R-2 was against the tariff order in respect of the FY 2008-09. The order remitting the matter is for re-determination of the revenue requirement and tariff for the FY

2008-09. In the said order dated 09.02.2009, the Tribunal observed that it was noticed that the tariff for the FY 2008-09 has been finalized by the State Commission without subjecting the estimates claimed by the Electricity Board with prudent check and validation of data. It was in that background, the directions were given for truing up for the FY 2007-08. The directions given by this Tribunal was to complete the true up exercise by 31.05.2009. The compilation of the accounts of FY 2008-09 was expected to take some more time beyond May 2009. Since the State Commission could not take up the matter before 31.05.2009, the State Commission had to consider the provisional accounts which were made available then for FY 2008-09. Therefore, the true up exercise was done by the State Commission for both the years. This is not wrong.

(iv) It is well settled that the truing up process is only comparing estimated figures at the beginning of the year with the actual figures at the end of the year. Since the actual data are available, the State Commission is required to undertake the truing up exercise. It is not necessary for the State Commission to wait for the audited accounts for which it may take a long time.

(v) The Appellant's contention that the State Commission ought not to have given retrospective adjustments in the tariff is misconceived. In the Appeal No. 132 of 2008 filed by the R-2, the challenge in the said appeal was against the tariff for the year 2008-09. The prayer in the Appeal was for re-determination of the tariff for the FY 2008-09. When the matter was remitted by the Tribunal to the State Commission with the direction to consider the grievance of the Appellant and to pass order in

accordance with law, the State Commission was required to consider the revenue requirement and determination of tariff for the FY 2008-09 also.

(vi) According to the Appellant, the State Commission disallowed the prior period charges. The ground of challenge is that the State Commission is bound by the audited accounts of the Appellant. This contention is also misconceived. The audited account is only to verify whether the expenditure has been actually incurred or not. The auditor does not deal with the prudence of the expenditure. Whether the said expenditure is to be allowed or not is only after prudent check by the State Commission. The auditor will only verify and certify whether the expenditure of such accounts has been actually incurred or not. However, the State Commission is required to apply prudent check to verify whether the expenditure is to be allowed or not. In the present case, the prior

period charges are expenditure incurred by the Appellant during the year 2002-03. This was never claimed to be allowed in the past. In such circumstances, it is not open for the Appellant to claim such expenditure at the time of truing up especially when the said claim was not made at the time of tariff petition. So, claiming the same for the first time in the truing up process is wholly unjustified.

In addition to the above points, the learned counsel for Respondent 2 urged the other grounds also mentioned filed by it in IA No. 82/2010 seeking for the cross claim.

13. The Learned Counsel for the State Commission also argued in detail in justification of the impugned order.

14. The following questions have arisen for consideration in the light of rival contentions urged by the respective counsel for the parties as referred to above in the main Appeal.

i) Whether in the proceedings initiated in terms of the order passed by this Tribunal dated 09.02.2009 in Appeal No. 132 of 2008 titled as *Byrinhat Industries Association vs. Meghalaya State Electricity Regulatory Commission and Another*, directing to take up the true up exercise in respect of the FY 2007-08, the Meghalaya State Commission should not have gone beyond the scope of the Remand to undertake truing up exercise of the Appellant's accounts for FY 2008-09 also?

ii) Whether the State Commission was right in not following and adopting the financial statement, duly audited by the Comptroller & Auditor General in spite of the principle of truing up?

iii) Whether the State Commission was right in disallowing the expenses relating to employees cost,

depreciation, income-tax, administrative expenditure and other expenses related to entire prior period charges as claimed by the Appellant in spite of AS-5 issued by the Council of the Institute of Chartered Accountants of India?

iv) Whether the State Commission could pass the impugned order dated 10.09.2009 to give effect to the trued up tariff with retrospective effect from 01.10.2008?

15. We have heard the learned Counsel for the parties on these questions and have given our thoughtful consideration.

16. We will now discuss on each of the issues.

17. With reference to the first issue, it has been contended on behalf of the Appellant, that the State Commission has gone beyond the scope and remand order by having erroneously trued-up the financial accounts of the Appellant for FY 2008-09,

when the Remand Order dated 09.02.2009 passed by this Tribunal in Appeal No. 132/2008 directed the State Commission only with regard to truing-up of FY 2007-08. With regard to Remand order, the Hon'ble Supreme Court as well as various High Courts in various authorities cited by the learned counsel for Appellant have laid down the various principles to be followed by the lower court or lower authority while dealing with the issue of limited Remand. Those decisions are as follows:

1. *Mohan Lal vs. Anandibat (1971) 1 SCC 813*
2. *Paper Products Ltd. vs.CCE (2007) 7 SCC 352*
3. *Smt. Bidya Devi vs. Commissioner of Income Tax, Allahabad AIR 2004 Calcutta 63*

4.K.P. Dwivedi vs. Tate of U.P. (2003) 12 SCC 572

5.Mr. Muneswar and Ors. vs. Smt. Jagat Mohini Des AIR (1952) Calcutta 368

6.Amrik Singh vs. Union of India (2001) 10 SCC 424

7. Union of India & Anr. Vs. Major Bhadur Singh (2006) 1 SCC 3670

8.Prakash Singh Badal & Anr. Vs. State of Punjab and Ors. (2007) SCC 1

The principles laid down in those authorities are given below:-

(i) The Court below to which the matter is remanded by the Superior Court is bound to act within the scope of remand. It is not open to the Court below to do anything but to carry out the terms of the remand in letter and spirit.

(ii) Ordinarily, the Superior Court can set aside the entire judgment of the Court below and remanded to the subordinate court to consider all the issues afresh. This is called 'open Remand'. The subordinate court can decide on its own afresh on the available materials.

(iii) The Superior Court can remand the matter on specific issues with a specific direction through a "Remand Order". This is called

'Limited Remand Order'. In case of Limited Remand Order, the jurisdiction of the Court below is confined only to the extent for which it was remanded".

18. Keeping these principles in mind, we can now refer to the specific directions in the Remand order issued by this Tribunal in Appeal No. 132 of 2008. The relevant paras of the directions are as follows:

"6. …….

7. In view of the above, we remit the matter to the Commission with the direction to undertake truing-up exercise of financial year 2007-08 with the financial data ending March, 2008 and examine the submissions and contentions of the Appellant in accordance with law. The Commission shall provide the opportunity to Appellant for being heard along with the Affected Parties before arriving at the determination in the truing-up exercise. Truing-up

exercise for financial year 2007-08 shall be undertaken by the Commission expeditiously so as to conclude it by end of March, 2009. On completion of the truing-up exercise the Commission shall act in accordance with law for giving effect to the same".

19. The above direction would make it clear that the State Commission was asked to undertake truing-up exercise of FY 2007-08 alone with the financial data ending March, 2008 and to conclude it by the end of March, 2009. As such, this is 'Limited Remand Order'. Admittedly, the State Commission carried out the exercise not only for FY 2007-08 but also for FY 2008-09. There is no dispute in the fact that when the Appellant filed its Report relating to the truing-up of the accounts for FY 2007-08, as directed by this Tribunal, it is R-2 who prayed the State Commission to take up truing-up both in respect of FY 2007-08 and FY 2008-09. The Appellant in his reply filed before the State Commission on 12.08.2009 objected

to the same, and requested the State Commission to confine itself to the truing-up exercise in respect of FY 2007-08 alone and that alone would be in conformity with the order of the Tribunal. As a matter of fact, the reply filed on 12.08.2009 before the State Commission would show that the Appellant (Electricity Board) specifically mentioned that the Appellant would not propose to reply to the truing-up exercise in respect of FY 2008-09 since the issue before the State Commission, as per the order of the Tribunal, is relating to the truing-up exercise for FY 2007-08 only. Even in the impugned order, the State Commission has referred to the said stand taken by the Appellant.

20. Despite this, the State Commission in the impugned order has trued-up the Appellant's accounts not only for FY 2007-08 but also for FY 2008-09. Admittedly, there is no reasoning given in the impugned order as to why the State Commission undertook truing-up exercise for FY 2008-09 as well. It is

settled law, as indicated above that when a matter is remanded or remitted by the superior court to the subordinate court or subordinate authority, with a limited direction, the scope of adjudication shall be limited to such direction alone and it is not open to such authority to do anything which is beyond the scope of the Remand.

21. However, the Learned Counsel appearing for the Respondent submitted that this is not a case of remand and this is only an order remitting the matter, directing for the true-up exercise for 2007-08 and the State Commission, being the authority to undertake the truing-up exercise, it has resorted to the said exercise in respect of the next year also as there is no bar or restriction to do so either under the Act or under the order passed by the Tribunal. In the light of the said stand taken by the Learned Counsel for the Respondent-2, it would be appropriate to deal with this issue.

22. It is not disputed that the Remand Order remitting the matter to the State Commission was passed by this Tribunal on 09.02.2009 in the Appeal No. `132/08 filed by the Byrnihat Industries Association, Respondent-2 herein challenging the determination of the distribution tariff for the FY 2008-09. It cannot also be debated that the Tribunal, specifically mentioned in para 7 of the said order that the matter is remitted to the State Commission with the specific direction to undertake the truing up exercise in respect of the FY 2007-08 with the financial data ending March 2008. In other words, the said order did not direct or permit the State Commission to simultaneously undertake the truing-up exercise for the FY 2008-09.

23. In the proceedings in the Appeal No. 132/08 filed by the R-2, it was represented by the Board, the Appellant herein before the Tribunal that the financial data of the Board from 01.04.2007 to 31.03.2008 would be produced before the State Commission to true-up the financial for the FY 2007-08. Endorsing the said contention, the Tribunal had remitted the

matter back to the State Commission only for carrying out the truing-up of Appellant's financial for the FY 2007-08. Thus, the order of Remand is very clear. The order remitting the matter to the State Commission was only restricted to the truing-up for the FY 2007-08. In pursuance of the said order, the State Commission also directed the Appellant, namely the Board, to submit the report and the materials for exercising the truing-up in respect of FY 2007-08 in order to comply with the order passed by the Tribunal. Further, the State Commission itself has recorded in the impugned order that the Appellant had not made any submissions with regard to truing-up for the FY 2008-09 either in its reply dated 12.08.2009 or in the oral submissions made by the Appellant during hearings on 29.07.2009 and 26.08.2009. On the other hand, the Appellant raised his objection in its reply dated 12.08.2009 for truing up in respect of next year. When such being the case, there is no reason as to why the State Commission went ahead for truing up Appellant's financial not only for the FY 2007-08 but also for the FY 2008-09. In fact, there is no reason neither in the impugned

order nor in any interim order by the State Commission referring to the reply made by the Appellant for rejecting the objection of the Appellant for objecting truing-up in respect of the FY 2008-09 and for justifying as to why it undertook the truing-up exercise in respect of the FY 2008-09 as well.

24. It is a well settled principle of law as mentioned earlier that when a matter is remanded by the appellate forum to the lower court or the lower authority, with a limited direction, the said lower court or the lower authority shall restrict itself to the extent as prescribed in the order of "Limited Remand". In other words, it is not open to the court below to do anything but to carry out the terms of the Remand remitting the matter in letter and spirit.

25. As a matter of fact, when the proceedings, in pursuance of the Remand order had started, the State Commission has specifically stated in the communication dated 06.07.2009 sent to the Appellant and in the order passed on 29.07.2009 that the

State Commission will take up the truing-up exercise in respect of the FY 2007-08 only. In other words, in the above communication/order there is no reference for the proposal about undertaking of the truing-up exercise in respect of the FY 2008-09. When the R-2 filed a petition requesting the State Commission to undertake the truing-up exercise in respect of the next year also, the specific objection was raised by the Board in its reply dated 12.08.2009 as indicated earlier and the following is the statement made by the Appellant in this regard.

> *"28. MeSEB craves liberty to not to reply to para 24 to 40 since it relates to the allegations of Objector relating to the FY 2008-09. It is reiterated that the issue before the Hon'ble Commission is relating to the truing-up exercise for FY 2007-08. The Objector has unnecessarily raised objections relating to FY 2008-09. If the Hon'ble Commission so desires, MeSEB shall provide the details as and when required."*

26. The above statement of the Appellant would indicate that the Appellant has taken a specific stand raising objection to the exercise of the truing-up in respect of FY 2008-09 as it is not in consonance with the order of Remand passed by the Tribunal. When such was the stand taken through the statement made by the Appellant before the State Commission objecting to the proposal to take up the truing-up exercise in respect of FY 2008-09, there is no justification for the State Commission to undertake the truing-up for the FY 2008-09 as well.

27. It is contended by the Learned Counsel for the R-2 that the Appellant itself has produced the documents/report before the State Commission to enable the State Commission to take up the truing-up exercise in respect of FY 2008-09. Mere submission of the records before the State Commission as directed by the State Commission, would not amount to withdrawal of its stand of objection taken before the State Commission that the State Commission should not take up the true-up exercise in respect of FY 2008-09.

28. According to the Appellant, even though such a specific stand was taken before the State Commission, the Appellant was constrained to submit the report for the next year in pursuance of the direction issued by the State Commission or otherwise the non-compliance of the said directions by the State Commission would result in adverse consequences against the Appellant.

29. Inspite of the fact that the specific stand taken by the Appellant, objecting to the truing up exercise for the next year, there is no specific reasoning given by the State Commission in the impugned order dated 10.09.2009 either with regard to the rejection of the said objection raised by the Appellant or with regard to the circumstances, under which for undertaking truing-up of the Appellant's financial for the FY 2008-09 was taken up along with the truing-up exercise for the FY 2007-08.

30. It is contended by the Learned Counsel for the Respondent that the order passed by the Tribunal is not a Remand and it is

only an order remitting the matter for truing-up exercising the process and in the absence of any prohibition referred to in the said order by the Tribunal for exercising the truing-up process in respect of FY 2008-09, it cannot be said that the order passed by the State Commission is wrong. This contention, in our view, cannot be sustained for the following reasons.

31. Even though the distribution tariff order in respect of FY 2008-09 had been challenged by the R-2 in Appeal No. 132/2008, the Tribunal had not entered into the merits of the tariff order which was passed by the State Commission in respect of FY 2008-09 and on the other hand, it thought it fit to direct the State Commission to finish the truing up process in respect of the FY 2007-08 as, in their view, the true-up exercise must be completed in time in respect of FY 2007-08 before passing the tariff order relating to FY 2008-09. The Appellant also submitted before the Tribunal that the Audited Accounts were available for truing up for the year 2007-08. In that view only the Tribunal remitted the matter with direction through the

order of remand. Therefore, it cannot be contended that it was not a Remand order. In our view, the same is a limited Remand Order remitting the matter to the State Commission with a specific direction to State Commission to exercise and pass the order of truing-up process in respect of the year 2007-08. Under those circumstances, the State Commission ought to have complied with the directions of the Tribunal by deciding the issue relating to truing-up exercise in respect of FY 2007-08 only. It is proper for the State Commission to take up the true-up exercise for the FY 2008-09 separately since the materials to decide the issue in that case would be entirely different. Therefore, the order passed by the State Commission truing up in respect of FY 2008-09, clubbing with the truing-up exercise for FY 2007-08 is wrong and the same is liable to be set aside.

32. The second issue is relating to the State Commission not following and adopting the financial statement, duly audited by the Comptroller & Auditor General. On this issue, it has been argued by the Learned Counsel for the Appellant that the State

Commission should not have disallowed the revenue requirement and accounts without considering the audited accounts of the Electricity Board in the truing-up exercise. While elaborating this point, it is contended on behalf of the Appellant that the State Commission while truing-up the Appellant's financial accounts in respect of FY 2007-08 has disallowed an amount of Rs. 8.4 crores even though the same had been duly acknowledged and found legitimate in the accounts duly audited by the Comptroller & Auditor General (CAG) and wrongly included an amount of Rs. 17.26 crores as revenue gain by 2% reduction of AT&C losses which is audited by the Comptroller & Auditor General. It is also contended on behalf of the Appellant that even though the total amount which had been acknowledged and audited by the CAG is Rs. 21.96 crores, the State Commission has allowed only Rs. 13.42 crores. In doing so, it is argued that the State Commission has wrongly classified the net prior period charges into 2 categories namely "controllable charges" and "un-controllable charges". This contention, in our view, is not

tenable. The audited account is only to verify as to whether the expenditure has been actually incurred or not. The auditor does not deal with the prudence of the expenditure. The question whether the said expenditure is to be allowed or not has to be considered only by the State Commission after prudence check. The auditor will only verify and certify whether the expenditure on such account had been actually incurred or not. On the other hand, the State Commission is bound to apply its mind to make a prudence check in order to verify whether the expenditure is to be allowed or not and the State Commission is not bound by the opinion of the auditors as laid down by the Hon'ble Supreme Court in AIR 2002 SC 358 = AIR 2002 (8) SCC 70.

33. The State Commission has disallowed certain expenditure in the ARR of the Appellant which are controllable. However, 6 uncontrollable expenditures have been allowed by the State Commission despite the failure on the part of the Appellant to claim the revenue requirement at the appropriate time. The claim which were rejected were only of controllable

expenditure. Since the Appellant have failed in its duty by not controlling the same, the State Commission has rightly disallowed the same as the burden cannot be passed on to the consumers. Segregating the prior period charges into controllable expenditure and uncontrollable expenditure is a well-recognized principle. This has been recognized in the National Tariff Policy. It is imperative for the State Commission to be guided by the National Electricity Policy and National Tariff Policy as mandated under section 61 of the Electricity Act, 2003. In this context, it would be proper to refer to Section 5.3 (h)(iii) of the National Tariff Policy. The same is as follows:

> "*Uncontrollable cost should be recovered speedily to ensure that future consumers are not burdened with past cost. Uncontrollable cost would include fuel cost, cost on account of inflation, tax and cesses, variation in power purchase unit costs including on account of hydro thermal mix in cases of adverse natural events*".

34. It is noticed that the prior period charges claimed by the Appellant are expenditure incurred by it during the FY 2002-03. This was never claimed in the past. Admittedly, the same was not claimed at the time of tariff proceedings also. In such circumstances, it is not open for the Appellant to claim such expenditure at the time of truing-up exercise for the year 2007-08. It is settled law that the stage of truing up as mentioned earlier is not to reopen the basis of redetermination of tariff and it is only comparing the estimated figures at the beginning of the year with the actual figures at the end of the year. It is not open to the Appellant to raise such an issue for the first time after many years. These principles have been laid down by the Hon'ble Supreme Court in 2009(6) SCC 235 in *UP Power Corporation Limited vs. NTPC* and this Tribunal in 2007 ELR APTEL 193 in *North Delhi Power Limited vs. DERC.* Therefore, the contention on this issue urged by the Learned Counsel for the Appellant is misconceived and consequently the

same is rejected. Consequently, the finding on this issue by the State Commission is correct and so the same is upheld.

35. The next issue is relating to the retrospective effect given to the revised tariff. According to the Appellant the State Commission ought not to have given retrospective adjustment in the tariff as this finding by the State Commission relating to the retrospective effect is neither tenable in law nor in fact. In this context, it is noteworthy to point out that the Appellant caters to a consumer base of more than 2 lakhs consumers. The Appellant is functioning on manual accounting system. In addition to the above, the Appellant is in the process of corporatization and unbundling. In view of the above, it is claimed by the Appellant that it is extremely difficult to give effect to all the directions relating to retrospective effect.

36. The perusal of the impugned order would reveal that the State Commission directed the Appellant to take effective steps to adjust the amount collected during the tariff period between

01.10.2008 and 31.03.2010. Thus, there is a specific direction to the effect that the Appellant has to give effect to the adjustment by 31.03.2010. The Appellant being a public body, will not retain any amount which is unjustified and shall account for any surplus amount.

37. In fact, while truing-up for FY 2007-08, the State Commission has adopted the right approach of comparing the Appellant's expenditure as well as the revenue earned during the FY 2007-08 after considering the two heads i.e. revenue and expenditure and concluded that it is not necessary to revise the tariff for FY 2007-08 retrospectively. Having held so, the State Commission, while truing-up in respect of 2008-09, has wrongly considered the trued-up expenditure as well as the ARR by giving retrospective effect. This is not a correct approach.

38. At this stage, one other factor has to be noticed. As against this impugned order dated 10.9.2009 in respect of the retrospective effect, the Appellant has filed this appeal. Actually

this Appeal has been filed as early as on 23.10.2009 and the same has been numbered as Appeal No. 37/10. At that stage R-2 filed a Review Petition No. RP-1/10 on 10.01.2010 seeking for suitable directions to the Appellant for implementation of the impugned order in respect of the FY 2008-09. After hearing the parties, this Petition for Review has been disposed of by the order dated 24.2.2010. In the said order, the State Commission while referring to the contention of the Appellant urged before the State Commission with regard to retrospective effect passed the following order:

> "*Noting the contention of the Appellant that giving retrospective effect to true up is not possible, direct that the ARR for the Accounting Year 2008-09 be finally trued up on the audited statement of accounts as duly audited by the CAG, as soon as it is received from the Appellant. Consequently, the revenue deficit or revenue surplus in the trued up ARR for the Financial Year 2008-09 would be adjusted while*

working out and fixing the ARR of the perspective year i.e. Financial Year 2010-11."

39. In this context, it is also worthwhile to note the other observations made by the State Commission in the Review Petition No. 1/10 dated 24.02.2010.

"*11 (b). The Commission has noted the contention of the Respondent in para 9(i) of their affidavit in response dated 22.02.2010 that inter alia, the fixation of tariff depends upon the estimated ARR after truing up the Accounts of preceding years. Truing up exercise has to be necessarily taken up against each ARR approved by the Commission wherein any excess or shortfall of trued ARR, over the approved ARR is adjusted in the subsequent tariff order. <u>However, for each time the accounts are trued up, the tariff may not be revised with retrospective effect.</u> This is because the consumer base of distribution utilities in general is of the order of 10 to*

50 lakh consumers and retrospective revision of bills for such a large number of consumers, every time the accounts are trued up is not possible. Retrospective revision of bills will also entail revision of all the monthly commercial data and correction of the Statement of Accounts 2008-09". ***The aforesaid contention has merit. Therefore, let the ARR of the accounting year 2008-09 be finally trued up on the basis of the Audited Statement of Accounts for that year, and the C&AG's Aujdited Report thereon, as soon as it is received from the Respondent. Consequently, Revenue deficit or Revenue surplus in the trued-up ARR for the accounting year 2008-09, will be adjusted while working out and fixing the ARR of the perspective year 2010-11."***

40. The above observation would make it clear that the State Commission has taken a view that for each time the financial accounts are trued up, the tariff may not be revised with

retrospective effect. To carry out retrospective revision of vast base of consumer every time the financial accounts are trued up is not possible. The Revenue deficit or Revenue surplus in the trued up in the ARR ought to be adjusted in the prospective year 2010-11.

41. In this context, the Appellant has prayed that since the Appellant's audited accounts (duly audited by the Comptroller & Accountant General) for the FY 2008-09 are now available, the State Commission may be directed to true up the Appellant's accounts on the basis of C&AG's report and consequently any revenue surplus or deficit be adjusted while fixing the ARR of the prospective year, i.e. 2010-11. It is also brought to our notice that the audited accounts, duly audited by the C&AG of the Appellant for the FY 2008-09 have already been submitted on 28.04.2010 before the State Commission and, therefore, this Tribunal may direct the State Commission to consider the audited data of the Appellant's accounts for the FY 2008-09.

42. In the light of this prayer, it would be appropriate to refer to the judgment of this Tribunal in Appeal No. 100/07 (Karnataka Power Transmission Corporation Limited V/s Karnataka Electricity Regulatory Commission and Others. The relevant observation with reference to retrospective effect has been given in paragraph 28, which is reproduced below:-

> *"28. We have heard contentions of the rival parties. Basic issue that has to be decided is: whether or not the Commission was correct in carrying out the truing up of revenue requirements and revenues of KPTCL for the tariff period 2000-01 to 2005-06. Invariably, the projections at the beginning of the year and actual expenditure and revenue received differ due to one reason or the other. Therefore, truing up is necessary. Truing up can be taken up in two stages: Once when the provisional financial results for the year are compiled and subsequently after the audited accounts are available. The impact of truing up exercises must be reflected in the tariff calculations for*

the following year. As an example; truing up for the year 2006-07 has to be completed during 2007-08 and the impact thereof has to be taken into account for tariff calculations for the year 2007-08 or/and 2008-09 depending upon the time when truing up is taken up. If any surplus revenue has been realized during the year 2006-07, it must be adjusted as available amount in the Annual Revenue Requirement for the year 2007-08 or/and 2008-09. It is not desirable to delay the truing up exercise for several years and then spring a surprise for the licensee and the consumers by giving effect to the truing up for the past several years. Having said that, truing up, per se, cannot be faulted, and, therefore, we do not want to interfere with the decision of the Commission in this regard to cleans up accounts, though belatedly, of the past. It is made clear that truing up stage is not an opportunity for the Commission to rethink de novo on the basic principles, premises and issues involved in the initial projections of revenue requirements of the licensee".

43. It is laid down in the said judgment that the impact of truing-up exercises must be reflected in the tariff calculations for the following year and not to be given retrospective effect. If any surplus/deficit has been realised during the financial year, it must be adjusted in the ARR of the utility in subsequent years. The aforesaid principle of provisional truing-up leads to the conclusion that the State Commission cannot give any retrospective downward revision to the Appellant's tariff for the FY 2008-09 since any surplus/deficit ought to have been adjusted in the ARR of the Appellant in the subsequent year.

44. Therefore, in view of the above settled law and factual position, the State Commission is directed to take into consideration above aspects while the process of truing-up exercise is taken up in respect of the FY 2008-09.

45. Let us now come to the cross claim of the Association, R-2 made in IA No. 82 of 2010. In this application, the R-2 urged

that the State Commission did not give due adjustment and credit to the consumers of the State of Meghalaya for the surplus profit earned by the Appellant in the FY 2007-08. According to R-2, even the State Commission acknowledged the fact that the Appellant had earned surplus of Rs. 63.69 crores for the FY 2007-08 which was over and above the revenue requirement as determined by the State Commission and that even then the State Commission has failed to pass a consequential order for the surplus earned by the Appellant to be adjusted in the tariff of the consumers.

46. According to the Appellant, the Appellant has not earned a surplus of Rs. 63.69 crores during FY 2007-08 but in fact it has incurred a deficit of Rs. 26.95 crores and, therefore, the State Commission cannot allow any amount to be passed on to the consumers in order to give any due adjustment as claimed by the Respondent.

47. We have carefully considered this issue in the light of the submissions made on behalf of the Appellant and the State Commission. As per the calculations of the R-2, the revenue earned by the Appellant in the year 2007-08 is Rs. 383.34 crores. As per the calculations of the R-2 in the truised ARR as decided by the State Commission is Rs. 319.65 crores. Thus, the difference of the revenue earned and the ARR is Rs. 63.69 crores. According to R-2, the State Commission has come to a finding that there is excess revenue of Rs. 63.69 crores but has not given any adjustment in favour of the consumer for the above surplus amount. The admitted surplus of Rs. 63.69 crores as found by the State Commission ought to be passed on to the consumers with carrying cost.

48. According to the Appellant Board, the total revenue earned by the Board for the financial year 2007-08 from sale of power was Rs. 318.15 crores which has also been confirmed by the audited statement of accounts, but the Commission has wrongly added an amount of Rs. 65.19 crores qua subsidising and grants

and other income in concluding that the total revenue of the Appellant for FY 2007-08 was Rs. 383.34 crores since the same had already been deducted by the Commission while truing up the ARR of the Appellant for the FY 2007-08. As such the Appellant has not earned any surplus but has suffered a deficit of Rs. 26.95 crores (i.e. Rs. 345.10 Cr. as per audited account - 318.15).

49. We have examined the issue. In the order dated 10.9.2009 the Commission in para 21.1.7 has indicated revenue from sale of power during 2007-08 as 318.15 Cr. and further noted that the Board has revenue of Rs. 32.80 crores as subsidies and grants and Rs. 32.39 crores as other income. Adding subsidies and grants and other income of Rs. 65.19 crores, the Commission has held that the total income during the year 2007-08 was Rs. 383.34 crores. On the other hand, the Commission while working out the ARR has also deducted the income on account of subsidies and grants and other income totalling to Rs. 65.19 crores to arrive at a figure of net ARR of

Rs. 319.65 crores. Thus the other income and subsides and grants totalling to Rs. 65.19 crores has been accounted for twice. When other income and subsidies and grants totalling to Rs. 65.19 crores has been deducted from the ARR, the same cannot be added to the income. Against the net ARR of Rs. 319.65 crores approved by the Commission in the true-up for 2007-08, the total income is Rs. 318.15 crores. Thus, there is actual deficit of Rs. 1.5 crores on the true up of FY 2007-08 taking into the true-up ARR approved by the Commission in the impugned order and there is no surplus as claimed by Respondent-2.

50. So, in the light of the above fact, the contention of the Respondent 2 that the Appellant has earned a surplus of Rs. 63.69 crores is not correct. On the other hand, the Appellant has a deficit and in fact, the State Commission has to adjust the deficit and to pass the consequent orders in future years. Therefore, there is no merit in the cross Appeal. Accordingly the claim made in the Cross Appeal is rejected

Summary of our findings:

51. **(i) The order passed by this Tribunal dated 09.02.2009 is the order of Remand with a limited direction to the State Commission to take the true up exercise only in regard to FY 2007-08. In our view this is a limited Remand order remitting the matter to state Commission with a specific direction to the State Commission to pass the order by truing up process in respect of FY 2007-08. Therefore, the State Commission ought to have complied with these directions by deciding the issue relating to truing up exercise in respect of FY 2007-08 alone. It is open to the State Commission to take up the truing up exercise in respect of FY 2008-09 separately on the basis of materials placed by the parties and decide the**

issue. Therefore, the order passed by the State Commission clubbing truing up the FY 2008-09 is wrong and is liable to be set aside.

(ii) The second issue relates to the State Commission not adopting the financial statement of audited accounts by the Comptroller and Auditor General of India. This contention is untenable. The audited accounts is followed specifically as to whether the expenditure has been actually incurred or not. The audited accounts do not deal with the prudence of the expenditure. The question whether expenditure is allowed or not has to be considered only by the State Commission while truing up. The Auditor will verify whether the expenditure has been actually incurred or not. On the other hand the State Commission is bound to apply its mind to make a prudence check whether the

expenditure is to be allowed or not. Therefore, the State Commission is not bound by the certificate of the Auditors.

(iii) The State Commission has correctly disallowed certain expenditure, ARR of the Appellant which may be rejected only on controllable expenditure. Since the Appellant has failed in its duty by not controlling the same and so the State Commission cannot pass the burden on to the consumers. Segregating the prior period charges into controllable expenditure and un-controllable expenditure is well recognised principle. Further, the prior period charges claimed by the Appellant are expenditure incurred by it during

FY 2002-03. This was never claimed in the past. It is a settled law that the stage of truing up is not to reopen the basis of re-

determination of tariff and it is only comparing the estimated figures at the beginning of the year with the actual figure at the end of the FY. It is not open to the Appellant to raise such an issue for the first time after many years.

(iv) The State Commission ought not to have given retrospective adjustment in the tariff as this finding relating to the retrospective effect is neither tenable in law nor in fact. While going through the order passed by the Commission in the Review Petition No. 1 of 2010 dated 10.01.2010, the State Commission itself has taken the view that for each time the accounts are trued up, the tariff may not be revised with retrospective effect. The impact of trued up exercise must be in the tariff calculation for the following year and the same shall not be given retrospective effect.

The surplus/deficit in revenue in the trued up ARR has to be adjusted in the ARR during the subsequent years. Therefore, the State Commission is directed to consider the said issue on the basis of the Appellant account duly audited by the C&AG for the FY 2008-09 which is now available and adjust in the ARR of the Appellant in the subsequent year.

(v) The contention of the Respondent-2 that the Appellant has earned surplus money of Rs. 63.69 crores is not correct. On the other hand the Appellant has deficit of Rs. 26.95 crores during 2007-08 as per the audited accounts of the Appellant and about Rs. 1.5 crores as per the trued up ARR decided by the Commission in the impugned order. In fact the State Commission has to adjust this deficit and pass the consequent orders in future years. Accordingly the claim made by the

Respondent 2 in the cross para in IA No. 82 of 2010 is rejected.

52. In view of our above findings, the impugned order is set aside to the extent as indicated above. Consequently, we direct the State Commission to consider taking up the true-up process separately in respect of the FY 2008-09 taking into account the observations made by this Tribunal with reference to the aspects contained therein and pass appropriate orders.

53. The Appeal is partly allowed. No costs.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

REPORTABLE/NOT REPORTABLE

Dated: 10th August, 2010

CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 425/GT/2020

Coram:

Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Date of Order: 6th June, 2022

IN THE MATTER OF

Petition for approval of tariff of Sipat Super Thermal Power Station, Stage-I (1980 MW) for the period from 1.4.2019 to 31.3.2024.

AND

IN THE MATTER OF

NTPC Limited,
NTPC Bhawan, Core-7,
Core-7, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi – 110003 **….Petitioner**

Vs

1. Madhya Pradesh Power Management Company Limited,
   Shakti Bhawan, Vidyut Nagar,
   Jabalpur – 482 008

2. Maharashtra State Electricity Distribution Company Limited,
   Prakashgad, Bandra (East),
   Mumbai – 400 051

3. Gujarat Urja Vikas Nigam Limited,
   Vidyut Bhawan, Race Course,
   Vadodara – 390 007

4. Chhattisgarh State Power Distribution Company Limited,
   P.O. Sundar Nagar, Dangania,
   Raipur – 492 013

5. Electricity Department,
   Government of Goa,
   Vidyut Bhawan, Panji,
   Goa – 403 001

6. Electricity Department,
   Administration of Daman & Diu,
   Daman – 396 210

7. Electricity Department,
   Administration of Dadra & Nagar Haveli,
   Silvasa **….Respondents**

Parties Present:

Ms. Swapna Seshadri, Advocate, NTPC
Shri Anand K. Ganesan, Advocate, NTPC
Ms. Ritu Apurva, Advocate, NTPC
Shri Jai Dhanani, Advocate, NTPC
Shri Arvind Banerjee, CSPDCL
Shri Anurag Naik, MPPMCL

ORDER

This petition has been filed by the Petitioner, NTPC for approval of tariff of Sipat Super Thermal Power Station Stage-I (3 x 660 MW) (hereinafter referred to as 'the generating station') for the 2019-24 tariff period, in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as 'the 2019 Tariff Regulations'). The generating station with a capacity of 1980 MW comprises of three units of 660 MW each. The dates of commercial operation of the different units of the generating station are as under:

Unit	Actual COD
Unit-I	1.10.2011
Unit-II	25.5.2012
Unit-III/ Generating Station	1.8.2012

2. The Commission vide order dated 29.3.2017 in Petition No. 337/GT/2014 had approved the tariff of the generating station for the 2014-19 tariff period. Subsequently,

by order dated 14.2.2022 in Petition No. 240/GT/2020, the tariff of the generating station for the 2014-19 tariff period, was revised, after truing up exercise, in terms of the 2014 Tariff Regulations. Accordingly, the annual fixed charges and the capital cost allowed vide order dated 14.4.2022 are as under:

Annual Fixed Charges allowed

(Rs. in lakh)

	2014-15	**2015-16**	**2016-17**	**2017-18**	**2018-19**
Depreciation	45170.38	46204.41	46762.35	46896.48	46981.36
Interest on Loan	39403.99	36877.66	34309.77	31085.40	27449.73
Return on Equity	52348.35	53821.47	54441.49	54576.41	54814.58
Interest on Working Capital	12409.40	12543.71	12708.33	13052.56	12819.71
O&M Expenses	37206.72	39195.73	42538.60	46479.00	43959.25
Total	**186538.84**	**188642.98**	**190760.54**	**192089.85**	**186024.64**

Capital Cost allowed

(Rs. in lakh)

	2014-15	**2015-16**	**2016-17**	**2017-18**	**2018-19**
Opening Capital Cost	877727.16	901921.03	918986.33	922897.72	923551.00
Add: Additional capital expenditure	24193.87	17065.30	3911.39	653.28	2430.22
Closing Capital Cost	**901921.03**	**918986.33**	**922897.72**	**923551.00**	**925981.22**
Average Capital Cost	889824.09	910453.68	920942.02	923224.36	924766.11

Present Petition

3. The Petitioner, in the present petition, has claimed the capital cost and annual fixed charges for the 2019-24 tariff period, as under:

Annual Fixed Charges claimed

(Rs. in lakh)

	2019-20	**2020-21**	**2021-22**	**2022-23**	**2023-24**
Depreciation	47468.59	47644.09	47819.59	47845.21	47870.83
Interest on Loan	25359.55	22348.65	18741.55	14619.48	10480.65
Return on Equity	52198.78	52391.76	52584.75	52612.92	52641.09
Interest on Working Capital	9239.28	9293.21	9334.30	9365.44	9392.80
O&M Expenses	49902.91	51640.48	53448.77	55308.37	57239.48
Total	**184169.11**	**183318.19**	**181928.96**	**179751.42**	**177624.86**

Capital Cost claimed

Capital cost eligible for Return on Equity at normal rate:

(Rs. in lakh)

	2019-20	2020-21	2021-22	2022-23	2023-24
Opening capital cost	926397.21	926397.21	933247.21	933247.21	934247.21
Add: Addition during the year/ period	0.00	6850.00	0.00	1000.00	0.00
Less: De-capitalization during the year/ period	0.00	0.00	0.00	0.00	0.00
Less: Reversal during the year/ period	0.00	0.00	0.00	0.00	0.00
Add: Discharges during the year/ period	0.00	0.00	0.00	0.00	0.00
Closing capital cost	926397.21	933247.21	933247.21	934247.21	934247.21
Average capital cost	**926397.21**	**929822.21**	**933247.21**	**933747.21**	**934247.21**

4. The Respondent MSEDCL has filed its reply affidavit on 4.6.2021. The Respondent CSPDCL and Respondent MPPMCL have also filed their separate reply affidavits on 23.7.2021. The Petitioner has filed its rejoinder affidavits to the replies of the above respondents on 30.7.2021. The Petitioner has also filed certain additional information on 12.5.2021, 4.6.2021 respectively. The Commission, after hearing the parties, on 30.11.2021, through video conferencing, reserved its order in the matter. The Petitioner has also filed certain additional information vide affidavits on 1.12.2021 and 31.12.2021 respectively. Based on the submissions of the parties and the documents available on record and on prudence check, we proceed to examine the claims of the Petitioner, in this Petition, for the 2019-24 tariff period, as stated in the subsequent paragraphs.

Capital Cost

5. Clause (1) of Regulation 19 of the 2019 Tariff Regulations provides that the capital cost as determined by the Commission after prudence check, in accordance with this regulation, shall form the basis of determination of tariff for existing and new projects. Clause 3 of Regulation 19 of the 2019 Tariff Regulations provides as under:

"(3) The Capital cost of an existing project shall include the following:

(a) *Capital cost admitted by the Commission prior to 1.4.2019 duly trued up by excluding liability, if any, as on 1.4.2019;*

(b) *Additional capitalization and de-capitalization for the respective year of tariff as determined in accordance with these regulations;*

(c) *Capital expenditure on account of renovation and modernization as admitted by this Commission in accordance with these regulations;*

(d) *Capital expenditure on account of ash disposal and utilization including handling and transportation facility;*

(e) *Capital expenditure incurred towards railway infrastructure and its augmentation for transportation of coal upto the receiving end of generating station but does not include the transportation cost and any other appurtenant cost paid to the railway; and*

(f) *Capital cost incurred or projected to be incurred by a thermal generating station, on account of implementation of the norms under Perform, Achieve and Trade (PAT) scheme of Government of India shall be considered by the Commission subject to sharing of benefits accrued under the PAT scheme with the beneficiaries."*

6. The annual fixed charges claimed by the Petitioner, is based on opening capital cost of Rs.926397.21 lakh as on 1.4.2019. However, the Commission vide order dated 14.4.2022 in Petition No. 240/GT/2020 had approved the capital cost of Rs.925981.22 lakh, on cash basis as on 31.3.2019. The recognized undischarged liabilities as on 31.9.2019 is Rs. 31822.32 lakh. Accordingly, the capital cost of Rs.925981.22 lakh, as on 31.3.2019, on cash basis, has been considered as the opening capital cost, as on 1.4.2019, in terms of Regulation 19(3) of the 2019 Tariff Regulations.

Additional Capital Expenditure

7. Regulation 25 and 26 of the 2019 Tariff Regulations, provides as under:

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.

(2) In case of replacement of assets deployed under the original scope of the existing project after cut-off date, the additional capitalization may be admitted by the Commission, after making necessary adjustments in the gross fixed assets and the cumulative depreciation, subject to prudence check on the following grounds:

(a) The useful life of the assets is not commensurate with the useful life of the project and such assets have been fully depreciated in accordance with the provisions of these regulations;

(b) The replacement of the asset or equipment is necessary on account of change in law or Force Majeure conditions;

(c) The replacement of such asset or equipment is necessary on account of obsolescence of technology; and

(d) The replacement of such asset or equipment has otherwise been allowed by the Commission.

26. Additional Capitalization beyond the original scope

(1) The capital expenditure, in respect of existing generating station or the transmission system including communication system, incurred or projected to be incurred on the following counts beyond the original scope, may be admitted by the Commission, subject to prudence check:

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

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

(c) Force Majeure events;

(d) Need for higher security and safety of the plant as advised or directed by appropriate Indian Government Instrumentality or statutory authorities responsible for national or internal security;

(e) Deferred works relating to ash pond or ash handling system in additional to the original scope of work, on case to case basis:

Provided also that if any expenditure has been claimed under Renovation and Modernization (R&M) or repairs and maintenance under O&M expenses, the same shall not be claimed under this Regulation;

(f) Usage of water from sewage treatment plant in thermal generating station.

(2) In case of de-capitalization of assets of a generating company or the transmission licensee, as the case may be, the original cost of such asset as on the date of decapitalization shall be deducted from the value of gross fixed asset and corresponding loan as well as equity shall be deducted from outstanding loan and the equity respectively in the year such de-capitalization takes place with corresponding adjustments in cumulative depreciation and cumulative repayment of loan, duly taking into consideration the year in which it was capitalized."

8. The projected additional capital expenditure claimed by the Petitioner is as under:

(Rs. in lakh)

	Regulation	2019-20	2020-21	2021-22	2022-23	2023-24
Works within original scope, change-in-law etc. eligible for ROE at Normal Rate						
Ash Dyke Raising	25(1)(c) read with 25(1)(g)	0.00	650.00	0.00	1000.00	0.00
Dry Fly Ash Extraction System	26(1)(b)	0.00	5000.00	0.00	0.00	0.00
Clo_2 Package	26(1)(b) read with 26(1)(d)	0.00	1200.00	0.00	0.00	0.00
Additional capital expenditure claimed (on projected basis)		**0.00**	**6850.00**	**0.00**	**1000.00**	**0.00**

9. We now examine the additional capital expenditure claimed by the Petitioner on projected basis for the 2019-24 tariff period as under:

(a) Ash Dyke Raising

10. The Petitioner has claimed projected additional capital expenditure of Rs.650.00 lakh in 2020-21 and Rs.1000.00 lakh in 2022-23, towards Ash dyke raising works, under Regulation 25(1)(c) read with Regulation 25(1)(g) of the 2019 Tariff Regulations. In justification of the same, the Petitioner has submitted that the expenditure claimed under this head, is within the original scope of work and is carried out periodically, at different tranches during the life of the generating station, for disposal of ash for continuous and sustained operation of the generating station.

11. The Respondent CSPDCL and Respondent MPPMCL in their replies, have objected to the requirement of Ash dyke raising, in the light of 100% ash utilization to be ensured by generating stations, in terms of the MOEF& CC Notification dated 25.1.2016. They have also pointed out that the Petitioner, while on the one hand is charging fly ash transportation cost, it has, on the other hand, claimed expenditure towards ash dyke raising. In response, the Petitioner in its rejoinder, has clarified that the raising of Ash dyke is undertaken in a phased manner, at intermittent intervals,

during the life of the plant. It has also submitted that at any time during the operation of the plant, the rate of generation of fly ash, could be much higher than the rate of utilization of fly ash, in which case, the unutilized ash needs to be diverted to ash dyke, for a safe disposal of ash and for continuous operation of the plant. The Petitioner has further submitted that the utilization of wet ash takes place from ash disposed in ash dyke only and the capital expenditure on this count, is necessary for the smooth operation of the plant.

12. The matter has been considered. In our view, the ash generation and ash disposal is a continuous process to be carried out from time to time during the operating life of the plant, in order to ensure the successful running of the plant. In view of this, we allow the Petitioner's claim under Regulation 25(1)(g) of the 2019 Tariff Regulations.

(b) Dry Fly Ash Extraction System (DAES)

13. The Petitioner has claimed projected additional capital expenditure of Rs.5000.00 lakh in 2020-21 under Regulation 26(1)(b) of the 2019 Tariff Regulations. In justification for the same, the Petitioner submitted that the expenditure claimed under this head has been envisaged for 100% ash utilization in the generating station, which has also been directed by the Chhattisgarh Environment Conservation Board (CECB) in consent to operate dated 3.4.2018.

14. The Respondent, CSPDCL has submitted that the above works are not covered within the original scope of work and since it is a subsequent development, the claim of the Petitioner under change in law, is incorrect. The Respondent, MPPMCL has submitted that the Petitioner's submission that the expenditure envisaged is for 100% ash utilization and has been directed by CECB, in the 'consent to operate' is baseless,

as the COD of the generating station is 1.8.2012. It has also stated that in case the expenditure was necessary for operation, the reason as to why the Petitioner waited for 8 years to comply is not known. The respondent has also submitted that the expenditure claimed is huge and the purpose is also redundant, keeping in view that ash utilization has been mandated by other previous MOEF & CC Notifications during the period 1999 and 2009 respectively. etc. on which no action was taken by the Petitioner. In response, the Petitioner in its rejoinder has clarified that DAES is required to be installed for 100% utilization of ash in line with the direction of CECB, in 'consent to operate' granted vide letter dated 3.4.2018 for the generating station. The Petitioner has also submitted that DAES will facilitate the disposal of ash in safe and scientific manner, and would also enhance the utilization of ash and is necessary to comply with the statutory provisions.

15. The mater has been examined. The Petitioner has claimed additional capital expenditure under change in law/ compliance to existing law, based on the 'consent to operate' granted by CECB, vide its letter dated 3.4.2018, valid for period from 1.12.2016 to 30.11.2021. It is also noticed that Clause 2(10) of the MoEF& CC Notification dated 25.1.2016 provides as under:

> "*Every Coal or lignite based thermal power plant shall install dedicated dry ash silos having separate access roads so as to ease the delivery of fly ash"*

16. In our view, the DAES shall help in reducing the burden of ash disposal in the ash dyke area, which will reduce the regular or time to time capitalization of expenditure for raising of ash dyke and environmental ground water pollution. In this background and keeping in view that the additional expenditure claimed is for compliance with the existing norms under the MoEF notification/directions of CECB, we allow the same

under Regulation 26(1)(b) of the 2019 Tariff Regulations. The Petitioner is, however, directed to furnish details of revenue earned from sale of fly ash (excluding transportation charges if any paid by the petitioner) and a copy of accounts, duly certified by the auditor, which is required to be mandatorily maintained by the petitioner in terms of the said notification at the time of truing up of tariff.

(c) ClO_2 Package

17. The Petitioner has claimed projected additional capital expenditure of Rs.1200.00 lakh in 2020-21 under Regulation 26(1)(b) read with Regulation 26(1)(d) of the 2019 Tariff Regulations. In justification for the same, the Petitioner submitted that at present Chlorine gas is being dozed, from chlorine stored in cylinders/ tonners, directly at various stages of water treatment to maintain water quality and to inhibit organic growth in the water retaining structures/equipment such as clarifiers, storage tanks, cooling towers, condenser tubes & piping etc. Chlorine gas is very hazardous and may prove fatal in case of leakage. In the interest of public safety the chlorine dozing system is now being replaced by Chlorine Dioxide (ClO_2) system, which is much safer and less hazardous than chlorine. In the proposed scheme Clo_2 shall be produced on site by use of commercial grade HCl and Sodium Chlorite and accordingly avoids handling and storage risk. Further, at Kudgi NTPC project Department of Factories, Boiler, Industrial Safety and Health, Government of Karnataka has asked the Petitioner to consider replacement of highly hazardous gas Chlorination system with ClO2 system. SPCB, Odisha while issuing consent to establish in case of Darlipalli Station has asked the Petitioner, to explore the possibility of installing ClO_2 system instead of Chlorine gas system. The Petitioner has further submitted that for safety of public, the Petitioner is replacing the Chlorination system with ClO2 system.

18. The Respondent, MPPMCL has submitted that the claim of the Petitioner under Regulation 26(1)(b) and Regulation 26(1)(d) of the 2019 Tariff Regulations, is unjustified as there is no incidence of change in law or compliance of any existing law. It has also submitted that Regulation 26(1)(d) is applicable only for security and safety related expenses, if advised or directed by statutory authorities, for which the Petitioner has not submitted any documentary proof. The Respondent has further submitted that the directions of authority of State of Karnataka, cannot be applicable to the State of Madhya Pradesh as 'change in law'. In response, the Petitioner has clarified that that there is no advisory of statutory authority with regard to the expenditure claimed towards Clo_2 package. It has submitted that the "Draft Safety, Health and Working Conditions Code 2018" put up by the Ministry of Labour and Employment, in March 2018 inviting comments/suggestions of various stakeholders, wherein the responsibilities of various faculties of industries/factories were mentioned, including the employer. The Petitioner has stated that as a responsible employer, it has taken cognizance of the requirement of Clo_2 package for safe handling of Chlorine gas. The Petitioner has added that the "The Occupational Safety, Health and Working Conditions Code, 2020" was notified by Ministry of Law & Justice, Government of India vide notification dated 29.9.2020 and installation of the said system is in line with the duties necessitated by Clause 6(1)(a) and 6(1)(d) of the said Code.

19. We have considered the matter. The Petitioner has claimed additional capitalization of the expenditure under Regulation 26(1)(b) of the 2019 Tariff Regulations. The Petitioner has submitted that for Kudgi project of the Petitioner, the Government of Karnataka had directed the Petitioner to replace the highly hazardous gas chlorination system with Clo_2 system. It is observed that the letter addressed by the

Directorate of Factories, Industrial Safety & Health State Government of Karnataka to the GM, NTPC pertains to site clearance of Kudgi Super Thermal Power station of the Petitioner. This letter can in no manner be termed as a 'change in law' event in respect of this generating station warranting capitalization of the expenditure. Also, the request of SPCB, Odisha to the Petitioner, to explore the possibility of installing ClO_2 system for Darlipalli station, cannot be considered, for this generating station, for grant of relief to the Petitioner. As regards the claim of the Petitioner under Regulation 26(1)(d) of the 2019 Tariff Regulations, we find no specific direction or advice from any Governmental or statutory authorities as regards the requirement of this item i.e. (chlorine dozing system to be replaced by Chlorine Dioxide (ClO_2) system) for safety and security of the generating station. Similar claim of the Petitioner in respect of tariff petitions for other generating stations of the Petitioner for the 2019- 24 tariff period has not been allowed by the Commission in its various orders. In view of this, the projected additional capital expenditure claimed by the Petitioner is not allowed.

20. Based on above, the projected additional capital expenditure allowed for the 2019-24 tariff period, is summarized below:

(Rs. in lakh)

	2019-20	**2020-21**	**2021-22**	**2022-23**	**2023-24**
Works within original scope, change-in-law etc. eligible for ROE at normal Rate					
Ash Dyke Raising	0.00	650.00	0.00	1000.00	0.00
Dry Fly Ash Extraction System	0.00	5000.00	0.00	0.00	0.00
Clo_2 Package	0.00	0.00	0.00	0.00	0.00
Additional capital expenditure allowed (on projected basis)	**0.00**	**5650.00**	**0.00**	**1000.00**	**0.00**

Capital Cost

21. Based on the above, the capital cost allowed for generating station for the 2019-24 tariff period is as under:

(Rs. in lakh)

	2019-20	2020-21	2021-22	2022-23	2023-24
Opening Capital Cost	925981.22	925981.22	931631.22	931631.22	932631.22
Add: Additional capital expenditure	0.00	5650.00	0.00	1000.00	0.00
Closing Capital Cost	**925981.22**	**931631.22**	**931631.22**	**932631.22**	**932631.22**
Average Capital Cost	925981.22	928806.22	931631.22	932131.22	932631.22

Debt Equity Ratio

22. Regulation 18 of the 2019 Tariff Regulations provides as under:

"18. Debt-Equity Ratio: (1) For a new projects, the debt-equity ratio of 70:30 as on date of commercial operation shall be considered. If the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan:

Provided that:

i. where equity actually deployed is less than 30% of the capital cost, actual equity shall be considered for determination of tariff:

ii. the equity invested in foreign currency shall be designated in Indian rupees on the date of each investment:

iii. any grant obtained for the execution of the project shall not be considered as a part of capital structure for the purpose of debt: equity ratio.

Explanation.-The premium, if any, raised by the generating company or the transmission licensee, as the case may be, while issuing share capital and investment of internal resources created out of its free reserve, for the funding of the project, shall be reckoned as paid up capital for the purpose of computing return on equity, only if such premium amount and internal resources are actually utilised for meeting the capital expenditure of the generating station or the transmission system.

(2)The generating company or the transmission licensee, as the case may be, shall submit the resolution of the Board of the company or approval of the competent authority in other cases regarding infusion of funds from internal resources in support of the utilization made or proposed to be made to meet the capital expenditure of the generating station or the transmission system including communication system, as the case may be.

(3) In case of the generating station and the transmission system including communication system declared under commercial operation prior to 1.4.2019, debt: equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2019 shall be considered:

Provided that in case of generating station or a transmission system including communication system which has completed its useful life as on or after 1.4.2019, if the equity actually deployed as on 1.4.2019 is more than 30% of the capital cost, equity in excess of 30% shall not be taken into account for tariff computation;

Provided further that in case of projects owned by Damodar Valley Corporation, the debt: equity ratio shall be governed as per sub-clause (ii) of clause (2) of Regulation 72 of these regulations.

(4) In case of the generating station and the transmission system including communication system declared under commercial operation prior to 1.4.2019, but where debt: equity ratio has not been determined by the Commission for determination

of tariff for the period ending 31.3.2019, the Commission shall approve the debt: equity ratio in accordance with clause (1) of this Regulation.

(5) Any expenditure incurred or projected to be incurred on or after 1.4.2019 as may be admitted by the Commission as additional capital expenditure for determination of tariff, and renovation and modernization expenditure for life extension shall be serviced in the manner specified in clause (1) of this Regulation.

23. The Petitioner has claimed gross normative loan of Rs.648478.05 lakh and equity of Rs.277919.16 lakh as on 1.4.2019 and has considered debt: equity ratio of 70:30 for funding of projected additional capital expenditure claimed during the 2019-24 tariff period. The gross normative loan and equity of the generating station, as on 31.3.2019 approved by order dated 14.4.2022 in Petition No. 240/GT/2020 is Rs.648186.86 lakh (i.e. 70% of the admitted capital cost as on 31.3.2019) and Rs.277794.36 lakh (i.e. 30% of the admitted capital cost as on 31.3.2019), respectively, which has been retained, as on 1.4.2019. Further, the projected additional capital expenditure approved above, has been allocated to debt and equity in the ratio of 70:30. Accordingly, the debt: equity ratio is worked out as under:

	Capital cost as on 1.4.2019 ***(Rs. in lakh)***	**(%)**	**Additional capital expenditure** ***(Rs. in lakh)***	**(%)**	**Total cost as on 31.3.2024** ***(Rs. in lakh)***	**(%)**
Debt	648186.86	70.00	4655.00	70.00	652841.86	70.00
Equity	277794.36	30.00	1995.00	30.00	279789.36	30.00
Total	**925981.22**	**100.00**	**6650.00**	**100.00**	**932631.22**	**100.00**

Return on Equity

24. Regulation 30 of the 2019 Tariff Regulations provides as under:

"30. Return on Equity:

(1) Return on equity shall be computed in rupee terms on the equity base determined in accordance with Regulation 18 of these regulations.

(2) Return on equity shall be computed at the base rate of 15.50% for thermal generating stations transmission system including communication system and run of river hydro generating station and at the base rate of 16.50% for the storage type hydro generating stations including pumped storage hydro generating stations and run of river generating station with pondage:

Provided that return on equity in respect of additional capitalization after cut-off date beyond the original scope excluding additional capitalization due to Change in Law shall

be computed at the weighted average rate of interest on actual loan portfolio of the generating station or the transmission system;

Provided further that:

(i) In case of a new project the rate of return on equity shall be reduced by 1.00% for such period as may be decided by the Commission if the generating station or transmission system is found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO) or Free Governor Mode Operation (FGMO) data telemetry communication system up to load dispatch centre or protection system based on the report submitted by the respective RLDC;

(ii) in case of existing generating station as and when any of the requirements under (i) above of this Regulation are found lacking based on the report submitted by the concerned RLDC rate of return on equity shall be reduced by 1.00% for the period for which the deficiency continues;

(iii) in case of a thermal generating station with effect from 1.4.2020:

(a) rate of return on equity shall be reduced by 0.25% in case of failure to achieve the ramp rate of 1% per minute;

(b) an additional rate of return on equity of 0.25% shall be allowed for every incremental ramp rate of 1% per minute achieved over and above the ramp rate of 1% per minute subject to ceiling of additional rate of return on equity of 1.00%:

Provided that the detailed guidelines in this regard shall be issued by National Load Dispatch Centre by 30.6.2019.

25. Regulation 31 of the 2019 Tariff Regulations provides as under:

"31. Tax on Return on Equity:

(1) The base rate of return on equity as allowed by the Commission under Regulation 30 of these regulations shall be grossed up with the effective tax rate of the respective financial year. For this purpose the effective tax rate shall be considered on the basis of actual tax paid in respect of the financial year in line with the provisions of the relevant Finance Acts by the concerned generating company or the transmission licensee as the case may be. The actual tax paid on income from other businesses including deferred tax liability (i.e. income from business other than business of generation or transmission as the case may be) shall be excluded for the calculation of effective tax rate.

(2) Rate of return on equity shall be rounded off to three decimal places and shall be computed as per the formula given below:

Rate of pre-tax return on equity = Base rate / (1-t)

Where "t" is the effective tax rate in accordance with Clause (1) of this Regulation and shall be calculated at the beginning of every financial year based on the estimated profit and tax to be paid estimated in line with the provisions of the relevant Finance Act applicable for that financial year to the company on pro-rata basis by excluding the income of non-generation or non-transmission business as the case may be and the corresponding tax thereon. In case of generating company or transmission licensee paying Minimum Alternate Tax (MAT) "t" shall be considered as MAT rate including surcharge and cess.

Illustration-

(i) In case of the generating company or the transmission licensee paying Minimum Alternate Tax (MAT) @ 21.55% including surcharge and cess:

Rate of return on equity = 15.50/(1-0.2155) = 19.758%

(ii) In case of a generating company or the transmission licensee paying normal corporate tax including surcharge and cess:

(a) Estimated Gross Income from generation or transmission business for FY 2019-20 is Rs 1000 crore;

(b) Estimated Advance Tax for the year on above is Rs 240 crore;

(c) Effective Tax Rate for the year 2019-20 = Rs 240 Crore/Rs 1000 Crore = 24%;

(d) Rate of return on equity = 15.50/ (1-0.24) = 20.395%.

(3) The generating company or the transmission licensee as the case may be shall true up the grossed up rate of return on equity at the end of every financial year based on actual tax paid together with any additional tax demand including interest thereon duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2019-24 on actual gross income of any financial year. However penalty if any arising on account of delay in deposit or short deposit of tax amount shall not be claimed by the generating company or the transmission licensee as the case may be. Any under-recovery or over-recovery of grossed up rate on return on equity after truing up shall be recovered or refunded to beneficiaries or the long term transmission customers as the case may be on year to year basis."

26. The Petitioner has claimed Return on Equity (ROE) considering base rate of 15.50% and effective tax rate of 17.472% for the 2019-24 tariff period. Since, the additional capital expenditure approved above, is within the original scope of work, the same has been considered for the purpose of tariff. Accordingly, ROE has been worked out as under:

(Rs. in lakh)

	2019-20	**2020-21**	**2021-22**	**2022-23**	**2023-24**
Normative Equity – Opening	277794.36	277794.36	279489.36	279489.36	279789.36
Addition of Equity due to additional capital expenditure	0.00	1695.00	0.00	300.00	0.00
Normative Equity – Closing	277794.36	279489.36	279489.36	279789.36	279789.36
Average Normative Equity	277794.36	278641.86	279489.36	279639.36	279789.36
Return on Equity (Base Rate)	15.500%	15.500%	15.500%	15.500%	15.500%
Effective Tax Rate	17.472%	17.472%	17.472%	17.472%	17.472%
Rate of Return on Equity (Pre-tax)	18.782%	18.782%	18.782%	18.782%	18.782%
Return on Equity (Pre-tax) - (annualized)	**52175.34**	**52334.51**	**52493.69**	**52521.86**	**52550.04**

Interest on loan

27. Regulation 32 of the 2019 Tariff Regulations provides as under:

"32. Interest on loan capital: (1) The loans arrived at in the manner indicated in Regulation 18 of these regulations shall be considered as gross normative loan for calculation of interest on loan.

(2) The normative loan outstanding as on 1.4.2019 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2019 from the gross normative loan.

(3) The repayment for each of the year of the tariff period 2019-24 shall be deemed to be equal to the depreciation allowed for the corresponding year/period. In case of de-capitalization of assets, the repayment shall be adjusted by taking into account cumulative repayment on a pro rata basis and the adjustment should not exceed cumulative depreciation recovered upto the date of de-capitalization of such asset.

(4) Notwithstanding any moratorium period availed by the generating company or the transmission licensee, as the case may be, the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the depreciation allowed for the year or part of the year.

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

Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered:

Provided further that if the generating station or the transmission system, as the case may be, does not have actual loan, then the weighted average rate of interest of the generating company or the transmission licensee as a whole shall be considered.

(6) The interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.

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

28. The Petitioner has claimed tariff considering weighted average rate of interest (WAROI) of 8.3044% in 2019-20, 8.5885% in 2020-21, 8.7218% in 2021-22, 8.7333% in 2022-23 and 8.7418% in 2023-24. This has been considered and Interest on loan has been worked out as under:

i) The gross normative loan amounting to Rs.648186.86 lakh has been retained as on 1.4.2019;

ii) Cumulative repayment of Rs.321337.43 lakh as on 31.3.2019 as considered in order dated 14.4.2022 in Petition No. 240/GT/2020 has been retained as on 1.4.2019;

iii) Accordingly, the net normative opening loan as on 1.4.2019 works out to Rs.326849.44 lakh;

iv) Addition to normative loan on account of additional capital expenditure approved above has been considered;

v) Depreciation allowed has been considered as repayment of normative loan during the respective year of the 2019-24 tariff period;

29. Necessary calculation of interest of loan is as under:

(Rs. in lakh)

		2019-20	**2020-21**	**2021-22**	**2022-23**	**2023-24**
A	Gross opening loan	648186.86	648186.86	652141.86	652141.86	652841.86
B	Cumulative repayment of loan up to previous year	321337.43	368784.70	416376.73	464113.52	511875.92
C	Net Loan Opening	326849.44	279402.16	235765.13	188028.35	140965.94
D	Addition on account of additional capital expenditure	0.00	3955.00	0.00	700.00	0.00
E	Repayment of loan during the year	47447.28	47592.03	47736.78	47762.40	47788.02
F	Net Loan Closing	279402.16	235765.13	188028.35	140965.94	93177.92
G	Average Loan	303125.80	257583.64	211896.74	164497.14	117071.93
H	Weighted Average Rate of Interest on Loan	8.3044%	8.5885%	8.7218%	8.7333%	8.7418%
I	**Interest on Loan**	**25172.78**	**22122.57**	**18481.21**	**14366.03**	**10234.19**

Depreciation

30. Regulation 33 of the 2019 Tariff Regulations provides as under:

"33. Depreciation: (1) Depreciation shall be computed from the date of commercial operation of a generating station or unit thereof or a transmission system or element thereof including communication system. In case of the tariff of all the units of a generating station or all elements of a transmission system including communication system for which a single tariff needs to be determined, the depreciation shall be computed from the effective date of commercial operation of the generating station or the transmission system taking into consideration the depreciation of individual units:

Provided that effective date of commercial operation shall be worked out by considering the actual date of commercial operation and installed capacity of all the units of the generating station or capital cost of all elements of the transmission system, for which single tariff needs to be determined.

(2) The value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission. In case of multiple units of a generating station or multiple elements of a transmission system, weighted average life for the generating station of the transmission system shall be applied. Depreciation shall be chargeable from the first year of commercial operation. In case of commercial operation of the asset for part of the year, depreciation shall be charged on pro rata basis.

(3) The salvage value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the capital cost of the asset:

Provided that the salvage value for IT equipment and software shall be considered as NIL and 100% value of the assets shall be considered depreciable;

Provided further that in case of hydro generating stations, the salvage value shall be as

provided in the agreement, if any, signed by the developers with the State Government for development of the generating station:

Provided also that the capital cost of the assets of the hydro generating station for the purpose of computation of depreciated value shall correspond to the percentage of sale of electricity under long-term power purchase agreement at regulated tariff:

Provided also that any depreciation disallowed on account of lower availability of the generating station or unit or transmission system as the case may be, shall not be allowed to be recovered at a later stage during the useful life or the extended life.

(4) Land other than the land held under lease and the land for reservoir in case of hydro generating station shall not be a depreciable asset and its cost shall be excluded from the capital cost while computing depreciable value of the asset.

(5) Depreciation shall be calculated annually based on Straight Line Method and at rates specified in Appendix-I to these regulations for the assets of the generating station and transmission system:

Provided that the remaining depreciable value as on 31st March of the year closing after a period of 12 years from the effective date of commercial operation of the station shall be spread over the balance useful life of the assets.

(6) In case of the existing projects, the balance depreciable value as on 1.4.2019 shall be worked out by deducting the cumulative depreciation as admitted by the Commission up to 31.3.2019 from the gross depreciable value of the assets.

(7) The generating company or the transmission licensee, as the case may be, shall submit the details of proposed capital expenditure five years before the completion of useful life of the project along with justification and proposed life extension. The Commission based on prudence check of such submissions shall approve the depreciation on capital expenditure.

(8) In case of de-capitalization of assets in respect of generating station or unit thereof or transmission system or element thereof, the cumulative depreciation shall be adjusted by taking into account the depreciation recovered in tariff by the de-capitalized asset during its useful services."

31. The cumulative depreciation and freehold land amounting to Rs.321337.43 lakh and Rs.3552.08 lakh, as on 31.3.2019, as considered in order dated 14.4.2022 in Petition No. 240/GT/2020, has been considered, as on 1.4.2019. The Petitioner has not considered the cost of IT equipment and software, while calculating the depreciable value and hence, the same is considered as 'nil'. Accordingly, the balance depreciable value, before providing depreciation for the year 2019-20, works out to Rs.508848.80 lakh. Since, the elapsed life of the generating station as on 1.4.2019 (i.e. 7.01 years) is less than 12 years from the effective station COD of 29.3.2012, depreciation has been

calculated by considering the weighted average rate of depreciation (WAROD) of 5.124% as claimed by the Petitioner. Necessary calculations in support of depreciation are as under:

(Rs. in lakh)

		2019-20	**2020-21**	**2021-22**	**2022-23**	**2023-24**
A	Average Capital Cost	925981.22	928806.22	931631.22	932131.22	932631.22
B	Value of freehold land included above	3552.08	3552.08	3552.08	3552.08	3552.08
C	Depreciable value [(A-B) x 0.9]	830186.23	832728.73	835271.23	835721.23	836171.23
D	Remaining aggregate depreciable value at the beginning of the year [(C) – (Cumulative depreciation at the end of the preceding period)]	508848.80	463944.02	418894.49	371607.71	324295.30
E	No. of completed years at the beginning of the year	7.01	8.01	9.01	10.01	11.01
F	Balance useful life at the beginning of the year (25 – E)	17.99	16.99	15.99	14.99	13.99
G	WAROD	5.124%	5.124%	5.124%	5.124%	5.124%
H	**Depreciation during the year (A x G)**	47447.28	47592.03	47736.78	47762.40	47788.02
I	Cumulative depreciation at the end [(H) + (Cumulative depreciation at the end of the preceding period)]	368784.70	416376.73	464113.52	511875.92	559663.95

O&M Expenses

32. The O&M expenses claimed by the Petitioner is as under:

(Rs. in lakh)

	2019-20	**2020-21**	**2021-22**	**2022-23**	**2023-24**
Normative O&M expenses claimed under Regulation 35(1)(1) of the 2019 Tariff Regulations	40114.80	41520.60	42985.80	44490.60	46054.80
O&M expenses under Regulation 35(1)(6) of the 2019 Tariff Regulations:					
- Water Charges	7831.85	8105.96	8389.67	8683.31	8987.22
- Security Expenses	1956.27	2013.92	2073.30	2134.46	2197.46
- Capital Spares consumed	0.00	0.00	0.00	0.00	0.00
Total O&M Expenses	**49902.91**	**51640.48**	**53448.77**	**55308.37**	**57239.48**

33. The normative O&M expenses claimed by the Petitioner, in terms of the Regulation 35(1)(1) of the 2019 Tariff Regulations is in order and is therefore allowed.

Water Charges

34. The first proviso to Regulation 35(1)(6) of the 2019 Tariff Regulations provides as under:

> *"35(1)(6) The Water Charges, Security Expenses and Capital Spares for thermal generating stations shall be allowed separately after prudence check:*
>
> *Provided that water charges shall be allowed based on water consumption depending upon type of plant and type of cooling water system, subject to prudence check. The details regarding the same shall be furnished along with the petition;*
>
> *xxxxx."*

35. The actual water charges claimed by the Petitioner in Petition No. 240/GT/2020 for the 2014-19 tariff period and allowed by the Commission in order dated 14.4.2022 are as under:

(Rs. in lakh)

2014-19 Tariff Period	**2014-15**	**2015-16**	**2016-17**	**2017-18**	**2018-19**
Water charges claimed	8694.72	8881.93	9194.46	9853.12	7566.85
Water charges allowed	8694.72	8881.93	9194.46	9853.12	7566.85

36. In terms of first proviso to Regulation 35(1)(6) of the 2019 Tariff Regulations, water charges shall be allowed separately based on the water consumption depending upon the type of plant, type of cooling water system etc., subject to prudence check. The details in respect of water charges for the 2019-24 tariff period as furnished by the Petitioner is as under:

Description	**Remarks**
Type of plant	Coal based Thermal Power Plant
Type of cooling water system	Closed Circuit Cooling System
Yearly allocation of water*	# 120 MCM
Consumption of water*	78.38 MCM
Rate of water charges*	Rs.12.25/m^3
Total water charges**	Rs.7567 lakh

** as per truing up petition filed for the instant station for Sipat-I & Sipat-II;*

*** for Sipat-I for 2018-19.*

 # as per truing up Petition filed for 2014-19 tariff period, it is 93 MCM for 2018-19.

37. For the 2019-24 tariff period, the Petitioner has claimed water charges, on the basis of water charges claimed for 2018-19 with an annual escalation of 3.5%, as under:

(Rs. in lakh)

2019-20	2020-21	2021-22	2022-23	2023-24
7831.85	8105.96	8389.67	8683.31	8987.22

38. The Respondent MSEDCL has submitted that the Petitioner has not provided any valid justification towards consideration of escalation of 3.5% every year, over the water charges of 2018-19 and as the same is without any administrative or scientific proof, ought to be disallowed. The Respondent, CSPDCL has submitted that water charges of Rs.6834.00 lakh, computed, based on maximum water consumption limits of 3.5 m^3/MWh as per Ministry of Environment, Forest and Climate Change (MOEFCC) Notification dated 7.12.2015, may be considered for 2019-24 tariff period, without any escalation, subject to adjustment as per actual generation limited to 3.5 m^3/MWh. Similar arguments have been made by the Respondent, MPPMCL, which recommended for admissibility of Rs.6347.00 lakh for 2019-20 and for the period 2021-24 and Rs.6797.00 lakh for 2020-21. The Petitioner in its rejoinder has submitted that water charges claimed are on estimated basis, subject to true up, based on actual water charges paid for 2018-19, with an escalation @ 3.5%, as considered for O&M expenses, in the 2019 Tariff Regulations. The Petitioner has also submitted that water charges paid depends upon actual water consumption, as well as contracted water quantity, in line with the water agreement as signed with the State Water Resources Department. The Petitioner has further submitted that water is the raw material for any thermal generating plant like fuel and the generator has to ensure water and coal corresponding to the ex-bus MCR capacity or at least the normative ex-bus capacity of

the station, so that it can offer its availability for supply of energy to the respective beneficiaries, as per their entitlements. As regards water, it is arranged, taking into account the peak requirements of the units, in different season, and the maximum demand envisaged. The Petitioner has added that the calculations indicated by Respondent MPPMCL are based on the actual generation of the station that varies month-on-month, based on seasonal variations, and demand of various beneficiaries. However, the petitioner has stated that it has to arrange for water corresponding to the maximum availability of the station i.e. at the MCR/Installed capacity.

39. We have examined the matter. It is observed that the rate of water charges considered by the Petitioner for the 2019-24 tariff period, is same as that considered for the 2014-19 tariff period. The actual consumption of water as shown by the Petitioner for the year 2018-19, is on a combined basis for both the Stages of the generating station, and is well within the maximum water consumption limits of 3.5 m^3/MWh as per MOEFCC Notification dated 7.12.2015. Accordingly, for the present, we are not inclined to allow the annual escalation of 3.5% as claimed by the Petitioner. However, we allow the actual water charges of Rs.7566.85 lakh (as allowed for the year 2018-19 in order dated 14.4.2022 in Petition No. 240/GT/2020) for each year of the 2019-24 tariff period, subject to truing up. Accordingly, the water charges claimed and allowed, for the 2019-24 tariff period is as under:

(Rs. in lakh)

	2019-20	**2020-21**	**2021-22**	**2022-23**	**2023-24**
Water charges claimed	7831.85	8105.96	8389.67	8683.31	8987.22
Water charges allowed	**7566.85**	**7566.85**	**7566.85**	**7566.85**	**7566.85**

Security Expenses

40. The second proviso to Regulation 35(1)(6) of the 2019 Tariff Regulations provides as under:

> *"35(1)(6) The Water, Security Expenses and Capital Spares for thermal generating stations shall be allowed separately and after prudence check:*
>
> *xxxx:*
>
> *Provided further that the generating station shall submit the assessment of the security requirement and estimated expenses;*
>
> *xxxxx."*

41. The security expenses claimed by the Petitioner for the 2019-24 tariff period is as under:

(Rs. in lakh)

2019-20	2020-21	2021-22	2022-23	2023-24
1956.27	2013.92	2073.30	2134.46	2197.46

42. The Petitioner has submitted that security expenses has been claimed, based on the estimated expenses for the 2019-24 tariff period and shall be subject to retrospective adjustment, based on actuals, at the time of truing up.

43. We have examined the matter. The Petitioner has claimed projected security expenses for the 2019-24 tariff period, but has not furnished the assessment of security requirement, as required, under the provisions of the 2019 Tariff Regulations. Accordingly, the Petitioner is directed to furnish the requisite details for carrying out the prudence check of security expenses, at the time of truing up of tariff. For the present, the projected security expenses for the 2019-24 tariff period has been considered for the purpose of tariff. Accordingly, the security expenses claimed and allowed, for the generating station for the 2019-24 tariff period is under:

(Rs. in lakh)

	2019-20	2020-21	2021-22	2022-23	2023-24
Security expenses claimed	1956.27	2013.92	2073.30	2134.46	2197.46
Security expenses allowed	1956.27	2013.92	2073.30	2134.46	2197.46

Capital Spares

44. The Petitioner has not claimed capital spares during the 2019-24 tariff period, but has submitted that the same shall be claimed based on actual consumption of spares at the time of truing up, in terms of proviso to Regulation 35(1)(6) of the 2019 Tariff Regulations. Accordingly, the same has not been considered in this order. The claim of the Petitioner, if any, towards capital spares, at the time of truing up, shall be considered on merits, after prudence check.

45. Accordingly, the total O&M expenses including water charges and security expenses, as claimed by the Petitioner and allowed for the 2019-24 tariff period is summarized as under:

(Rs. in lakh)

	2019-20	2020-21	2021-22	2022-23	2023-24
Normative O&M expenses claimed under Regulation 35(1)(1) of the 2019 Tariff Regulations **(a)**	40114.80	41520.60	42985.80	44490.60	46054.80
Normative O&M expenses allowed under Regulation 35(1)(1) of the 2019 Tariff Regulations (b)	**40114.80**	**41520.60**	**42985.80**	**44490.60**	**46054.80**
Water Charges claimed under Regulation 35(1)(6) of the 2019 Tariff Regulations **(c)**	7831.85	8105.96	8389.67	8683.31	8987.22
Water Charges allowed under Regulation 35(1)(6) of the 2019 Tariff Regulations (d)	**7566.85**	**7566.85**	**7566.85**	**7566.85**	**7566.85**
Security Expenses claimed under Regulation 35(1)(6) of the 2019 Tariff Regulations **(e)**	1956.27	2013.92	2073.30	2134.46	2197.46
Security Expenses allowed under Regulation 35(1)(6) of the 2019 Tariff Regulations (f)	**1956.27**	**2013.92**	**2073.30**	**2134.46**	**2197.46**
Total O&M expenses claimed under Regulation 35 of the 2019 Tariff Regulations (a + c + e)	49902.91	51640.48	53448.77	55308.37	57239.48
Total O&M expenses allowed under Regulation 35 of the 2019 Tariff Regulations (b + d + f)	**49637.92**	**51101.37**	**52625.95**	**54191.91**	**55819.11**

Additional expenditure on Emission Control System

46. The Petitioner has submitted that it is in the process of installing Emission Control Systems (ECS) in compliance to the revised emission standards, as notified by the MOEFCC vide notification dated 7.12.2015, as amended. It is however noticed that the Petitioner had filed Petition No. 67/MP/2020, for approval of additional expenditure on installation of various Emission Control Systems at this generating station, in compliance of MOEF&CC notification dated 7.12.2015 and the Commission by a common order dated 30.7.2021 had disposed of the said petition, with certain observations. Therefore, we are not deciding this issue in this petition. The claim of the Petitioner for additional expenditure on emission control system shall therefore be guided by order dated 30.7.2021 in Petition No. 67/MP/2020.

Additional expenditure towards Fly ash transportation

47. The Petitioner vide affidavit dated 12.5.2021 has claimed the recovery of additional expenditure of Rs.256.00 lakh in 2019-20 and Rs.2525.00 lakh in 2020-21 from the beneficiaries, on account of ash transportation charges, after adjusting the revenue earned from sale of ash. We, however, note that the Petitioner has filed Petition No. 205/MP/2021 seeking reimbursement of fly ash transportation charges in respect of its generating stations. The Petitioner has raised similar issues with regard to fly ash transportation in that petition arguing higher liability of the Respondents therein on account of interest burden and cash flow issues that may be faced by the Petitioner and the Respondents have raised the issue of 'maintainability' of the said petition. However, the Commission vide its order dated 28.5.2022 has 'admitted' the petition and directed the parties to complete their pleadings in the matter, on merits. The

reimbursement of charges towards fly ash transportation shall, therefore, be governed by the final decision of the Commission in Petition No. 205/MP/2021.

Operational Norms

48. The Petitioner has considered the following norms of operation:

Normative Annual Plant Availability Factor (NAPAF) (%)	85
Heat Rate (kCal/kwh)	2317.37
Auxiliary Power Consumption (%)	6.25
Specific Oil Consumption (ml/kwh)	0.50

Normative Annual Plant Availability Factor

49. Regulation 49(A) of the 2019 Tariff Regulations provides as under:

> *"**(A)** Normative Annual Plant Availability Factor (NAPAF)*
> *(a) For all thermal generating stations, except those covered under clauses (b), (c), (d), & (e) - 85%;*
> *xxx."*

50. In terms of Regulation 49(A)(a) of the 2019 Tariff Regulations, the Petitioner has considered the Normative Annual Plant Availability Factor (NAPAF) of 85% for the 2019-24 tariff period, and the same is allowed.

Gross Station Heat Rate (kCal/kWh)

51. Regulation 49(C)(b)(i) of 2019 Tariff Regulations provides as under:

> *"(i) For Coal-based and lignite-fired Thermal Generating Stations:*
> *1.05 X Design Heat Rate (kCal/kWh)*
> *Where the Design Heat Rate of a generating unit means the unit heat rate guaranteed by the supplier at conditions of 100% MCR, zero percent make up, design coal and design cooling water temperature/back pressure.*
> *Provided that the design heat rate shall not exceed the following maximum design unit heat rates depending upon the pressure and temperature ratings of the units:*

Pressure Rating (Kg/cm2)	*150*	*170*	*170*
SHT/RHT (^{0}C)	*535/535*	*537/537*	*537/565*
Type of BFP	*Electrical Driven*	*Turbine Driven*	*Turbine Driven*
Max Turbine Heat Rate (kCal/kWh)	*1955*	*1950*	*1935*
Min. Boiler Efficiency			
Sub-Bituminous Indian Coal	*0.86*	*0.86*	*0.86*
Bituminous Imported Coal	*0.89*	*0.89*	*0.89*

Max. Design Heat Rate (kCal/kWh)			
Sub-Bituminous Indian Coal	*2273*	*2267*	*2250*
Bituminous Imported Coal	*2197*	*2191*	*2174*

Pressure Rating (Kg/cm2)	*247*	*247*	*270*	*270*
SHT/RHT (^{0}C)	*537/565*	*565/593*	*593/593*	*600/600*
Type of BFP	*Turbine Driven*	*Turbine Driven*	*Turbine Driven*	*Turbine Driven*
Max Turbine Heat Rate (kCal/kWh)	*1900*	*1850*	*1810*	*1800*
Min. Boiler Efficiency				
Sub-Bituminous Indian Coal	*0.86*	*0.86*	*0.865*	*0.865*
Bituminous Imported Coal	*0.89*	*0.89*	*0.895*	*0.895*
Max. Design Heat Rate (kCal/kWh)				
Sub-Bituminous Indian Coal	*2222*	*2151*	*2105*	*2081*
Bituminous Imported Coal	*2135*	*2078*	*2034*	*2022*

Provided further that in case pressure and temperature parameters of a unit are different from above ratings, the maximum design heat rate of the unit of the nearest class shall be taken:

Provided also that where heat rate of the unit has not been guaranteed but turbine cycle heat rate and boiler efficiency are guaranteed separately by the same supplier or different suppliers, the design heat rate of the unit shall be arrived at by using guaranteed turbine cycle heat rate and boiler efficiency:

Provided also that where the boiler efficiency is lower than 86% for Subbituminous Indian coal and 89% for bituminous imported coal, the same shall be considered as 86% and 89% for Sub-bituminous Indian coal and bituminous imported coal respectively, for computation of station heat rate:

Provided also that maximum turbine cycle heat rate shall be adjusted for type of dry cooling system:

Provided also that in case of coal based generating station if one or more generating units were declared under commercial operation prior to 1.4.2019, the heat rate norms for those generating units as well as generating units declared under commercial operation on or after 1.4.2019 shall be lowest of the heat rate norms considered by the Commission during tariff period 2014-19 or those arrived at by above methodology or the norms as per the sub-clause (C)(a)(i) of this Regulation:

Provided also that in case of lignite-fired generating stations (including stations based on CFBC technology), maximum design heat rates shall be increased using factor for moisture content given in sub-clause (C)(a)(iv) of this Regulation:

Provided also that for Generating stations based on coal rejects, the Commission shall approve the Station Heat Rate on case to case basis.

Note: In respect of generating units where the boiler feed pumps are electrically operated, the maximum design heat rate of the unit shall be 40 kCal/kWh lower than the maximum design heat rate of the unit specified above with turbine driven Boiler Feed Pump."

52. The Petitioner has considered Gross Station Heat Rate (GSHR) of 2317.38 kCal/kWh, based on following parameters:

Main Steams Pressure at Turbine inlet	(kg/Cm^2)	247
Main Steam Temperature at Turbine inlet	(^oC)	537
Reheat Steam Temperature at Turbine inlet	(^oC)	565
Type of BFP	(No.)	Steam Driven
Guaranteed Design Gross Turbine Cycle Heat Rate	$(kCal/kWh)^3$	1904
Design / Guaranteed Boiler Efficiency	(%)	86.27

53. It is observed that the Petitioner, while computing the Station Heat Rate, has failed to take note that the Design Heat Rate of a generating unit is required to be computed, based on the heat rate guaranteed by the supplier, at conditions of 100% MCR, zero percent make up, design coal and design cooling water temperature/back pressure. Therefore, the GSHR is required to be recomputed. Accordingly, considering the guaranteed design gross turbine cycle heat rate of 1904 kCal/kWh and boiler efficiency of 86.27% for the generating station, the unit design heat rate is worked out as 2207.02 kCal/kWh (i.e. 1904 / 0.8627).

54. Considering the design parameters of the generating station, for the pressure rating of 247 Kg/cm^2, super heater Temperature of 537^oC and re-heater temperature of 565^0C, Max Turbine Heat rate of 1900.00 kCal/kWh and boiler efficiency of 86%, the maximum design unit heat rate is 2222 kCal/kWh, as per the 2019 Tariff Regulations. The design heat rate of 2207.02 kCal/kWh, is less than the ceiling design heat rate of 2222 kCal/kWh, as provided in the 2019 Tariff Regulations. However, in terms of the above regulations, 1900 kCal/kWh is the maximum Turbine Heat Rate, and the Petitioner has furnished the same as 1904 kcal/kWh. Further, where the boiler efficiency is below 86% for Sub-bituminous Indian coal, the same shall be considered as 86%. Therefore, the Turbine Cycle Heat rate and boiler efficiency has been considered as 1900 kcal/kWh and 86.27% respectively, for computation of design heat rate. The design heat rate of the generating station works out as 2202.39 kCal/kWh (i.e., 1900 /

0.8627), which is within the ceiling design heat rate of 2222 kCal/kWh. Hence, the GSHR has been worked out as 2312.51 kCal/kWh = (1.05 x 2202.39) and the same has been considered for the purpose of tariff.

Secondary Fuel Oil Consumption

55. Regulation 49(D)(a) of 2019 Tariff Regulations provides as under:

"(a) For Coal-based generating stations other than at (c) below: 0.50 ml/kWh"

56. In terms of Regulation 49(D)(a) of the 2019 Tariff Regulations, the Petitioner has considered secondary fuel oil consumption of 0.50 ml/kWh during the 2019-24 tariff period and hence, the same is allowed.

Auxiliary Power Consumption

57. Regulation 49(E)(a) of 2019 Tariff Regulations provides as under:

"(a) For Coal-based generating stations except at (b) below:

S. No.	***Generating Station***	***With Natural Draft cooling tower or without cooling tower***
(i)	*200 MW series*	*8.50%*
(ii)	*300 MW and above*	
	Steam driven boiler feed pumps	*5.75%*
	Electrically driven boiler feed pumps	*8.00%*

Provided that for thermal generating stations with induced draft cooling towers and where tube type coal mill is used, the norms shall be further increased by 0.5% and 0.8%, respectively:

Provided further that Additional Auxiliary Energy Consumption as follows shall be allowed for plants with Dry Cooling Systems:

Type of Dry Cooling Sysem	***(% of gross generation)***
Direct cooling air cooled condensers with mechanical draft fans	*1.0%*
Indirect cooling system employing jet condensers with pressure recovery turbine and natural draft tower	*0.5%*

Note: The auxiliary energy consumption for the unit capacity of less than 200 MW sets shall be dealt on case to case basis."

58. In terms of Regulation 49(E)(a) of the 2019 Tariff Regulations, the Petitioner has considered auxiliary energy consumption of 6.25% for the 2019-24 tariff period, and the same is allowed.

Interest on Working Capital

59. Sub-section (a) of clause (1) of Regulation 34 of the 2019 Tariff Regulations provides as under:

> *"34. Interest on Working Capital:*
> *(1) The working capital shall cover:*
>
> *(a) For Coal-based/lignite-fired thermal generating stations:*
>
> *(i) Cost of coal or lignite and limestone towards stock if applicable for 10 days for pit-head generating stations and 20 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal/lignite stock storage capacity whichever is lower;*
>
> *(ii) Advance payment for 30 days towards cost of coal or lignite and limestone for generation corresponding to the normative annual plant availability factor;*
>
> *(iii) Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor and in case of use of more than one secondary fuel oil cost of fuel oil stock for the main secondary fuel oil;*
>
> *(iv) Maintenance spares @ 20% of operation and maintenance expenses including water charges and security expenses;*
>
> *(v) Receivables equivalent to 45 days of capacity charge and energy charge for sale of electricity calculated on the normative annual plant availability factor; and*
>
> *(vi) Operation and maintenance expenses including water charges and security expenses for one month.*
>
> *(b) xxxx*
> *(2) The cost of fuel in cases covered under sub-clauses (a) and (b) of clause (1) of this Regulation shall be based on the landed fuel cost (taking into account normative transit and handling losses in terms of Regulation 39 of these regulations) by the generating station and gross calorific value of the fuel as per actual weighted average for the third quarter of preceding financial year in case of each financial year for which tariff is to be determined:*
>
> *Provided that in case of new generating station the cost of fuel for the first financial year shall be considered based on landed fuel cost (taking into account normative transit and handling losses in terms of Regulation 39 of these regulations) and gross calorific value of the fuel as per actual weighted average for three months as used for infirm power preceding date of commercial operation for which tariff is to be determined.*
>
> *(3) Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.4.2019 or as on 1st April of the year during the tariff period 2019-24 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.*

Provided that in case of truing-up the rate of interest on working capital shall be considered at bank rate as on 1st April of each of the financial year during the tariff period 2019-24.

(4) Interest on working capital shall be payable on normative basis notwithstanding that the generating company or the transmission licensee has not taken loan for working capital from any outside agency."

Fuel Cost and Energy Charges for computing Working Capital

60. Regulation 34(2) of the 2019 Tariff Regulations provides that the computation of cost of fuel as part of Interest on Working Capital (IWC) is to be based on the landed price and GCV of fuel as per actuals, for the third quarter of preceding financial year in case of each financial year for which tariff is to be determined.

61. Regulation 43(2) of the 2019 Tariff Regulations provides as under:

"(2) Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the following formulae:

***(a)** For coal based and lignite fired stations:*

ECR = {(SHR – SFC x CVSF) x LPPF / CVPF + SFC x LPSFi + LC x LPL} x 100 / (100 – AUX)

(b) For gas and liquid fuel based stations:

ECR = SHR x LPPF x 100 / {(CVPF) x (100 – AUX)}

Where,

AUX = Normative auxiliary energy consumption in percentage.

CVPF = (a) Weighted Average Gross calorific value of coal as received, in kCal per kg for coal based stations less 85 Kcal/Kg on account of variation during storage at generating station;

(b) Weighted Average Gross calorific value of primary fuel as received, in kCal per kg, per litre or per standard cubic meter, as applicable for lignite, gas and liquid fuel based stations;

(c) In case of blending of fuel from different sources, the weighted average Gross calorific value of primary fuel shall be arrived in proportion to blending ratio:

CVSF = Calorific value of secondary fuel, in kCal per ml;

ECR = Energy charge rate, in Rupees per kWh sent out;

SHR = Gross station heat rate, in kCal per kWh;

LC = Normative limestone consumption in kg per kWh;

LPL = Weighted average landed cost of limestone in Rupees per kg;

LPPF = Weighted average landed fuel cost of primary fuel, in Rupees per kg, per litre or per standard cubic metre, as applicable, during the month. (In case of blending of fuel from different sources, the weighted average landed fuel cost of primary fuel shall be arrived in proportion to blending ratio);

SFC= Normative specific fuel oil consumption, in ml per kWh;

LPSFi= Weighted Average Landed Fuel Cost of Secondary Fuel in Rs./ ml during the month:

Provided that energy charge rate for a gas or liquid fuel based station shall be adjusted for open cycle operation based on certification of Member Secretary of respective Regional Power Committee during the month."

62. The Petitioner has claimed the cost of fuel component in working capital and Energy Charge Rate (ECR) based on the following:

(a) Operational norms as per the 2019 Tariff Regulations;

(b) Price and 'as received GCV of coal (after reducing the same by 85 kCal/kWh in terms of above quoted Regulation) procured for the three months of October, 2018, November, 2018 and December, 2018.

(c) Price and GCV of secondary fuel oil for the three months of October, 2018, November, 2018 and December, 2018.

63. Accordingly, the Petitioner has claimed ECR of Rs.1.232 per kWh and the following fuel cost component in working capital for the 2019-24 tariff period:

(Rs. in lakh)

	2019-20	**2020-21**	**2021-22**	**2022-23**	**2023-24**
Cost of coal for 50 days	18203.99	18203.99	18203.99	18203.99	18203.99
Cost of secondary fuel oil for 2 months	695.24	693.34	693.34	693.34	695.24

64. On perusal of the Form-15 furnished by the Petitioner, it is observed that the Petitioner has included opening stock of coal and its corresponding value while computing weighted average price of coal for the month of October, 2018, November, 2018 and December, 2018. However, in terms of Regulation 34(2) of the 2019 Tariff Regulations, the computation of cost of fuel as part of IWC is to be based on the landed price and GCV of fuel, as per actuals, which means that only fuel received during these three months is only to be considered and no opening stock shall be included therein. Accordingly, the opening stock of coal and its corresponding values have been excluded while computing the weighted average price and GCV of coal. Similarly, while calculating normative transit and handling losses in respect of coal the Petitioner has

considered the same in excess of prescribed limit of 0.2%. The normative transit and handling losses of 0.2% has been considered for the purpose of tariff. Based on the above, the weighted average price and GCV of coal and oil claimed and allowed for the 2019-24 tariff period, subject to truing up is as under:

	Claimed	**Allowed**
Weighted average price of coal (Rs./MT)	1869.33	1868.78
Weighted average GCV of coal (kCal/kg) *	3836.33	3834.67
Weighted average price of oil (Rs./KL)	56433.74	56433.74
Weighted average GCV of oil (kCal/Ltr.)	10179.67	10183.92

** Weighted average GCV of coal as received net of 85 kCal/kg.*

65. Accordingly, the fuel component in working capital, energy charges and ECR claimed and allowed for the 2019-24 tariff period is as under:

(Rs. in lakh)

	Claimed		**Allowed**	
	2019-20 & 2023-24	**2020-21 to 2022-23**	**2019-20 & 2023-24**	**2020-21 to 2022-23**
Cost of coal for 40 days of generation at NAPF	18203.99		18168.19	
Cost of secondary fuel oil for 2 months of generation at NAPF	695.24	693.34	695.24	693.34
Energy charges for 45 days of generation at NAPF	20992.37		20959.66	
ECR *(Rs./kWh)*	1.232		1.230	

66. The Petitioner, on a month to month basis, shall compute and claim the energy charges from the beneficiaries based on formulae given under Regulation 43 of the 2019 Tariff Regulations.

Working Capital for Maintenance Spares

67. The Petitioner has claimed the maintenance spares in the working capital as under:

(Rs. in lakh)

2019-20	**2020-21**	**2021-22**	**2022-23**	**2023-24**
9980.58	10328.10	10689.75	11061.67	11447.90

68. Regulation 34(1)(a)(iv) of the 2019 Tariff Regulations provide for maintenance spares @ 20% of the O&M expenses (including water charges and security expenses). Accordingly, maintenance spares @ 20% of the O&M expenses (including the water charges and security expenses) allowed for the 2019-24 tariff period is as under:

(Rs. in lakh)

2019-20	2020-21	2021-22	2022-23	2023-24
9927.58	10220.27	10525.19	10838.38	11163.82

Working Capital for Receivables

69. In terms of Regulation 34(1)(a)(v) of the 2019 Tariff Regulations, the receivables equivalent to 45 days of capacity charges and energy charges is worked out and allowed as under:

(Rs. in lakh)

	2019-20	2020-21	2021-22	2022-23	2023-24
Variable Charges - for 45 days	20959.66	20959.66	20959.66	20959.66	20959.66
Fixed Charges - for 45 days	22579.62	22411.29	22118.66	21812.79	21453.20
Total	**43539.28**	**43370.96**	**43078.33**	**42772.45**	**42412.86**

Working Capital for O&M Expenses

70. The Petitioner in Form-O has claimed the O&M expenses for one (1) month in the working capital as under:

(Rs. in lakh)

2019-20	2020-21	2021-22	2022-23	2023-24
4158.58	4303.37	4454.06	4609.03	4769.96

71. Regulation 34(1)(a)(vi) of the 2019 Tariff Regulations provide for O&M expenses equivalent to one (1) month of the O&M expenses (including water charges and security expenses). Accordingly, O&M expenses equivalent to 1 month of the O&M expenses (including water charges and security expenses) allowed for the 2019-24 tariff period is as under:

(Rs. in lakh)

2019-20	2020-21	2021-22	2022-23	2023-24
4136.49	4258.45	4385.50	4515.99	4651.59

Rate of Interest on working capital

72. In line with the Regulation 34(3) of the 2019 Tariff Regulations, the rate of interest on working capital is considered as 12.05% (i.e. 1 year SBI MCLR of 8.55% as on 01.04.2019 + 350 bps) for the year 2019-20, 11.25% (i.e. 1 year SBI MCLR of 7.75% as on 01.04.2020 + 350 bps) for the year 2020-21 and 10.50% (i.e. 1 year SBI MCLR of 7.00% as on 01.04.2021 + 350 bps) for the period 2021-24.

73. Accordingly, Interest on working capital has been computed as under:

(Rs. in lakh)

	2019-20	2020-21	2021-22	2022-23	2023-24
WC for cost of coal towards Stock - 10 days of generation	4542.05	4542.05	4542.05	4542.05	4542.05
WC for cost of coal towards advance payment - 30 days of generation	13626.15	13626.15	13626.15	13626.15	13626.15
WC for cost of Secondary fuel oil – 2 months of generation	695.24	693.34	693.34	693.34	695.24
WC for Maintenance Spares @ 20% of O&M expenses	9927.58	10220.27	10525.19	10838.38	11163.82
WC for Receivables – 45 days of generation	43539.28	43370.96	43078.33	42772.45	42412.86
WC for O&M expenses – 1 month of generation	4136.49	4258.45	4385.50	4515.99	4651.59
Total Working Capital	**76466.79**	**76711.21**	**76850.54**	**76988.36**	**77091.70**
Rate of Interest	12.0500%	11.2500%	10.5000%	10.5000%	10.5000%
Interest on Working Capital	**9214.25**	**8630.01**	**8069.31**	**8083.78**	**8094.63**

Annual Fixed Charges

74. Accordingly, the annual fixed charges approved for the 2019-24 tariff period for the generating station is summarized as under:

(Rs. in lakh)

	2019-20	2020-21	2021-22	2022-23	2023-24
Depreciation	47447.28	47592.03	47736.78	47762.40	47788.02
Interest on Loan	25172.78	22122.57	18481.21	14366.03	10234.19
Return on Equity	52175.34	52334.51	52493.69	52521.86	52550.04

Interest on Working Capital	9214.25	8630.01	8069.31	8083.78	8094.63
O&M Expenses	49637.92	51101.37	52625.95	54191.91	55819.11
Total	**183647.56**	**181780.50**	**179406.94**	**176925.99**	**174485.99**

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.*

75. The annual fixed charges approved as above is subject to truing up in terms of Regulation 13 of the 2019 Tariff Regulations.

Application Fee and Publication expenses

76. The Petitioner has sought reimbursement of fee paid by it for filing the petition for the 2019-24 tariff period and for publication expenses. The Petitioner shall be entitled for reimbursement of the filing fees and publication expenses in connection with the present petition, directly from the beneficiaries on pro-rata basis in accordance with Regulation 70(1) of the 2019 Tariff Regulations.

77. Similarly, RLDC Fees & Charges paid by the Petitioner in terms of the Central Electricity Regulatory Commission (Fees and Charges of Regional Load Dispatch Centre and other related matters) Regulations, 2019, shall be recovered from the beneficiaries. In addition, the Petitioner is entitled for recovery of statutory taxes, levies, duties, cess etc. levied by the statutory authorities in accordance with the 2019 Tariff Regulations.

78. Petition No. 425/GT/2020 is disposed of in terms of the above.

Sd/-	***Sd/-***	***Sd/-***	***Sd/-***
(Pravas Kumar Singh)	**(Arun Goyal)**	**(I.S Jha)**	**(P.K. Pujari)**
Member	**Member**	**Member**	**Chairperson**

Press Information Bureau
Government of India
Ministry of Home Affairs

05-February-2019 17:26 IST

Naxal affected Districts

90 districts in 11 States are considered as affected by Left Wing Extremism (LWE). The State-wise list is given below:

List of 90 districts of LWE affected States

S. No.	State	Number of Districts	Name of Districts
1.	Andhra Pradesh	6	East Godavari, Guntur, Srikakulam, Visakhapatnam, Vizianagaram, West Godavari
2.	Bihar	16	Arwal, Aurangabad, Banka, East Champaran, Gaya, Jamui, Jehanabad, Kaimur, Lakhisarai, Munger, Muzaffarpur, Nalanda, Nawada, Rohtas, Vaishali, West Champaran
3.	Chhattisgarh	14	Balod, Balrampur, Bastar, Bijapur, Dantewada, Dhamtari, Gariyaband, Kanker, Kondagaon, Mahasamund, Narayanpur, Rajnandgaon, Sukma, Kabirdham
4.	Jharkhand	19	Bokaro, Chatra, Dhanbad, Dumka, East Singhbhum, Garhwa, Giridih, Gumla, Hazaribagh, Khunti, Koderma, Latehar, Lohardaga, Palamu, Ramgarh, Ranchi, Simdega, Saraikela-Kharaswan, West Singhbhum
5.	Kerala	3	Malappuram, Palakkad, Wayanad
6.	Madhya Pradesh	2	Balaghat, Mandla
7.	Maharashtra	3	Chandrapur, Gadchiroli, Gondia

'Police' and 'Public order' being State subjects, the primary responsibility of meeting the challenge of LWE lies with the State Governments. However, the Central Government monitors the situation closely, supplements and coordinates the efforts of the State Governments. A National Policy and Action Plan to address LWE

8.	Odisha	15	Angul, Bargarh, Bolangir, Boudh, Deogarh, Kalahandi, Kandhamal, Koraput, Malkangiri, Nabrangpur, Nayagarh, Nuapada, Rayagada, Sambhalpur, Sundargarh
9.	Telangana	8	Adilabad, Bhadradri-Kothagudem, Jayashankar-Bhupalpally, Khammam, Komaram-Bheem, Mancherial, Peddapalle, Warangal Rural
10.	Uttar Pradesh	3	Chandauli, Mirzapur and Sonebhadra
11.	West Bengal	1	Jhargram
Total		90	

place that envisages a multi-pronged strategy involving security related measures, developmental interventions, ensuring rights & entitlements of local communities etc. On security front, the Central Government assists the LWE affected State Governments by providing Central Armed Police Forces battalions, training, funds for modernization of State police forces, equipment & arms, sharing of intelligence etc. On development side, the Central Government has taken various measures including construction of roads, strengthening of communications network, installation of mobile towers, improving network of banks, post offices, health and education facilities in the LWE areas through concerned Ministries.

Road Requirement Plan-I (RRP-I) envisages construction of 5,422 kms roads at estimated cost of ₹ 8,593 crore. The scheme includes 454 km roads and 2 critical bridges at Indravati and Godavari rivers in Maharashtra, of which 412 km and 01 bridge at Godavari river has been completed. Road Connectivity Project for LWE areas (RRP-II) envisages construction of other district roads and village roads at estimated cost of ₹11,275 crore including 132 kms roads in Maharashtra worth ₹ 270 crore. Mobile tower projects to improve mobile connectivity are under implementation in two Phases. So far, 2235 (65 in Maharashtra) have been installed under Phase-I and 4072 towers (136 in Maharashtra) are now planned in Phase-II at an outlay of ₹ 7330 crore. For financial inclusion in LWE areas, Department of Posts sanctioned 1788 Branch Post Offices (142 in Maharashtra) in Phase-I in 32 most LWE affected districts, 1484 Branch Post Offices (142 in Maharashtra) have become functional. Further, Department of Financial Services has opened 604 new bank branches and installed 987 ATMs in 30 most LWE affected districts in 45 months (31.03.15 to 31.12.18). This includes 9 bank branches and 32 ATMs in Maharashtra.

The Government of India has approved Special Central Assistance (SCA) Scheme for the most LWE affected districts, under which funds are provided to States for filling the critical gaps in public infrastructure & services which are of urgent nature. So far ₹ 775 crore has been released to the States, of which ₹ 25 crore has been released to Maharashtra for Gadchiroli district.

The steadfast implementation of National Policy and Action Plan has resulted in considerable improvement in LWE scenario over the years in the LWE affected States as reflected by decline in number of LWE incidents and shrinkage in geographical spread of LWE influence.

Funds released under the Special Central Assistance (SCA) for the most LWE affected districts

(figures in ₹ crore)

S.No	State	2017-18		2018-19		Total
		Districts	Funds released	Districts	Funds Released (as on 30.01.19)	
1	Andhra Pradesh	01	5	01	20	25
2	Bihar	06	30	04	80	110
3	Chhattisgarh	08	40	08	160	200
4	Jharkhand	16	80	13	260	340
5	Maharashtra	01	5	01	20	25
6	Odisha	02	10	02	40	50
7	Telangana	01	5	01	20	25
Total		35	175	30	600	775

The steadfast implementation of National Policy and Action Plan has resulted in considerable improvement in LWE scenario

spread of LWE influence.

This was stated by the Minister of State for Home Affairs Shri Hansraj Gangaram Ahir in a written reply to question in the Lok Sabha today.

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BB/ PK/AK/401

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Dated : 25th August, 2020

NOTIFICATION

No. L-1/236/2018/CERC: In exercise of powers conferred under Section 178 of the Electricity Act, 2003 (36 of 2003) read with Section 61 thereof and all other powers enabling it in this behalf, and after previous publication, the Central Electricity Regulatory Commission hereby makes the following regulations, to amend the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as "the Principal Regulations"), namely.-

1. Short Title and Commencement.

1.1. These regulations may be called the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2020.

1.2. These regulations shall come into force with effect from the date of publication in the official Gazette.

1.3. Clause (6) of Regulation 21 of the Principal Regulations shall be applicable with effect from 1st April, 2019.

2. Amendment to Regulation 3 of the Principal Regulations.

2.1. A new clause, namely, Clause (5a) shall be inserted after Clause (5) of Regulation 3 of the Principal Regulations as under:

"(5a) 'A**uxiliary energy consumption for emission control system** ' or '**AUX_e**' in relation to a period in case of coal or lignite based thermal generating station means the quantum of energy consumed by auxiliary equipment of the emission control system of the coal or lignite based thermal generating station in addition to the auxiliary energy consumption under clause (5) of this Regulation;"

2.2. A new clause, namely, Clause (15a) shall be inserted after Clause (15) of Regulation 3 of the Principal Regulations as under:

"(15a) '**Date of Operation'** or **'ODe'** in respect of an emission control system means the date of putting the emission control system into use after meeting all applicable technical and environmental standards, certified through the Management Certificate duly signed by an authorised person, not below the level of Director of the generating company;"

2.3 A new clause, namely, Clause (20a) shall be inserted after Clause (20) of Regulation 3 of the Principal Regulations as under:

"(20a) "**emission control system**" means a set of equipment or devices required to be installed in coal or lignite based thermal generating station or unit thereof to meet the revised emission standards;"

2.4 In Clause (47) of Regulation 3 of the Principal Regulations, the words "normative auxiliary energy consumption" occurring at the end shall be substituted by the words "auxiliary energy consumption and auxiliary energy consumption for emission control system as per these regulations".

2.5 Clause (48) of Regulation 3 of the Principal Regulations shall be substituted as under:

"(48) **'Plant Load Factor'** or **'(PLF)'** in relation to a thermal generating station or unit thereof for a given period means the total sent out energy corresponding to scheduled generation during the period, expressed as a percentage of sent out energy corresponding to installed capacity in that period and shall be computed in accordance with the following formula:

$$\text{PLF} = 10000 \times \sum_{i=1}^{N} \frac{SGi}{[NxICx(100-AUX_n-AUX_{en})]} \%$$

Where,

IC = Installed Capacity of the generating station or unit in MW,

SGi= Scheduled Generation in MW for the i^{th} time block of the period,

N = Number of time blocks during the period,

AUX_n= Normative auxiliary energy consumption as a percentage of gross energy generation; and

AUX_{en}= Normative auxiliary energy consumption for emission control system as a percentage of gross energy generation, wherever applicable."

3. Amendment to Regulation 8 of the Principal Regulations.

3.1. In Clause (1) of Regulation 8 of the Principal Regulations, the words "and emission control system, wherever applicable," shall be inserted in first line after the words "generating station" and before the words "may be";

3.2. In Clause (4) of Regulation 8 of the Principal Regulations, the words "on submission of the completion certificate by the Board of the generating company"

shall be substituted by the words "in accordance with the application filed under 4th proviso to clause (1) of Regulation 9 of these regulations."

4. Amendment to Regulation 9 of the Principal Regulations.

4.1. A new proviso, namely, fourth proviso shall be added under Clause (1) of Regulation 9 of the Principal Regulations as under:

> "Provided also that the generating company shall file an application for determination of supplementary tariff for the emission control system installed in coal or lignite based thermal generating station in accordance with these regulations not later than 60 days from the date of operation of such emission control system."

5. Amendment to Regulation 14 of the Principal Regulations.

5.1. In Clause (2) of Regulation 14 of the Principal Regulations, the words "Supplementary capacity charges for additional capitalisation" shall be substituted with the words "Supplementary tariff consisting of supplementary capacity charges".

6. Amendment to Regulation 15 of the Principal Regulations.

6.1. Existing clause of Regulation 15 of the Principal Regulations shall be re-numbered as Clause (1).

6.2. A new Clause, namely Clause (2) shall be added after the re-numbered Clause (1) of Regulation 15 of the Principal Regulations as under:

"(2) Supplementary Capacity Charges: Supplementary capacity charges shall be derived on the basis of the Annual Fixed Cost for emission control system (AFCe). The Annual Fixed Cost for the emission control system shall consist of the components as listed at Sub-clauses (a) to (e) of Clause (1) of this Regulation."

7. Amendment to Regulation 16 of the Principal Regulations.

7.1. The words "as per Regulation 43 of these regulations" shall be inserted at the end of the second proviso to Regulation 16 of the Principal Regulations.

8. Amendment to Regulation 18 of the Principal Regulations.

8.1. A new clause, namely Clause (6) shall be added after Clause (5) of Regulation 18 of the Principal Regulations as under:

"(6) Any expenditure incurred for the emission control system during the tariff period as may be admitted by the Commission as additional capital expenditure for determination of supplementary tariff, shall be serviced in the manner specified in clause (1) of this Regulation."

9. Amendment to Regulation 21 of the Principal Regulations.

9.1. In Clause (5) of Regulation 21 of the Principal Regulations, the words "either in entirety on in part" shall be substituted with the words "either in entirety or in part".

9.2. A new clause, namely, Clause (6) shall be added after Clause (5) of Regulation 21 of the Principal Regulations as under:

"(6) For the purpose of Clauses (4) and (5) of this Regulation, IDC on actual loan and normative loan shall be considered in accordance with sub-clause (b) of clause (2) of Regulation 19 of these regulations."

10. Amendment to Regulation 23 of the Principal Regulations.

10.1. A new proviso, namely, proviso (iii) shall be added after proviso (ii) to Regulation 23 of the Principal Regulations as under :

"(iii) where the emission control system is installed, the norms of initial spares specified in this Regulation for coal or lignite based thermal generating station as the case may be, shall apply."

11. Amendment to Regulation 29 of the Principal Regulations.

11.1. A new clause, namely, Clause (5) shall be added after Clause (4) of Regulation 29 of the Principal Regulations as under:

"(5) Un-discharged liability, if any, on account of emission control system shall be allowed as additional capital expenditure during the year it is discharged, subject to prudence check."

12. Amendment to Regulation 30 of the Principal Regulations.

12.1. First proviso under Clause (2) of Regulation 30 of the Principal Regulations shall be substituted as under:

"Provided that return on equity in respect of additional capitalization after cut-off date beyond the original scope, excluding additional capitalization on

account of emission control system, shall be computed at the weighted average rate of interest on actual loan portfolio of the generating station or the transmission system or in the absence of actual loan portfolio of the generating station or the transmission system, the weighted average rate of interest of the generating company or the transmission licensee, as the case may be, as a whole shall be considered, subject to ceiling of 14%".

12.2. A new clause, namely, Clause (3) shall be added after Clause (2) of Regulation 30 of the Principal Regulations, as under:

"(3) The return on equity in respect of additional capitalization on account of emission control system shall be computed at the base rate of one year marginal cost of lending rate (MCLR) of the State Bank of India as on 1st April of the year in which the date of operation (ODe) occurs plus 350 basis point, subject to ceiling of 14%;"

13. Amendment to Regulation 32 of the Principal Regulations.

13.1. A new clause, namely, Clause (5a) shall be inserted after Clause (5) of Regulation 32 of the Principal Regulations as under:

"(5a) The rate of interest on loan for installation of emission control system shall be the weighted average rate of interest of actual loan portfolio of the emission control system or in the absence of actual loan portfolio, the weighted average rate of interest of the generating company as a whole shall be considered."

14. Amendment to Regulation 33 of the Principal Regulations.

14.1. Two new clauses namely, Clauses (9) and (10) shall be added after Clause (8) of Regulation 33 of the Principal Regulations as under:

"(9) Where the emission control system is implemented within the original scope of the generating station and the date of commercial operation of the generating station or unit thereof and the date of operation of the emission control system are the same, depreciation of the generating station or unit thereof including the emission control system shall be computed in accordance with Clauses (1) to (8) of this Regulation.

(10) Depreciation of the emission control system of an existing or a new generating station or unit thereof where the date of operation of the emission control system is subsequent to the date of commercial operation of the generating station or unit thereof, shall be computed annually from the date of operation of such emission control system based on straight line method, with salvage value of 10%, over a period of ─

a) twenty five years, in case the generating station or unit thereof is in operation for fifteen years or less as on the date of operation of the emission control system; or

b) balance useful life of the generating station or unit thereof plus fifteen years, in case the generating station or unit thereof is in operation for more than fifteen years as on the date of operation of the emission control system; or

c) ten years or a period mutually agreed by the generating company and

the beneficiaries, whichever is higher, in case the generating station or unit thereof has completed its useful life."

15. Amendment to Regulation 34 of the Principal Regulations.

15.1. A new clause, namely, Clause (aa) shall be inserted after Clause (a) of Regulation 34 of the Principal Regulations as under:

"(aa) For emission control system of coal or lignite based thermal generating stations:

(i) Cost of limestone or reagent towards stock for 20 days corresponding to the normative annual plant availability factor;

(ii) Advance payment for 30 days towards cost of reagent for generation corresponding to the normative annual plant availability factor;

(iii) Receivables equivalent to 45 days of supplementary capacity charge and supplementary energy charge for sale of electricity calculated on the normative annual plant availability factor;

(iv) Operation and maintenance expenses in respect of emission control system for one month;

(v) Maintenance spares @20% of operation and maintenance expenses in respect of emission control system."

16. Amendment to Regulation 35 of the Principal Regulations.

16.1. At the end of the first sentence of first proviso under Sub-clause (6) of Clause (1) of Regulation 35 of the Principal Regulations, the words "and considering the norms

of specific water consumption notified by the Ministry of Environment, Forest and Climate Change" shall be added.

16.2. Sub-clause (7) of Clause (1) of Regulation 35 of the Principal Regulations along with its proviso shall be substituted as under:

> "(7) The operation and maintenance expenses on account of emission control system in coal or lignite based thermal generating station shall be 2% of the admitted capital expenditure (excluding IDC and IEDC) as on its date of operation, which shall be escalated annually @3.5% during the tariff period ending on 31st March 2024:
>
> Provided that income generated from sale of gypsum or other by-products shall be reduced from the operation and maintenance expenses."

17. Amendment to Title of Chapter 10 of the Principal Regulations.

17.1. The Title of Chapter-10 shall be substituted as "COMPONENTS OF ENERGY CHARGE AND SUPPLEMENTARY ENERGY CHARGE".

18. Amendment to Regulation 37 of the Principal Regulations.

18.1. The heading of Regulation 37 of the Principal Regulations shall be substituted as "Energy Charges and Supplementary Energy Charges".

18.2. The words "and Supplementary Energy Charges" shall be added after the words "Energy Charges" in Regulation 37 of the Principal Regulations.

19. Amendment to Regulation 41 of the Principal Regulations.

19.1. In Clause (2) of Regulation 41 of the Principal Regulations, the words "notified separately" shall be substituted by the words "as specified in Regulations 49 of these regulations".

20. Amendment to the title of Chapter-11 of the Principal Regulations.

20.1. The title of Chapter-11 of the Principal Regulations shall be substituted as "COMPUTATION OF CAPACITY CHARGES, SUPPLEMENTARY CAPACITY CHARGES, ENERGY CHARGES AND SUPPLEMENTARY ENERGY CHARGES".

21. Amendment to Regulation 42 of the Principal Regulations.

21.1. In the proviso under the formula under Clause (2) of Regulation 42 of the Principal Regulations, the words "or installation of emission control system, as the case may be" shall be inserted after the words "Renovation and Modernisation".

21.2. Clause (5) of Regulation 42 of the Principal Regulations along with the proviso of the said clause shall be substituted as under:-

"(5) The Plant Availability Factor for a Month ('PAFM') shall be computed in accordance with the following formula:

$$\text{PAFM} = 10000 \times \sum_{i=1}^{N} \frac{DCi}{[NxICx(100-AUX_n-AUX_{en})]} \%$$

Where,

AUX_n = Normative auxiliary energy consumption as a percentage of gross energy generation;

AUX_{en}= Normative auxiliary energy consumption for emission control system as a percentage of gross energy generation, wherever applicable;

DCi = Average declared capacity (in ex-bus MW), for the i^{th} day of the period i.e. the month or the year, as the case may be, as certified by the concerned load dispatch centre after the day is over;

IC = Installed Capacity (in MW) of the generating station;

N = Number of days during the period;

Note: DCi and IC shall exclude the capacity of generating units not declared under commercial operation. In case of a change in IC during the concerned period, its average value shall be taken."

22. New Regulation 42A to be added in the Principal Regulations.

22.1. A new regulation, namely, Regulation 42A shall be added after Regulation 42 of the Principal Regulations as under:

"42A. Computation and Payment of Supplementary Capacity Charge for Coal or Lignite based Thermal Generating Stations:

(1) The fixed cost of emission control system shall be computed on annual basis based on the norms specified under these regulations and recovered on monthly basis under supplementary capacity charge. The total supplementary capacity charge payable for a generating station shall be shared by its beneficiaries as per their respective percentage share or allocation in the capacity of the generating station. The supplementary capacity charge shall be recovered under two segments of the year, i.e. High Demand Season (period of three months) and Low Demand Season (period of remaining nine months), and within each

season in two parts viz., supplementary capacity charge for Peak Hours of the month and supplementary capacity charge for Off-Peak Hours of the month as follows:

Supplementary Capacity Charge for the Year (SCC_y) =

Sum of Supplementary Capacity Charge for three months of High Demand Season + Sum of Supplementary Capacity Charge for nine months of Low Demand Season.

(2) The Supplementary Capacity Charge payable to a thermal generating station for a calendar month shall be calculated in accordance with the following formulae:

Supplementary Capacity Charge for the Month (SCC_m) =

Supplementary Capacity Charge for Peak Hours of the Month (SCC_p) + Supplementary Capacity Charge for Off-Peak Hours of the Month (SCC_{op})

Where,

<u>High Demand Season:</u>

SCC_{p1}= $(0.20\ x\ \text{AFCe})\ x\ \left(\frac{1}{12}\right)\ x\ \left(\frac{PAFMp1}{NAPAF}\right)$ subject to ceiling of $(0.20\ x\ \text{AFCe})\ x\ \left(\frac{1}{12}\right)$

SCC_{p2} = $\{(0.20\ x\text{AFCe})x\left(\frac{1}{6}\right)x\left(\frac{PAFMp2}{NAPAF}\right)$ subject to ceiling of $(0.20\ x\text{AFCe})x\left(\frac{1}{6}\right)\} - SCCp1$

SCC_{p3}= $\{(0.20\ x\text{AFCe})x\left(\frac{1}{4}\right)x\left(\frac{PAFMp3}{NAPAF}\right)$ subject to ceiling of $(0.20\ x\text{AFCe})x\left(\frac{1}{4}\right)\} - (SCCp1 + SCCp2)]\}$

SCC_{op1}= $\{(0.80\ x\text{AFCe})x\left(\frac{1}{12}\right)x\left(\frac{PAFMop1}{NAPAF}\right)$ subject to ceiling of $(0.80\ x\text{AFCe})x\left(\frac{1}{12}\right)\}$

SCC_{op2} = $\{(0.80\ x\text{AFCe})x\left(\frac{1}{6}\right)x\left(\frac{PAFMop2}{NAPAF}\right)$ subject to ceiling of $(0.80\ x\text{AFCe})x\left(\frac{1}{6}\right)\} - SCCop1$

SCC_{op3} = $\{(0.80\ x\text{AFCe})x\left(\frac{1}{4}\right)x\left(\frac{PAFMop3}{NAPAF}\right)$ subject to ceiling of $(0.80\ x\text{AFCe})x\left(\frac{1}{4}\right)\} - (SCCop1 + SCCop2)$

Low Demand Season:

SCC_{p1} = $\{(0.20\ x\text{AFCe})x\left(\frac{1}{12}\right)x\left(\frac{PAFMp1}{NAPAF}\right)$ subject to ceiling of $(0.20\ x\text{AFCe})x\left(\frac{1}{12}\right)\}$

SCC_{p2}= $\{(0.20\ x\text{AFCe})x\left(\frac{1}{6}\right)x\left(\frac{PAFMp2}{NAPAF}\right)$ subject to ceiling of $(0.20\ x\text{AFCe})x\left(\frac{1}{6}\right)\} - CCp1$

SCC_{p3}= $\{(0.20\ x\text{AFCe})x\left(\frac{1}{4}\right)x\left(\frac{PAFMp3}{NAPAF}\right)$ subject to ceiling of $(0.20\ x\text{AFCe})x\left(\frac{1}{4}\right)\} - (SCCp1 + SCCp2)$

SCC_{p4}= $\{(0.20\ x\text{AFCe})x\left(\frac{1}{3}\right)x\left(\frac{PAFMp4}{NAPAF}\right)$ subject to ceiling of $(0.20\ x\text{AFCe})x\left(\frac{1}{3}\right)\} - (SCCp1 + SCCp2 + SCCp3)$

SCC_{p5}= $\{(0.20\ x\text{AFCe})x\left(\frac{5}{12}\right)x\left(\frac{PAFMp5}{NAPAF}\right)$ subject to ceiling of $(0.20\ x\text{AFCe})x\left(\frac{5}{12}\right)\} - (SCCp1 + SCCp2 + SCCp3 + SCCp4)$

SCC_{p6} = $\{(0.20\ x\text{AFCe})x\left(\frac{1}{2}\right)x\left(\frac{PAFMp6}{NAPAF}\right)$ subject to ceiling of $(0.20\ x\text{AFCe})x\left(\frac{1}{2}\right)\} - (SCCp1 + SCCp2 + SCCp3 + SCCp4 + SCCp5)$

SCC_{p7} = $\{(0.20\ x\text{AFCe})x\left(\frac{7}{12}\right)x\left(\frac{PAFMp7}{NAPAF}\right)$ subject to ceiling of $(0.20\ x\text{AFCe})x\left(\frac{7}{12}\right)\} - (SCCp1 + SCCp2 + SCCp3 + SCCp4 + SCCp5 + SCCp6)$

SCC_{p8}= $\{(0.20\ x\text{AFCe})x\left(\frac{2}{3}\right)x\left(\frac{PAFMp8}{NAPAF}\right)$ subject to ceiling of $(0.20\ x\text{AFCe})x\left(\frac{2}{3}\right)\} - (SCCp1 + SCCp2 + SCCp3 + SCCp4 + SCCp5 + SCCp6 + SCCp7)$

SCC_{p9} = $\{(0.20\ x\text{AFCe})x\left(\frac{3}{4}\right)x\left(\frac{PAFMp9}{NAPAF}\right)$ subject to ceiling of $(0.20\ x\text{AFCe})x\left(\frac{3}{4}\right)\} - (SCCp1 + SCCp2 + SCCp3 + SCCp4 + SCCp5 + SCCp6 + SCCp7 + SCCp8)$

SCC_{op1} = $\{(0.80\ x\text{AFCe})x\left(\frac{1}{12}\right)x\left(\frac{PAFMop1}{NAPAF}\right)$ subject to ceiling of $(0.80\ x\text{AFCe})x\left(\frac{1}{12}\right)\}$

SCC_{op2} = $\{(0.80\ x\text{AFCe})x\left(\frac{1}{6}\right)x\left(\frac{PAFMop2}{NAPAF}\right)$ subject to ceiling of $(0.80\ x\text{AFCe})x\left(\frac{1}{6}\right)\} - SCCop1$

SCC_{op3} = $\{(0.80\ x\text{AFCe})x\left(\frac{1}{4}\right)x\left(\frac{PAFMop3}{NAPAF}\right)$ subject to ceiling of $(0.80\ x\text{AFCe})x\left(\frac{1}{4}\right)\} - (SCCop1 + SCCop2)$

SCC_{op4} = $\{(0.80\ x\text{AFCe})x\left(\frac{1}{3}\right)x\left(\frac{PAFMop4}{NAPAF}\right)$ subject to ceiling of $(0.80\ x\text{AFCe})x\left(\frac{1}{3}\right)\} - (SCCop1 + SCCop2 + SCCop3)$

SCC_{op5}= $\{(0.80\ x\text{AFCe})x\left(\frac{5}{12}\right)x\left(\frac{PAFMop5}{NAPAF}\right)$ subject to ceiling of $(0.80\ x\text{AFCe})x\left(\frac{5}{12}\right)\} - (SCCop1 + SCCop2 + SCCop3 + SCCop4)$

SCC_{op6} = $\{(0.80\ x\text{AFCe})x\left(\frac{1}{2}\right)x\left(\frac{PAFMop6}{NAPAF}\right)$ subject to ceiling of $(0.80\ x\text{AFCe})x\left(\frac{1}{2}\right)\} - (SCCop1 + SCCop2 + SCCop3 + SCCop4 + SCCop5)$

SCC_{op7}= $\{(0.80\ x\text{AFCe})x\left(\frac{7}{12}\right)x\left(\frac{PAFMop7}{NAPAF}\right)$ subject to ceiling of $(0.80\ x\text{AFCE})x\left(\frac{7}{12}\right)\} - (SCCop1 + SCCop2 + SCCop3 + SCCop4 + SCCop5 + SCCop6)$

SCC_{op8} = $\{(0.80\ x\text{AFCe})x\left(\frac{2}{3}\right)x\left(\frac{PAFMop8}{NAPAF}\right)$ subject to ceiling of $(0.80\ x\text{AFCe})x\left(\frac{2}{3}\right)\} - (SCCop1 + SCCop2 + SCCop3 + SCCop4 + SCCop5 + SCCop6 + SCCop7)$

SCC_{op9} = $\{(0.80\ x\text{AFCe})x\left(\frac{3}{4}\right)x\left(\frac{PAFMop9}{NAPAF}\right)$ subject to ceiling of $(0.80\ x\text{AFCe})x\left(\frac{3}{4}\right)\} - (SCCop1 + SCCop2 + SCCop3 + SCCop4 + SCCop5 + SCCop6 + SCCop7 + SCCop8)$

Provided that in case of generating station or unit thereof under shutdown due to Renovation and Modernisation, the generating company shall be allowed to recover O&M expenses and interest on loan in respect of emission control system only.

Where,

SCC_m= Supplementary Capacity Charge for the Month;

SCC_p= Supplementary Capacity Charge for the Peak Hours of the Month;

SCC_{op}= Supplementary Capacity Charge for the Off-Peak Hours of the Month;

SCC_{pn}= Supplementary Capacity Charge for the Peak Hours of n^{th} Month in a specific Season;

SCC_{opn}= Supplementary Capacity Charge for the Off-Peak Hours of n^{th} Month in a specific Season;

AFCe = Annual Fixed Cost of the emission control system;

$PAFM_{pn}$= Plant Availability Factor achieved during Peak Hours upto the end of n^{th} Month in a Season;

$PAFM_{opn}$= Plant Availability Factor achieved during Off-Peak Hours upto the end of n^{th} Month in a Season;

NAPAF= Normative Annual Plant Availability Factor.

(3) Any under-recovery or over-recovery of Supplementary Capacity Charge as a result of under-achievement or over-achievement, vis-à-vis the NAPAF in Peak Hours and Off-Peak Hours of a Season (High Demand Season or Low Demand Season, as the case may be) shall not be adjusted with under-achievement or over-achievement, vis-à-vis the NAPAF in Peak Hours and Off-Peak Hours of the other Season:

Provided that within a Season, the shortfall in recovery of Supplementary Capacity Charge for cumulative Off-Peak Hours derived based on NAPAF, shall be allowed to be off-set by over-achievement of PAF, if any, and consequent notional over-recovery of Supplementary Capacity Charge for cumulative Peak Hours in that Season:

Provided further that within a Season, the shortfall in recovery of Supplementary Capacity Charge for cumulative Peak Hours derived based on NAPAF, shall not be allowed to be off-set by over-achievement of PAF, if any, and consequent notional over-recovery of Supplementary Capacity Charge for cumulative Off-Peak Hours in that Season.

(4) Normative Plant Availability Factor for Peak Hours and Off-Peak Hours in a month for the purpose of Supplementary Capacity Charge and Peak Hours and Off-Peak Hours shall be considered in the manner specified in Clause (3) of Regulation 42 of these regulations. The PAFM shall be worked out in accordance with Clause (5) of the Regulation 42 of these regulations."

23. Amendment to Regulation 43 of the Principal Regulations.

23.1. At the end of the heading of Regulation 43 of the Principal Regulations, the words "**and Supplementary Energy Charge for Coal or Lignite based Thermal Generating Stations**:" shall be added.

23.2. A new clause, namely, Clause (1a) shall be added after Clause (1) of Regulation 43 of the Principal Regulations as under:

" (1a) The supplementary energy charge on account of emission control system shall cover the differential energy charges due to auxiliary energy consumption and cost of reagent consumption, and shall be payable by every beneficiary for the total energy scheduled to be supplied to such beneficiary during the calendar month on ex-power plant basis, at the supplementary energy charge rate of the month. Total supplementary energy charge payable to the generating company for a

month shall be:

Supplementary Energy Charges = (Supplementary energy charge rate in Rs./kWh) x {Scheduled energy (ex-bus) for the month in kWh}"

23.3. In Clause (2) of Regulation 43 of the Principal Regulations, the words "and Supplementary Energy charge rate" shall be added after the words "Energy charge rate (ECR)".

23.4. The word "**ECR**" shall be inserted at the beginning of the heading of Sub-clause (a) of Clause (2) of Regulation 43 of the Principal Regulations.

23.5. A new sub-clause, namely, Sub-clause (aa) shall be inserted after Sub-clause (a) of clause (2) of Regulation 43 of the Principal Regulations as under:

"(aa) Supplementary ECR for coal and lignite based thermal generating stations:

Supplementary ECR = $(\Delta ECR) + [(SRC \times LPR / 10)/(100-(AUX_n + AUX_{en}))]$

Where,

(ΔECR) = Difference between ECR with revised auxiliary energy consumption with emission control system equivalent to $(AUX_n + AUX_{en})$ and ECR with normative auxiliary energy consumption as specified in these regulations and revised;

SRC = Specific reagent consumption on account of revised emission standards (in g/kWh);

LPR = Weighted average landed price of reagent for emission control system (in Rs./kg)".

24. Amendment to the Regulation 48 of the Principal Regulations.

24.1. In Clause (1) of Regulation 48 of the Principal Regulations, the words "supplementary capacity charge, supplementary energy charge,"shall be inserted after the words "energy charge,".

25. Amendments to Regulation 49 of the Principal Regulations.

25.1. Sub-sub-clause (iv) of Sub-clause (d) of Clause (E) of Regulation 49 of the Principal Regulations shall be omitted.

25.2. A new sub-clause, namely, Sub-clause (f) shall be inserted after Sub-clause (e) of Clause (E) of Regulation 49 of the Principal Regulations as under:

"(f) Norms of Auxiliary energy consumption for emission control system (AUX_{en}) of thermal generating stations:

Name of Technology	AUX_{en} (as % of gross generation)
(1) For reduction of emission of sulphur dioxide:	
a) Wet Limestone based FGD system (without Gas to Gas heater)	1.0%
b) Lime Spray Dryer or Semi dry FGD System	1.0%
c) Dry Sorbent Injection System (using Sodium bicarbonate)	NIL

d)	For CFBC Power plant (furnace injection)	NIL
e)	Sea water based FGD system (without Gas to Gas heater)	0.7%
(2) For reduction of emission of oxide of nitrogen :		
a)	Selective Non-Catalytic Reduction system	NIL
b)	Selective Catalytic Reduction system	0.2%

Provided that where the technology is installed with "Gas to Gas" heater, AUX_{en} specified above shall be increased by 0.3% of gross generation."

25.3. A new clause, namely Clause (F) shall be added after Clause (E) of Regulation 49 of the Principal Regulations as under:

"**(F) Norms for consumption of reagent:** (1) The normative consumption of specific reagent for various technologies for reduction of emission of sulphur dioxide shall be as under:

(a) For Wet Limestone based Flue Gas De-sulphurisation (FGD) system: The specific limestone consumption (g/kWh) shall be worked out by following formula:

$$[K \times SHR \times S/CVPF] \times [85/ LP]$$

Where,

S = Sulphur content in percentage,

LP = Limestone Purity in percentage,

SHR= Gross station heat rate, in kCal per kWh;

CVPF = (a) Weighted Average Gross calorific value of coal as received, in kCal per kg for coal based thermal generating stations less 85 kCal/kg on account of variation during storage at generating station;

(b) Weighted Average Gross calorific value of lignite as received, in kCal per kg, as applicable for lignite based thermal generating stations:

Provided that value of K shall be equivalent to (35.2 x Design SO_2 Removal Efficiency/96%) for units to comply with SO_2 emission norm of 100/200 mg/Nm^3 or (26.8 x Design SO_2 Removal Efficiency/73%) for units to comply with SO_2 emission norm of 600 mg/Nm^3;

Provided further that the limestone purity shall not be less than 85%.

(b) For Lime Spray Dryer or Semi-dry Flue Gas Desulphurisation (FGD) system: The specific lime consumption shall be worked out based on minimum purity of lime (LP) as at 90% or more by applying formula [6 x 90 / LP] g/kWh;

(c) For Dry Sorbent Injection System (using sodium bicarbonate): The specific consumption of sodium bicarbonate shall be 12 g per kWh at 100% purity.

(d) For CFBC Technology (furnace injection) based generating station: The specific limestone consumption for CFBC based generating station (furnace injection) shall be computed with the following formula:

$$[\ 62.9 \times S \times SHR\ /CVPF\ ] \times [\ 85/\ LP]$$

Where

S = Sulphur content in percentage,

LP = Limestone Purity in percentage,

SHR = Gross station heat rate, in kCal per kWh,

CVPF = (a) Weighted Average Gross calorific value of coal as received, in kCal per kg for coal based thermal generating stations less 85 kCal/kg on account of variation during storage at generating station;

(b) Weighted Average Gross calorific value of lignite as received, in kCal per kg as applicable for lignite based thermal generating stations;

(e) For Sea Water based Flue Gas Desulphurisation (FGD) system: The reagent used in sea water based Flue Gas Desulphurisation (FGD) system shall be NIL

(2) The normative consumption of specific reagent for various technologies for reduction of emission of oxide of nitrogen shall be as below:

(a) For Selective Non-Catalytic Reduction (SNCR) System: The specific urea consumption of SNCR system shall be 1.2 g per kWh at 100% purity of urea.

(b) For Selective Catalytic Reduction (SCR) System: The specific ammonia consumption of SCR system shall be 0.6 g per kWh at 100% purity of ammonia."

26. Amendment to PART I of Annexure I of the Principal Regulations.

26.1. In Row 16 of FORM 15 of Part I of Annexure I of the Principal Regulations, the formula "(12+13+14+15)" specified after the words "Total Transportation Charges" shall be substituted by the formula "(12+13-14+15)".

26.2. In FORM 15 of Part I of Annexure I of the Principal Regulations, Column no. (5) shall be deleted and the heading "Domestic Source (1)" under column no. (4) shall be substituted by the words "Domestic Source". Note 3 under Form 15 shall be substituted by "3. Details to be provided for each type of coal i.e. domestic coal, imported coal and e-auction coal separately."

26.3. A new form namely, FORM 16A shall be inserted after FORM 16 of Annexure-I of Part I of the Principal Regulations.

Sd/-
(Sanoj Kumar Jha)
Secretary

Note: The Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 were published in Part III- Section 4, No.144 of the Gazette of India (Extraordinary) dated May 3, 2019.

Annexure -I

PART 1

FORM- 16A

Details of Reagent for
Computation of Supplementary Energy Charge Rate

Name of the Petitioner _____
Name of the Generating Station _____

S. No.	Month	Unit	For preceding 3rd Month (from ODe)	For preceding 2nd Month (from ODe)	For preceding 1st Month (from ODe)
1	Quantity of Reagent supplied by Limestone supply Company				
2	Adjustment (+/-) in quantity supplied made by Limestone or Reagent supply Company				
3	Net quantity of Reagent Received (1±2)				
4	Amount charged for Reagent supply Company	(Rs.)			
5	Adjustment (+/-) in amount charged made for Reagent supply by the Company	(Rs.)			
6	Total amount Charged (4±5)	(Rs.)			
7	Transportation charges by rail/ship/road transport	(Rs.)			
8	Adjustment (+/-) in amount charged made by Railways/Transport Company	(Rs.)			
9	Demurrage Charges, if any	(Rs.)			
10	Total Transportation Charges (7±-8-9)	(Rs.)			
11	Total amount Charged for Reagent supplied including Transportation (6+10)	(Rs.)			
12	Weighted Average Cost of Reagent during the month	(Rs/tonne)			
13	Purity of Reagent received during the month	(%)			

(Petitioner)