CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 12/RP/2015
in
Petition No. 229/2010

Coram:
Shri Gireesh B. Pradhan, Chairperson
Shri A.S. Bakshi, Member

Date of Hearing: 10.09.2015
Date of Order: 09.02.2016

In the matter of

Review of Order dated 6.5.2015 in Petition No.229/2010 for approval of the tariff of Indira Gandhi Super Thermal Power Project, Stage-I (3 x 500 MW) for the period from date of commercial operation of Unit-I to 31.3.2014

And

In the matter of

Aravali Power Company Private Limited
NTPC Bhawan, Core-7, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003 …**Petitioner**

Vs

1. Haryana Power Purchase Centre
Shakti Bhawan, Sector-IV,
Panchkula, Haryana-134109

2. Tata Power Delhi Distribution Company Ltd
(*erstwhile* North Delhi Power Ltd)
Grid Substation, Hudson road,
Kingsway Camp,
Delhi-110009

3. BSES Rajdhani Power Ltd.,
BSES Bhawan, Nehru Place,
New Delhi-110019

4. BSES Yamuna Power Ltd.
Shakri Kiran Building,
Karkardooma,
Delhi-110092 **…Respondents**

Parties present:

Shri M.G. Ramachandran, Advocate, APCPL
Ms. Poorva Saigal, Advocate, APCPL
Shri Prashant Chaturvedi, APCPL
Shri Ajay Mehta, APCPL
Shri Bhupinder Kumar, APCPL

Order

The petitioner, Aravali Power Company Private Limited (APCPL) has filed this petition for review of order dated 6.5.2015 in Petition No.229/2010 whereby the tariff of Indira Gandhi Super Thermal Power Project, Stage-I (3 x 500 MW) ("the generating station") was determined by the Commission for the period from date of commercial operation of Unit-I to 31.3.2014 in terms of the 2009 Tariff Regulations.

2. Aggrieved by the said order, the petitioner has sought review of the said order dated 6.5.2015 on the ground of error apparent on the face of the order, raising the following issues:

i) Wrong consideration of Zero date;

ii) Wrong consideration of scheduled completion date w.r.t contract agreement date;

iii) Non-consideration of reasons for delay in execution of works while calculating IDC and IEDC;

iv) Non-consideration of additional rate of ROE of 0.5%;

v) The capital cost being within the Benchmark cost, has not been considered while giving effect to reduction in the capital cost for time overrun;

vi) Wrong deduction of escalation in Main Plant Civil Packages;

vii) Non-consideration of Notional IDC in absence of Weighted Average Interest Rate of loan;

viii) Non-consideration of part of loan amount of ₹1302.94 Cr for IDC calculation;

ix) Wrong adjustment of revenue from sale of infirm power;

x) Wrong consideration of depreciation rate;

xi) Disallowance of additional capitalization of ₹400 lakh during 2011-12 for 400 kV Jhajjar-Mundka D/C transmission line;

3. In addition to the above the petitioner vide affidavit dated 15.7.2015 has sought for review of the order dated 6.5.2015 on the issue of "*Non-consideration of additional capitalization between commercial operation date of different units for computation of tariff."*

4. Heard the representative of the petitioner on the above issues on 'admission'. Review petition is admitted on the issues raised in para 2 (vi), para 2 (ix) and para 3 above. As regards other issues raised by the petitioner, the same is disposed of as detailed in the subsequent paragraphs.

Wrong consideration of Zero date

5. The Commission in order dated 6.5.2015 had decided as under:

"17. The project was conceived to meet the power demands in the wake of CWG-2010 from 3.10.2010 to 14.10.2010 and accordingly it was envisaged to commission at least Unit-I of the generating station prior to October, 2010. However, Unit-I was synchronized on 10.10.2010, during CWG-2010, and the unit was run on full load on 31.10.2010. It is noticed that the agenda for the Board meeting of the petitioner company on 5.7.2007 does not specifically mention the schedule dates for commissioning of units / generating station except that the feasibility report had indicated that Unit-I was to be declared under commercial operation after 42 months from the date of main plant order and the subsequent units at an interval of 6 months thereafter. From the information submitted by the petitioner, it would only be fair and reasonable to take the schedule date of commercial operation either as per feasibility report or as per the schedule tie-up with the vendor of main plant contract instead of reckoning the Scheduled date of commercial operation (SCOD) from the date of financial closure as submitted by the petitioner. In our view, the time schedule as per contractual agreement with the vendor would be more appropriate as the contractual /commercial implications accrue based on provisions of the contract. Accordingly, we reckon the scheduled CODs of the units of the generating station as per the schedule tied-up with the vendor for main plant contract. As per the contract with the vendor of Steam Generator Package, the synchronization of Unit-I is 35 months. from the date of award and for Unit-II & III at an interval of 3 months each. Accordingly, considering the SCOD after 6 months from the date of synchronization, the SCODs of Unit-I, Unit-II and Unit-III works out to 41 months, 44 months and 47months respectively from the date of award of Steam Generator Package. The submissions of the petitioner that the date of financial closure (24.1.2008) should be considered as the zero date, in our view, is not acceptable considering the fact that the petitioner had applied to Power Finance Corporation (PFC) for financial assistance only on 1.8.2007 and 21.8.2007. On the contrary, the petitioner had entered into an agreement with the main plant contractor wherein the completion schedules, as mentioned above (para 16 above) were part of the contract and the cost of the package was quoted based on the said completion schedule. It is therefore evident that the petitioner had entered into a contract keeping in view the scheduled completion time and cost, for bankability of the project. It is further observed that the timeline specified by the petitioner is comparable to the timelines of similar projects of NTPC and other central generating stations. In this background, the contention of the petitioner that the delay of COD of the units was due to the delay in financial closure merits no consideration. Accordingly, the date of financial closure cannot be considered as the zero date, as submitted by the petitioner.

6. The petitioner in the review petition has submitted as under:

"Since the investment approval was without financial closure, the Commission may have taken the financial closure as zero date. Taking Main Plant award date as zero date on the plea that Main Plant award was made before financial closure is an error apparent on the face of the record. In case, there would have been no financial closure, APCPL would have taken all the hit of initial investment of early award of Main Plant without any reimbursement. The business risk taken by NTPC of giving the awards of main plant cannot be a basis of shifting the zero date from financial closure date to Main plant award date. Further, the Commission has overlooked the fact that it was envisaged to commission at least the Unit-I of project before start of Common wealth Games 2010 for providing adequate power supply to the state of Delhi during this time period. Accordingly, the Board of Director's of APCPL accorded

advanced investment approval for the project in anticipation of the financial closure without securing the risk associated during the construction of the project. The above proactive action on the part of APCPL cannot lead to penalisation in computing the period available for achieving COD as per the applicable regulations and consistent practices. Therefore there is an error apparent on the facts of the case or otherwise sufficient reasons for review of the decision taken in the order on the above aspect."

7. The matter has been examined. It is argued by the petitioner that the consideration of the Main plant award date as zero date on the ground that the Main plant was made before financial closure is error apparent on the face of the record. It has also submitted that the business risk taken by NTPC of giving the awards of Main plant cannot be a basis for shifting the zero date from the financial closure date to Main plant award date. The agenda for the Board meeting of the petitioner company did not specifically mentioned the schedule dates of commissioning of the units/ generating station except that the feasibility report had indicated that Unit-I was to be declared under commercial operation after 42 months from the date of Main plant order and the subsequent units at an interval of six months thereafter. In the above background and since the contractual implications accrue based on the provisions of the contract, the Commission in order dated 6.5.2015, had reckoned the scheduled CODs of the units of the generating station as per the schedule tied-up with the vendor for the Main plant contract. The petitioner in this review petition has not indicated any error apparent on the face of the record and has only sought to reopen the case on merits. This is not permissible as the review petition cannot be an appeal in disguise. In our view, there is no error apparent on the face of the record and review on this count fails.

Wrong consideration of scheduled completion date

8. The Commission in its order dated 6.5.2015 had decided as under:

"17. As stated, the project was conceived to meet the power demands in the wake of CWG-2010 from 3.10.2010 to 14.10.2010 and accordingly it was envisaged to commission at least Unit-I of the generating station prior to October, 2010. However, Unit-I was synchronized on 10.10.2010, during CWG-2010, and the unit was run on full load on 31.10.2010. It is noticed that the agenda for the Board meeting of the petitioner company on 5.7.2007 does not specifically mention the schedule dates for commissioning of units / generating station except that the feasibility report had indicated that Unit-I was to be declared under commercial operation after 42 months from the date of main plant order and the subsequent units at an interval of 6 months thereafter. From the information submitted by the petitioner, it would only be fair and reasonable to take the schedule date of commercial operation either as per feasibility report or as per the schedule tie-up with the vendor of main plant contract instead of

reckoning the Scheduled date of commercial operation (SCOD) from the date of financial closure as submitted by the petitioner. In our view, the time schedule as per contractual agreement with the vendor would be more appropriate as the contractual /commercial implications accrue based on provisions of the contract. Accordingly, we reckon the scheduled CODs of the units of the generating station as per the schedule tied-up with the vendor for main plant contract. As per the contract with the vendor of Steam Generator Package, the synchronization of Unit-I is 35 months Order in Petition No.229/2010 Page 9 of 53 from the date of award and for Unit-II & III at an interval of 3 months each. Accordingly, considering the SCOD after 6 months from the date of synchronization, the SCODs of Unit-I, Unit-II and Unit-III works out to 41 months, 44 months and 47months respectively from the date of award of Steam Generator Package. The submissions of the petitioner that the date of financial closure (24.1.2008) should be considered as the zero date, in our view, is not acceptable considering the fact that the petitioner had applied to Power Finance Corporation (PFC) for financial assistance only on 1.8.2007 and 21.8.2007. On the contrary, the petitioner had entered into an agreement with the main plant contractor wherein the completion schedules, as mentioned above (para 16 above) were part of the contract and the cost of the package was quoted based on the said completion schedule. It is therefore evident that the petitioner had entered into a contract keeping in view the scheduled completion time and cost, for bankability of the project. It is further observed that the timeline specified by the petitioner is comparable to the timelines of similar projects of NTPC and other central generating stations. In this background, the contention of the petitioner that the delay of COD of the units was due to the delay in financial closure merits no consideration. Accordingly, the date of financial closure cannot be considered as the zero date, as submitted by the petitioner.

18. Based on the above discussions, the SCODs, the actual COD and the time overrun have been computed as under:

Units	Date of main plant award (zero date)	Period of synchronization (months)	Period of COD (months)	SCOD (from date of main plant award)	Actual COD	Time Overrun
Unit-I	21.8.2007	35	41	21.1.2011	5.3.2011	1.5 months
Unit-II		38	44	21.4.2011	21.4.2012	12 months
Unit-III		41	47	21.7.2011	26.4.2013	21 months

9. The petitioner has submitted as under:

"While considering the scheduled dates for commissioning of units, the Commission has considered the scheduled commissioning date of the units of the generating station as per the schedule tied-up with the vendor of Steam Generator Package. Accordingly, the Commission has considered the Schedule CODs of Unit-I, Unit-II and Unit-III of generating station as 41 months, 44 months and 47 months respectively from the date of award of Steam Generator Package. However, the Commission while considering the Schedule CODs of Unit-I, Unit-II and Unit-III of generating station has overlooked the judgment dated 27.4.2011 passed by Hon'ble Appellate Tribunal for Electricity in Appeal No. 72 of 2010 in which the principle for prudence check of time over run and cost overrun of a project has been laid down.

The petitioner has explained with the following example as to how it is not appropriate to take the date of signing of contract between the generating company and its contractors/ suppliers for computing the scheduled date of commercial operation, instead the benchmark norm may be considered.

	Unit-I	Unit-II	Unit-III
Assuming Capital Cost of the project	₹5 crore/MW= ₹7500 crore		
Assuming IDC capitalized	₹0.5 crore/MW= ₹750 crore		
Unit Size (in MW)	500 MW	500 MW	500 MW
Assuming Scheduled COD as per contractual agreement with Main Plant Vendor	41	44	47
Benchmark timelines for completion of project for additional rate of ROE of 0.5% as per 2009 Tariff Regulations for Greenfield Project	44	50	56
Assuming actual COD of the units of the project	42	48	54
Therefore, Units of the project is entitled for Additional rate of ROE of 0.5% as per 2009 Tariff Regulations for 25 years	= ₹7500 x 30% x 0.5% x 25 years= ₹312.5 crore		
However on the other side, as per Commission's order dated 6.5.2015 in the instant petition, pro rata reduction in IDC due to time overrun w.r.t contractual agreement (₹ in crore)	1/41 x 0.5 x 500 = 6.10	4/44 x 0.5x1000 = 45.46	7/47 x 0.5 x 1500 = 111.7

Therefore, it is observed that the impact of additional return on equity and the contractual arrangement may seek to achieve the same. This cannot be taken to be the period for achieving the COD. If any units of the projects declaring commercial operation within the timeline specified under the 2009 Tariff Regulations, it will be entitled for an incentive for its good project management practices and execution skills in the form of additional ROE of ₹313 crore over the useful life of the units of the project. However on the other hand, there will be a reduction of IDC from the capital cost of ₹112 crore which is not in accordance with good industry practices and the intent and for the purpose of the said tariff regulations laid down by the Commission. Therefore, the implication of the order of the Commission would lead to an anomalous situation and there is an error apparent on the facts of the case or otherwise sufficient reasons for review of the decision taken in the order on the above aspect."

10. We have considered the submissions. The petitioner has argued that the Commission has overlooked the observations contained in the judgment dated 27.4.2011 of Appellate Tribunal for Electricity (the Tribunal) in Appeal No. 72 of 2011. According to the petitioner, the Commission should have considered the delay with respect to some bench marks rather than considering the time schedule in terms of the contract. In this regard it is pointed out that the Board agenda of the petitioner company did not specifically mentioned the schedule COD of the units. Accordingly, the Commission while considering the delay in CODs of the units had considered the contents of the feasibility report which indicated that Unit-I was to be declared under COD after 42 months from the date of Main plant order. Keeping this in view and the observations of the Tribunal in judgment dated 27.4.2011, the Commission had considered the date of award of contract of main plant towards the delay in COD of the units and had given elaborate reasons for the same in

order dated 6.5.2015. In our view, the findings of the Commission on this issue are based on the information submitted by the petitioner and hence there is no error apparent on the face of the record. The petitioner by this review petition has sought to reopen the case on merits and the same is not permissible. Therefore, review on this count is rejected.

Non-consideration of reasons for delay in execution of works while calculating IDC and IEDC

11. The Commission in order dated 6.5.2015 had observed as under:

> *" 27. We now examine the question of time overrun in the light of the principles laid down in the judgment of the Tribunal dated 27.4.2011. The submissions of the petitioner as regards the justification for time overrun under various heads, which have been examined in the previous paragraphs, clearly indicate that there has been slackness on the part of the petitioner in project management and in the execution of contractual agreements in respect of supply and execution of pressure parts piping, including the terms and" conditions of contract. These factors cannot be said to be beyond the control of the petitioner, considering the fact that essence of timely commissioning of the project was known to the petitioner from the stage of conception of the project. In this background, the delay due to selection of a new technology (HCSD) for ash disposal system when efficiency has not been established in India, is also attributable to the petitioner. Considering the above factors in totality, we hold that the petitioner is responsible for the delay in completion of the project and is therefore covered by the principle [(situation (i)] laid down in the judgment of the Tribunal dated 27.4.2011 in Appeal No. 72/2010. Accordingly, the delay of 1.5 months for Unit-I, 12 months for Unit-II and 21 months for Unit-III is due to factors entirely attributable to the petitioner and the entire cost due to time overrun has to be borne by the petitioner. However, the Liquidated Damages and Insurance proceeds on account of the delay, received could be retained by the petitioner."*

12. The petitioner in this petition has submitted as under:

> *"The Hon'ble Commission while working out IDC and IEDC capitalized upto COD of respective units has inadvertently considered Schedule CODs of Unit-I, Unit-II and Unit-III respectively from the date of award of Steam Generator Package. Further, the reasons for delay in the execution of the works which were beyond the control of the petitioner, has also not been considered by the Commission while computing IDC, IEDC and Capital cost for the project.*
>
> *During the implementation of the project, the petitioner encountered unanticipated developments which were beyond the reasonable control and that adversely impacted the adherence of schedules of execution. The bottlenecks which were encountered in key activities were abrupt, unexpected and beyond reasonable control.*
>
> *As regards the activity wise delay, the petitioner submits that as a result of all out efforts made the project/ Units have been timely commissioned despite the unforeseen developments/ bottlenecks mentioned above and took all possible steps to overcome these unanticipated developments / bottlenecks by way of additional mobilization of resources and better coordination amongst various agencies. In respect of any activity that had to be deferred, the petitioner also ensured to mitigate the financial impact by way of consequential deferment of corresponding deployment of funds for such activity.*

The detailed reasons which were beyond the control of the petitioner for delay in execution of the works in Unit-I, II & III are as under:

Unit-I

Delay in civil works due to time taken for getting Right of water Use and unprecedented Monsoon

The project has faced tough situations with respect to the civil works due to the unprecedented torrential rains during 2010 monsoon and the resultant flooding / submergence of makeup water pipeline area and surrounding areas. One of the most critical works that was affected due to the above unprecedented rains was the laying of the underground pipeline from the Makeup water pump house which was located at a distance of 18 KM from the reservoir. The makeup water line work was awarded in 2008. The work related to laying of makeup line-1 was scheduled to be completed within 14 months from the date of award and works related to laying of makeup water line-2 was scheduled to be completed within 23 months from the date of award. However, the Haryana Government restrained the petitioner for executing the work due to absence of any legislation for the Right of Use (ROU) for laying of the underground pipelines. The legislation for the enactment of the ROU was however issued on 06.10.2008. Subsequently, Section-3 notification under the said act for laying the makeup water pipe line was issued on 16.07.2009) under which objections were invited for the acquisition of Right of User in land for laying of the underground pipeline. The Right of User in the land was granted by Haryana Govt. vide notification dated 16.09.2009. The works on the ROU corridor could only be taken up after the issuance of the Gazette Notification.

There was then unprecedented heavy rainfall during the monsoon months in the year 2010 due to which 1.4 Km of the ROU corridor was completely submerged in water upto the height of 1.5 metre. Work related to the laying of the pipeline came to a complete standstill for approx. 6 months, i.e. upto December 2010.

Unit-I was ready for commissioning in October 2010 (synchronised on 10.10.2010) but makeup water line could not be constructed due to reasons mentioned above which were not within the control of the petitioner. Unit-I was commissioned with the water from the temporary Construction Reservoir with contingency arrangements. Water source and capacity of Construction Reservoir was not sufficient for continuous running of the Unit. The ground condition of the water submerged area on the ROU route of makeup water pipeline was such that it was not possible to lay the pipeline for more than 6 months. It was decided to lay an over-ground Loop line circumventing the submerged area of approx. 2.5 km. Thereafter Unit-I was declared under commercial operation on 5.3.2011.

These reasons are in the nature of force majeure events which is beyond the control of the petitioner and the same has been placed before the Hon'ble Commission vide affidavit dated 4.11.2014 in the instant petition. As per the decision of the Hon'ble Appellate Tribunal dated 27.4.2011 in Appeal No. 72 of 2010 if the reasons for delay in execution of the works is beyond the control of the project developers, they should be given the benefits of time overrun in that case. In the circumstances there is an error apparent on the facts of the case or otherwise sufficient reasons for review of the decision taken in the order on the above aspect.

Unit-II

Delay in civil works due to ban on mining activities and unprecedented Monsoon Unit-II was declared under commercial operation on 21.4.2012. As per letter from the Director Industries & Commerce, Mines & Geology, Haryana, a ban on mining was imposed in Haryana with effect from 28.2.2010. This led to acute scarcity of raw construction material (sand, aggregate, etc) affecting the progress of Civil construction work in plant area from March 2010 onwards as working agency had taken time to arrange raw material from alternate sources. Besides, as already indicated that the unprecedented rains during the monsoon months in the year 2010 also inundated civil foundation works within the plant area critical for Boiler light up and subsequent commissioning activities.

As per CERC Regulations 2009 regarding time line for completion of projects, 44 months from the date of investment approval by the board for green fields projects and subsequent units at an interval of 6 months is to be considered for the purpose of additional return of 0.5%. The scheduled COD of Unit-II works out to 5.9.2011 against actual COD of 21.4.2012. As already explained, this delay of around 7 months is due to issuance of notification by Govt. of Haryana regarding ban on mining resulting in scarcity of construction raw material in nearby proximity and the delay in critical civil works because of heavy rains during the period from July to September 2010.

These reasons are in the nature of force majeure events which is beyond the control of the petitioner and the same has been placed before the Hon'ble Commission vide affidavit dated 4.11.2014. These reasons are in the nature of force majeure events which is beyond the control of the petitioner. As per the decision of the Hon'ble Tribunal dated 27.4.2011 in Appeal No. 72 of 2010 if the reasons for delay in execution of the works is beyond the control of the project developers, they should be given the benefits of time overrun in that case. In the circumstances there is an error apparent on the facts of the case or otherwise sufficient reasons for review of the decision taken in the order on the above aspect.

Unit-III

Delay in civil works due to non availability of makeup water line

The Hon'ble commission has not considered the reasons for delay in commissioning of third units' due to non availability of the permanent makeup water line due to the reasons like heavy rainfall and ROW issue for laying of underground pipelined. As already indicated, makeup water line with the contingency arrangement made through loop line was catering to Units-I & II. After dewatering the low-lying water logged area, despite repeated attempts of mobilization of the heavy equipment required for laying and handling the pipeline, the ground conditions became workable only after September 2012 and line was completed in March 2013 and Unit-III was declared for commercial operation from 26.4.2013.

Further, as mentioned herein above there was delay in completion of civil works due to the ban on mining activities resulting in scarcity of construction raw materials in proximity. These reasons are in the nature of force majeure events which is beyond the control of the petitioner and the same has been placed before the Hon'ble Commission vide affidavit dated 4.11.2014. As per the decision of the Hon'ble Tribunal dated 27.4.2011 in Appeal No. 72 of 2010 if the reasons for delay in execution of the works is beyond the control of the project developers, they should be given the benefits of time overrun in that case. In the circumstances there is an error apparent on the facts of the case or otherwise sufficient reasons for review of the decision taken in the order on the above aspect."

13. We have examined the matter. The submission of the petitioner that the Commission has not considered the reasons for the delay while calculating IDC and IEDC is not tenable. From the order dated 6.5.2015 it is evident that the submissions of the petitioner as regards delay in execution of works in Units I, II and III was examined by the Commission in terms of the decision of the Tribunal in Appeal No. 72 of 2010 and the justification furnished by the petitioner. The relevant paragraph of the order dated 6.5.2015 in Petition No. 229/2010 is extracted as under:

"27. We now examine the question of time overrun in the light of the principles laid down in the judgment of the Tribunal dated 27.4.2011. The submissions of the petitioner as regards the justification for time overrun under various heads, which have been examined in the previous paragraphs, clearly indicate that there has been slackness on the part of the petitioner in project

management and in the execution of contractual agreements in respect of supply and execution of pressure parts piping, including the terms and conditions of contract. These factors cannot be said to be beyond the control of the petitioner, considering the fact that essence of timely commissioning of the project was known to the petitioner from the stage of conception of the project. In this background, the delay due to selection of a new technology (HCSD) for ash disposal system when efficiency has not been established in India, is also attributable to the petitioner. Considering the above factors in totality, we hold that the petitioner is responsible for the delay in completion of the project and is therefore covered by the principle [(situation (i)] laid down in the judgment of the Tribunal dated 27.4.2011 in Appeal No. 72/2010. Accordingly, the delay of 1.5 months for Unit-I, 12 months for Unit-II and 21 months for Unit-III is due to factors entirely attributable to the petitioner and the entire cost due to time overrun has to be borne by the petitioner. However, the Liquidated Damages and Insurance proceeds on account of the delay, received could be retained by the petitioner.

14. It is therefore evident that the Commission while calculating IDC and IEDC in respect of the generating station had duly considered the reasons for the delay in execution of works. The petitioner has not indicated any error apparent on the face of the order but has only sought to reargue the case on merits. Accordingly, we hold that there is no error apparent on the face of the order and review on this count fails.

Non consideration of additional rate of ROE of 0.5%

15. The petitioner has submitted that in terms of Regulation 15 of the 2009 Tariff Regulations, the project developer is entitled for an additional rate of ROE of 0.5% over its useful life of the project if a unit of the project is declared under commercial operation within the timeline specified under the said regulations. The petitioner has also submitted that the Commission has wrongly proceeded on the basis that in terms of the said regulation an additional ROE of 0.5% can only be allowed only if the project is completed within the specified timeline and no additional return is available with the developer if whole of the project is declared under commercial operation beyond the stipulated timeline. Accordingly, it has submitted that this is contrary to the principle of determination of tariff unit-wise and phasing of the commercial operation of various units. Based on this, the petitioner has contended that there is error apparent on the face of the order or sufficient reason exists for review of order on the above aspect.

16. We have examined the matter. Regulation 15 of the 2009 Tariff Regulations provides as under:

*"15. **Return on Equity**. (1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with regulation 12.*

(2) Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per clause (3) of this regulation:

Provided that in case of projects commissioned on or after 1st April, 2009, an additional return of 0.5% shall be allowed if such projects are completed within the timeline specified in ***Appendix-II****:"*

Provided further that the additional return of 0.5% shall not be admissible if the project is not completed within the timeline specified above for reasons whatsoever."

17. The timelines prescribed for completion of the project as per Appendix-II of the 2009 Tariff Regulations is as under:

"1. The completion time schedule shall be reckoned from the date of investment approval by the Board (of the generating company or the transmission licensee), or the CCEA clearance as the case may be, up to the date of commercial operation of the units or block or element of transmission project as applicable.

2. The time schedule has been indicated in months in the following paragraphs and tables:

A Thermal Power Projects
Coal/Lignite Power Plant

Unit size 500/600 MW
(a) 44 months for [first unit of] green field projects. Subsequent units at an interval of 6 months each
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18. It is evident from the last proviso of Regulation 15 of the 2009 Tariff Regulations, as quoted above, that the additional return on equity of 0.5% shall not be admissible if the project is not completed within the timeline specified (in Appendix-II) for any reason whatsoever. Admittedly in the present case, there has been time overrun in the declaration of commercial operation of the units of the petitioner. Considering this fact the Commission in its order dated 6.5.2015 had not allowed the additional ROE of 0.5%. The petitioner has not pointed out any error apparent on the face of the order but has only sought to reopen the case on merits. This is not permissible in review. Accordingly, we hold that there is no error apparent on the face of the order and review on this ground fails.

The capital cost being within the Benchmark cost, has not been considered while giving effect to reduction in the capital cost for time overrun.

19. The Commission in its order dated 6.5.2015 in Petition No. 229/2010 had decided as under**:**

"27. *We now examine the question of time overrun in the light of the principles laid down in the judgment of the Tribunal dated 27.4.2011. The submissions of the petitioner as regards the*

justification for time overrun under various heads, which have been examined in the previous paragraphs, clearly indicate that there has been slackness on the part of the petitioner in project management and in the execution of contractual agreements in respect of supply and execution of pressure parts piping, including the terms and conditions of contract. These factors cannot be said to be beyond the control of the petitioner, considering the fact that essence of timely commissioning of the project was known to the petitioner from the stage of conception of the project. In this background, the delay due to selection of a new technology (HCSD) for ash disposal system when efficiency has not been established in India, is also attributable to the petitioner. Considering the above factors in totality, we hold that the petitioner is responsible for the delay in completion of the project and is therefore covered by the principle [(situation (i)] laid down in the judgment of the Tribunal dated 27.4.2011 in Appeal No. 72/2010. Accordingly, the delay of 1.5 months for Unit-I, 12 months for Unit-II and 21 months for Unit-III is due to factors entirely attributable to the petitioner and the entire cost due to time overrun has to be borne by the petitioner. However, the Liquidated Damages and Insurance proceeds on account of the delay, received could be retained by the petitioner."

20. The petitioner in the review petition has submitted as under:

"The Cost per MW comparison of Hard Cost undertaken by CERC is tabulated below:

(₹in crore/MW)

Benchmark Cost	IGSTS Total	IGSTS CERC	Durgapur 2 x 500	Mejia 2x500	Maithon 2x525
4.48	4.35	4.31	4.69	4.30	3.46

The Hon'ble Commission while comparing hard cost of IGSTPS of Rs.4.35 Cr./MW with Bench mark 4.48 Cr/MW and contemporary projects has found IGSTPS to be on lower side. Thus, it can be concluded that the approved project cost and hard cost of the project as on COD is reasonable if compared with the contemporary projects."

21. Accordingly, the petitioner has submitted that since, there is no cost overrun, the deduction on account of cost overrun due to time overrun is an error apparent on the face of the order and there is sufficient reason for review of order on this ground.

22. We have considered the submissions of the petitioner. The submissions of the petitioner that since there is no cost overrun, the deduction of cost overrun due to time overrun is an error apparent on the face of the order is not acceptable. The findings of the Commission as regards the comparison of capital cost of the generating station of the petitioner with the Bench mark capital cost are as under:

"*48. The hard cost based upon the figures of capital expenditure as on 31.3.2014 under different packages as submitted by the petitioner works out to ₹3.527 crore / MW, However, the hard cost as per the actual capital expenditure as furnished in Form 5B of the affidavit dated 15.11.2013 which has been considered for capital cost as on COD (26.4.2013) does not match with the figures submitted by the petitioner, for comparison of hard cost with the benchmark cost specified by the Commission. Based on the information submitted in Form 5B, the hard cost, after adjustment of the pro rata reduction in IEDC, main plant civil work due to time overrun and adjustment of infirm power cost is worked out as ₹4.31 crore/MW (645979.14/1500). This hard cost of ₹4.31crore/MW as worked out is comparable to the benchmark cost of ₹4.48 crore/MW specified by the Commission. Further, the capital cost of*

the project has been compared with other similar capacity green field projects of Durgapur Steel Thermal Power Project of DVC and Maithon Power Ltd. etc., as given under…"

Sl. No.	Generating Stations	Capacity (MW)	Station COD	Completed Cost as per Investment Approval by Board ***(₹in Crore)***	Approved cost ***(₹in crore / MW)***	Hard Cost as on COD of generating station as approved by Commission/ as claimed by DVC/ Maithon Power Ltd./ APCPL ***(₹in Crore)***	***₹in crore / MW***
						Hard Cost	
1	Durgapur Steel Thermal of DVC	2 X 500	5.3.2013	5715.62	5.72	4691.38	4.69
2	Mejia TPS, Unit-7 &8 of DVC	2 X 500	16.8.2012	5286.27	5.27	4298.77	4.30
3	Maithon Right Bank of MPL	2 X 525	24.7.2012	5500.00	5.24	3634.45	3.46
4	Indira Gandhi Super TPS	3 X 500	26.4.2013	8587.96	5.72	6459.79	4.31

23. Though the hard cost as per the actual capital expenditure furnished in Form 5B of the affidavit dated 15.11.2013 did not match with the figures submitted by the petitioner for comparison of hard cost with the benchmark cost specified by the Commission, the Commission based on the information submitted by the petitioner had worked out the hard cost as ₹4.31 crore/MW (645979.14/1500) after adjustment of the pro rata reduction in IEDC, main plant civil work due to time overrun and adjustment of infirm power cost. There is admittedly time overrun in the completion of the project and the reasons for the delay in the completion of the project have also not been accepted by the Commission. Hence, in terms of the principles laid down by the Tribunal in Appeal No. 72 of 2010, the Commission had examined the issue of time overrun involved in the completion of the project and had concluded that the delay of 1.5 months for Unit-I, 12 months for Unit-II and 21 months for Unit-III is attributable to the petitioner and that the entire cost overrun due to time overrun has to be borne by the petitioner. Accordingly, in terms of the said judgment, the cost overrun due to time overrun was deducted from the capital cost of the

generating station. In this background, we find no merit in the submissions of the petitioner and the prayer of the petitioner for review of the said order on this ground is rejected.

Wrong deduction of escalation in Main Plant Civil Packages

24. The petitioner in the review petition has submitted as under:

> *"APCPL enters into contract agreements with the contractor wherein the price variation clause clearly specifies that the contract price shall be subject to price adjustment during the performance of the contract to reflect the changes in the cost of labour and material components etc. The price variation clause envisages price escalation payable by APCPL to the contractor, as up to the contract date (scheduled date) or the actual date, whichever is earlier. The Contract entered by APCPL for Main Plant Civil Package clearly indicates that APCPL is liable only for the escalation up to the scheduled date and the additional escalation for the delay on the part of the contractor is to be borne by the contractor itself. It is further submitted that the Cost of Main Plant Civil Packages shown in the form-5D is as per awarded value at the time of award considering the then prevailing prices and market scenario. The actual cost of Main Plant Civil packages has been arrived by adding price escalation, taxes & duties for the period from the date of award to the scheduled completion date as per contractual agreement."*

25. Accordingly, the petitioner has submitted that the deduction of escalation in the main plant civil package is totally unwarranted and there is an error apparent on the facts of the case or otherwise sufficient reasons for review of the decision taken in the order on the above aspect.

26. The petitioner vide affidavit dated 15.7.2015 has filed additional submissions on this issue as under:

> *"The Hon'ble Commission, in its order dated 6.05.2015 has compared the awarded price of Rs. 290.11 Cr (Form-%D) towards Main plant civil works with the value given at Row 4.1 of Form 5 B of the additional submission dated 15.11.2013 and has disallowed the expenditure incurred by the Petitioner on the Main Plant Civil works (**Reference may be made to Para 32 of the order dated 06.05.2015**). In this connection, it is submitted that in addition to the payments made to the Civil contractor, the expenditure mentioned in Row 4.1 of Form 5 B also includes the cost of material (Cement, Reinforcement Steel, Structural steel angles, chequered plates, rails, pipe, and stainless steel plates) which is used in the civil works.*
>
> *The items mentioned hereinabove were provided to the Agency by the Company at its cost (not included in the package cost) and therefore, the cost of these items have been considered as part of the civil works cost. Hence, the capital expenditure (as on commercial operation date) of Rs. 516.57 Cr is therefore inclusive of these materials.*
>
> *The capitalization details (Gross block + CWIP) in respect of the above package are given as under:*

Date	Cost of work executed under the contract (on cumulative basis) (₹ in crore)	Material cost provided free of cost to contractor (on cumulative basis)(₹ in crore)	Total cost on cumulative basis (₹ in crore)
26.4.2013	232.69	443.53	676.22
31.3.2014	243.13	449.05	692.18

Further, as on COD of Unit III, i.e. 26.04.2013 and as on 31.03.2014, the capitalization on cash basis is Rs 516.57 Cr and Rs 519.44 Cr respectively including cost of free issue of material provided by the company.

*From the above, it is clear that if the cost of materials supplied (**free of cost**) to the contractor is excluded from the expenditure, then the cash expenditure as on the date of commercial operation of the unit is well within the awarded cost. Reference may also be made to the auditor certificate for non-payment of any cost escalation due to time overrun in this package.*

There is therefore an error apparent on the facts of the case or even otherwise there are sufficient reasons for this Hon'ble Commission to review the decision taken in the order on the above aspect."

27. We have considered the submissions of the petitioner. Based on the data submitted above (table under Para 26 above), the petitioner has contended that "the items mentioned were provided to the Agency by the Company at its cost (not included in the package cost) and therefore, the cost of these items have been considered as part of the civil works cost. Accordingly, it has submitted that the capital expenditure of ₹516.57 crore (as on COD) is therefore inclusive of these materials. The petitioner has argued that if the cost of materials supplied free of cost to the contractor is excluded from the expenditure, then the cash expenditure as on COD of the unit is well within the awarded cost and hence, there is no cost overrun due to time overrun. It is pertinent to mention that the above submissions of the petitioner do not find mention in the Form-5D filed vide affidavit dated 15.11.2013. The petitioner was directed by letter dated 17.9.2014 to submit additional information as regards the escalation paid during the period from the schedule COD to the actual COD in the different contract packages. In response, no clarification/ information was submitted by the petitioner. Hence, the matter was examined and based on the available information, the Commission had rejected the claim of the petitioner on prudence check, while passing the order dated 6.5.2015. The petitioner having not submitted the relevant clarification/information as sought for by the Commission on this issue, cannot say that the Commission has not considered the submissions made by it while disallowing the said claim. In our view, the petitioner cannot have any grievance since the information was not submitted for the consideration of the Commission. There is no error apparent on the face of the order and review on this ground is rejected.

Non-consideration of Notional IDC in absence of Weighted Average Interest Rate of loan

28. The Commission in its order dated 6.5.2015 had observed as under:

"45. The petitioner has claimed notional IDC of ₹4475.65 lakh as on COD of Unit-I of the generating station. The claim of the petitioner has been examined and the following is observed:

(a) The petitioner has claimed notional IDC from the first quarter of 2007-08 and the first drawl of the actual loan was made in the fourth quarter (14.2.2008) of 2007-08. The petitioner has worked out the notional IDC for first three quarters of 2007-08 by considering the rate of interest @ 10.75% per annum, applicable to the first drawl of loan. But, there was no drawl of actual loan for the generating station as well as the petitioner company as a whole before 14.2.2008. Hence, there was no weighted average rate of interest available to work out the normative IDC before actual drawl of the loan (14.2.2008). Therefore, no IDC has been allowed before the actual drawl of the loan.

(b) As the IDC has been restricted up to 21.1.2011, 21.4.2011 and 21.7.2011 for Unit –I, Unit–II and Unit –III respectively, the normative IDC has also been restricted up to these dates for the said units. However, due to the non submission of information by the petitioner, the normative IDC has been worked out up to 31.3.2011 for all the three units. This is subject to revision as per information to be submitted by the petitioner at time of truing-up of tariff in terms of Regulation 6 of the 2009 Tariff Regulations.

46. In terms of the above, the normative IDC is worked out as ₹2632.65 lakh and the same is allowed for the purpose of tariff purpose."

29. Referring to Regulation 7 (1) (a) of the 2009 Tariff Regulations, the petitioner has submitted as under:

"As per Tariff Regulations 2009, in case the actual equity incurred by the project developer is in excess of 30%of the funds deployed, the excess equity shall be treated as normative loan and notional IDC will be allowed accordingly.

…Since the project was envisaged for CWG 2010 and executed on a fast track basis without waiting for financial closure, the deployment of funds has been carried out from the owners equity till the first drawl of the actual loan which was made in the fourth quarter on 2007-08. Accordingly, the petitioner has considered the weighted average rate of interest @ 10.75% p.a. applicable to the first drawl of loan for calculating the notional IDC. Even as per tariff regulations, the petitioner is entitled for a notional IDC for an equity infused in excess of 30% of funds deployed."

30. The petitioner has reiterated the above submissions vide affidavit dated 15.7.2015. Accordingly, the petitioner has submitted that there is an error apparent on the face of the record or otherwise sufficient reasons for review of the decision taken in the order on the above aspect.

31. The matter has been examined. The claim of the petitioner for applying interest rate of actual loan drawl from a retrospective date i.e. 16.5.2007 (Average basis) for working out notional loan is not acceptable. In terms of Regulation of 2009 Tariff Regulations, Notional IDC has been worked out on the basis of equity in excess of 30% and interest rate of the actual loan or the company loan available at that period and allowed accordingly. The Commission in its

various tariff orders determining the tariff of the generating stations of NTPC had followed this methodology of computing notional loan based on actual loan. Since in the present case, the equity is in excess of 30% and no actual loan was available in order to consider the applicable interest rate till the drawl of loan, the methodology adopted in other cases was followed in the present case. The excess equity is considered as notional loan for the purpose of IDC in order to cater to the variation in deploying the debt and interest. As the petitioner has not opted to deploy debt during this period, notional IDC was not considered as the actual loan was availed later on. Clause 7 (1) of the 2009 Tariff Regulations do not provide the interest rate to be considered for the purpose of IDC. Regulation 12 of the 2009 Tariff Regulations provide that for a project declared under COD on or after 1.4.2009, if the equity deployed is more than 30% of capital cost, the equity in excess in 30% shall be treated as normative loan. As stated the provisions of 2009 Tariff Regulations do not specify the interest rate for notional IDC and hence the interest rate applicable to the generating company at that point in time has been considered. In this background the notional IDC has been worked out and allowed in order dated 6.5.2015 and the same is in accordance with the 2009 Tariff Regulations. Hence, there is no error apparent on the face of the order and review on this ground fails.

Non-consideration of Part of loan amount for IDC

32. The petitioner has submitted as under:

> *"The Hon'ble Commission has not considered part of loan drawl stating it is related to loan taken for servicing of interest on previously drawn loans. Accordingly a loan amount of ₹1302.94 crore has not been taken into calculations.*
>
> *It is submitted that the Interest During Construction (IDC) is part of the capital cost of the project and is to be financed through debt and equity in the ratio of 70:30 which is also provided under Regulation 7. The IDC needs to be financed through debt and equity and its financing through debt shall carry the interest thereon which is provided in the Regulation. In view of above there is no compounding of interest on amount of ₹1302.94 crore as observed by the Hon'ble Commission. Further, the Company has maintained the debt equity ratio of 70:30 in respect of the capital expenditure (including IDC) as incurred by the Company as reflected in Form 14 A of the instant petition. Thus, the loan amount of ₹1302.94 crore drawn for payment of interest in consonance of the Tariff Regulations and needs to be considered while working out IDC.*
>
> *The Hon'ble Commission has failed to appreciate that in a single project company before COD there being no retained earnings as in the case of multi project company with other existing businesses there is no funds available to service its obligations towards interest repayment and there is a need to take fresh loan to service the interest. Start up company like APCPL does not have enough cash in reserve to repay its interest obligation before the COD*

of the project. APCPL has accordingly taken a fresh loan from PFC, who is the only lender for APCPL, to settle the interest payment amount and the same should have been considered."

33. The petitioner has reiterated the above submissions vide affidavit dated 15.7.2015. Accordingly, the petitioner has submitted that there is an error apparent on the face of the record or otherwise sufficient reasons for review of the decision taken in the order on the above aspect.

34. We have examined the matter. As per the loan agreement between PFC and the petitioner, the interest accruing on the loan amount was to be paid on monthly basis. The extract of the loan agreement is as under:

2.1 …..The installment of the interest will be payable monthly on 15th of every month after the commencement of the disbursement.

It is noticed that the petitioner did not pay the interest accrued every month from equity nor from any internal resources but has preferred to draw fresh loan in order to meet interest payment liability. In this regard, the Commission in its order dated 6.5.2015 had observed as under:

"94. The petitioner, instead of paying the interest accrued every month, was drawing fresh loan equivalent to the interest amount each and every month to settle the interest payment. Out of the total loan of ₹5950.46 crore drawn up to 31.3.2014, loan amounting to ₹1302.94 crore was drawn to settle the interest amount which has resulted into compounding of interest. The petitioner has also claimed the interest on such loan amount of ₹1302.94 crore as IDC. As per agreement with PFC, the petitioner was required to pay the interest but due to its inability to pay the monthly interest, the petitioner has drawn fresh loan to settle the interest liability. Thus, loan amount of ₹1302.94 crore, drawn to settle the interest, has not been considered while working out the IDC."

35. Thus, out of the total loan amount of ₹5950.46 crore drawn up to 28.3.2014, loan amounting to ₹1302.94 crore was drawn to settle the interest amount which in the presentation made appeared to have resulted into compounding of interest. As certain discrepancies were noted in the information between expenditure claimed and as reflected in Form 9A/9B, need for reconciliation between the figures certified by Chartered Accountant and to those appearing in balance sheet, the loan amount of ₹1302.94 crore which was drawn to settle the interest was not considered while working out the IDC. Since the decision on this count is based on the materials submitted by the petitioner and considered by the Commission, the submission of the petitioner that there is error apparent on record is not acceptable. However, considering the fact that there

is no compounding of interest on the amount of ₹1302.94 crore, the same will be considered at the time of revision of tariff based on truing up exercise in terms of Regulation 6 (1) of the 2009 Tariff Regulations. The petitioner is also granted liberty to submit all relevant information in Form 9A/ 9B along with reconciliation of figures while considering the truing-up petition as stated above.

Wrong consideration of depreciation rate

36. The Commission in the table under para 61 of the order dated 6.5.2015 had allowed depreciation as under:

	5.3.2011 to 31.3.2011	**1.4.2011 to 31.3.2012**	**1.4.2012 to 20.4.2012**	**21.4.12 to 31.3.2013**	**1.4.2013 to 25.4.2013**	**26.4.2013 to 31.3.2014**
Opening Gross Block	308912.38	308912.38	308912.38	527967.46	527967.46	713134.16
Addition due additional Capitalisation	-	-	-	-	-	22990.00
Closing Gross Block	308912.38	308912.38	308912.38	527967.46	527967.46	736124.16
Average Gross Block	308912.38	308912.38	308912.38	527967.46	527967.46	724629.16
Rate of Depreciation	4.276%	4.276%	4.276%	4.612%	4.753%	4.758%
Depreciable Value	278021.14	278021.14	278021.14	475170.71	475170.71	652166.25
Depreciation	**977.04**	**13208.07**	**723.73**	**23014.30**	**1718.62**	**32115.89**

37. The petitioner has submitted as under:

> *"The Hon'ble Commission has considered the depreciation rate of 4.275%, 4.612% and 4.276% against the claim of 4.37883%, 4.6697% and 4.8338% as on COD of Unit-I, Unit-II and Unit-III respectively. The depreciation rate has been considered as per the rates specified in 2009 Tariff Regulations and the capital base as submitted by the petitioner. The depreciation rates worked out in the order was different from the petitioner's claim due to change in depreciation rate of certain capital items. In the instant order, the reason for allowing depreciation rates other than that been claimed by the petitioner is not being provided by the Hon'ble Commission."*

38. Accordingly, the petitioner has submitted that there is an error apparent on the face of the record or otherwise sufficient reasons for review of the decision taken in the order on the above aspect of difference in depreciation rates.

39. The matter has been examined. It is noticed that the petitioner in its petition for determination of tariff had claimed the depreciation rate of 4.276%. However, on scrutiny of Form-11 submitted by the petitioner, it was observed that the depreciation rate of few capital items considered by the petitioner were different from those specified under the 2009 Tariff

Regulations. The claims in respect of these capital items and the methodology adopted by the Commission in order dated 6.5.2015 are as under:

a) Depreciation on Capital Expenditure on assets not owned by Company has been claimed at the rate of 25.00% p.a. However, the depreciation rate for such asset category i.e. Capital Expenditure on assets not owned by Company has not been provided in Appendix-III of the 2009 Tariff Regulations. Accordingly, the asset was considered under the head "Any other assets not covered above" with a depreciation rate of 5.28%.

b) The rate of depreciation claimed for "Software" was 33.33%. However, the depreciation rate of 15% as specified under the 2009 Tariff Regulation was considered.

c) Depreciation on notional IDC at 5.28% has been considered by the petitioner. Since the notional IDC do not form part of the book value of the gross block, the inclusion of the same in the gross block for calculation of the depreciation was not justifiable. Accordingly, notional IDC was not considered for calculation for the rate of depreciation.

40. Since depreciation allowed in order 6.5.2015 has been worked out and allowed in terms of the 2009 Tariff Regulations, the submission of the petitioner is not acceptable. The petitioner is at liberty to obtain certified copies of the calculation for depreciation, after inspection of records in terms of the CERC (Conduct of Business) Regulations, 1999. Hence, there is no error apparent on the face of the order and review on this ground fails.

Disallowance of additional capital expenditure during 2011-12 for 400 KV D/C Jhajjar-Mundka Transmission Line

41. The petitioner has submitted as under:

> *"The Hon'ble Commission has disallowed an additional capital expenditure of Rs 400 lakh during 2011-12 for 400 KV D/C Jhajjar-Mundka Transmission Line stating that the capital cost of the transmission line has been restricted to the investment approval dated 1.5.2008 for the instant transmission line. Hon'ble Commission vide its order dated 28.1.2015 in petition no 239 of 2010 while considering the capital cost for the instant transmission line, had given liberty to the petitioner to approach Hon'ble Commission for revision of tariff for the period 07-11.2013 to 31.03.2014 in case Revised Cost Estimates get approved. However, the Hon'ble Commission in the instant petition (229/2010) for the same transmission line for the prior period (i.e. 05.03.2011 to 06.11.2013) has not provided the liberty to the petitioner based on the revised cost estimates (RCE). The relevant para of Hon,ble Commission's order dated 28.01.2015, where liberty was granted, is quoted as under:*
>
> > *"16. The completion cost as furnished by the petitioner exceeds the apportioned approved cost of Rs 7863.90 lakh by Rs 19.1 lakh. For the purpose of tariff computation, the completion cost as on the effective date of commercial operation is being restricted to the approved cost. The petitioner is granted liberty to approach the Commission for revision of tariff in case the Revised Cost Estimates are approved by the competent authority. Accordingly, gross block Rs 7863.90 lakh has been*

considered for the purpose of computation of the transmission charges in the present petition".

42. Accordingly, the petitioner has submitted that there is an error apparent on the facts of the case or otherwise sufficient reasons for review of the decision taken in the order on the above aspect.

43. From the submission of the petitioner above, it is evident that the petitioner is aggrieved by the Commission's order not granting it liberty to submit the Revised Cost Estimates in respect of the transmission system for the period from 5.3.2011 to 6.11.2013. In this connection, it is noticed that in para 117 of the order dated 6.5.2015 in Petition No. 229/2010, the Commission had observed as under:

"117. The transmission charges allowed as above is subject to truing-up in terms of the Regulation 6 of the 2009 Tariff Regulations. Also, the difference in the opening capital cost considered as on 7.11.2013 in order dated 28.1.2015 in Petition No. 239/TT/2010 and the closing capital cost considered as on 6.11.2013 in this order would be trued-up at the time of revision of tariff determined by order dated 28.1.2015 in terms of Regulation 6 of the 2009 Tariff Regulations."

44. In line with the above observation, we grant liberty to the petitioner to submit the Revised Cost Estimates at the time of truing-up of tariff in terms of Regulation 6 of the 2009 Tariff Regulations. The review on this account is disposed of accordingly.

45. Based on the above, the review petition is admitted on the following issues:

i) Wrong deduction of escalation in Main Plant Civil Packages;

ii) Wrong adjustment of revenue from sale of infirm power;

(iii) Non-consideration of additional capitalization between commercial operation date of different units for computation of tariff.

46. The petitioner is directed to serve the copy of the petition, along with this order, on the respondents, latest by 18.2.2016. The respondents shall file its reply on or before 26.2.2016 with advance copy to the petitioner, who shall file its rejoinder, if any, by 29.2.2016.

47. Matter shall be listed for hearing on the above issues on **3.3.2016**. Pleadings in the matter shall be completed by the parties before the said date.

Sd/-
(A.S. Bakshi)
Member

Sd/-
(Gireesh B. Pradhan)
Chairperson