

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 11/RP/2024**

**in**

**Petition No. 23/GT/2017**

**Coram:**

**Shri Jishnu Barua, Chairperson**

**Shri Ramesh Babu V., Member**

**Shri Harish Dudani, Member**

**Date of Order: 17<sup>th</sup> April, 2025**

**In the matter of:**

Review of the Commission's order dated 20.1.2024 in Petition No. 23/GT/2017 for approval of the Tariff for the Nabinagar Thermal Power Project (1000 MW) for the period from Date of Commercial Operation of Unit-I (15.1.2017) to 31.3.2019.

**And**

**In the matter of:**

Bhartiya Rail Bijlee Company Limited  
Nabinagar Thermal Power Project, Post Khaira,  
Aurangabad, Bihar - 824303

**...Review Petitioner**

**Vs**

1. East Central Railway  
Hajipur, Bihar
2. North Bihar Power Distribution Company Limited  
Vidyut Bhawan, Bailey Road,  
Patna, Bihar – 800001
3. North Bihar Power Distribution Company Limited  
Vidyut Bhawan, Bailey Road,  
Patna, Bihar – 800001

**...Respondents**

**Parties Present:**

Ms. Swapna Seshadri, Advocate, BRBCL

Ms. Puja Priyadarshini, Advocate, ECR

Shri Aashish Gupta, Advocate, NBPDC

Shri Chiranjeev Singh Marwaha, Advocate, SBPDCL

**ORDER**

Petition No. 23/GT/2017 was filed by the Review Petitioner, Bhartiya Rail Bijlee Company Limited (in short 'BRBCL'), seeking approval of tariff of Nabinagar Thermal



Power Project (1000 MW) for the period from COD of Unit-1 (15.1.2017) to 31.03.2019 in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (in short '2014 Tariff Regulations'). The Commission, vide its order dated 20.1.2024 (in short, 'impugned order'), disposed of the said petition. Aggrieved by the impugned order dated 20.1.2024, the Review Petitioner has sought a review of the following issues:

- A. *Non-condonation of delay of 353 days out of the total delay of 2593 days in COD of unit III;*
- B. *Deduction of IDC and Disallowance of IEDC;*
- C. *Disallowance of notional IDC;*
- D. *Prepayment charges for re-financing of loans;*
- E. *Claim on account of contingency;*
- F. *Interest on loan.*

#### **Hearing dated 4.4.2024**

2. The Review Petition was heard 'on admission', and the Commission, after hearing the learned counsel for the Review Petitioner, 'admitted' the Review Petition on the issues raised in para 1 above and directed the issue of notice and for the parties to complete their pleadings in the matter. Respondent No. 1, East Central Railway (in short 'ECR'), filed its reply on 25.6.2024, and the Review Petitioner filed its rejoinder to the said reply on 9.7.2024. Respondent No. 2, North Bihar Power Distribution Company Limited, and Respondent No. 3, South Bihar Power Distribution Company Limited (collectively called the 'Bihar Discoms'), have filed their common reply on 28.8.2024, and the Review Petitioner has filed its rejoinder to the same on 21.10.2024. The Review Petitioner filed its written submissions on 4.10.2024 and on 22.10.2024. The Respondent, Bihar Discoms, filed their written submissions on 5.10.2024 and on 8.1.2025. The Respondent ECR has filed its written submissions on 2.1.2025

#### **Hearings dated 29.8.2024, 8.10.2024 and 23.10.2024**

3. Thereafter, the matter was listed on different dates, viz 29.8.2024, 8.10.2024, and 23.10.2024, but was adjourned for various reasons, viz., request for adjournment and due to paucity of time, etc.



### **Hearing dated 26.12.2024**

4. The Review Petition was heard on 26.12.2024, wherein the learned counsel for the parties made their detailed oral submissions. While reserving the order in the matter, parties were permitted to file their consolidated written submissions.

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

#### **A. *Non-condonation of delay of 353 days out of total delay of 2593 days in COD of Unit III***

##### ***Submissions of the Review Petitioner***

6. The Review Petitioner submitted that the Commission, in para 47 of the impugned order, notionally restricted the construction period of ESP for Unit-III to the actual time taken for Unit-II ESP, plus 6 months stating that the unacquired land for ESP II and ESP III was almost similar in quantum, overlooking the fact that the land unavailability for ESP III was 35% higher compared to ESP II. The scheduled duration for the construction of Unit III ESP was 36 months. An error has occurred in limiting the time period of 36 months to 24 months for ESP III. It is technically not possible to squeeze the minimum time required to construct ESP since it is a massive structure, and reducing time from the technically required time can lead to failures, accidents, and other risks. It was further submitted that land was not available before 18.2.2016, thereby delaying the start of construction, which involved several sequences of activities (i.e., preliminary civil work completed in April 2017, electrical equipment works and mechanical equipment erection started in April 2017, etc). COD was declared in February 2019. The Review Petitioner, in its written submissions dated 22.10.2024, has reiterated its submissions above.

### **Reply of the Respondents**

7. Respondent No.1, ECR submitted the following:

- (a) The review of condonation of delay of 353 days is not maintainable under review jurisdiction as the Review Petitioner has placed reliance on the same explanation



as regards the time overrun of Unit-III during the hearing of original tariff petition (23/GT/2017). Therefore, the Review Petitioner is trying to re-argue its case, which is not maintainable under the scope of the Review.

- (b) The Review Petitioner has completely misrepresented the facts and falsely stated that no work could be started in respect of ESP III as there was absolutely no land available and only after having possession of land on 18.2.2016, the work of ESP III was started from scratch. However, it can be seen from the minutes of the meeting that the Review Petitioner was in possession of a part of the land, out of a total 0.85 acres, and resumed the construction works in September 2014 only, after resolving the villager's agitation problem.
- (c) Considering that work for ESP-III had resumed in September 2014 and as per Review Petitioner's PERT chart, only 36 months was required for construction works, it ought to have completed the works for ESP II by September 2017 whereas under the impugned order an SCOD extension till 10.3.2018 has been granted by this Commission on account of delay in construction of ESP III. The only dispute as regards ESP-III was in relation to excess payments made by the Review Petitioner, and there was no issue faced by it regarding the unavailability of land.

8. Respondents BSPHCL, in its reply dated 28.8.2024, submitted the following:

- (a) The Review Petition is an appeal in disguise, which is impermissible under law. It was the Review Petitioner's failure to provide any specifics with respect to the land available with it for the ESP of Unit-III, the work that had been carried out, and the work that was left, which led this Commission to draw an analogy based on Unit-II on grounds of prudence.
- (b) In the activity charts provided by the Review Petitioner itself, the gap between the scheduled COD of both the Units was such that it could not have been adhered to without parallel working. Further, the Commission, to the benefit of the Review Petitioner, granted an additional 3 months over and above the scheduled gap between the COD of Unit-II and Unit-III in computing the reasonable time for the achievement of COD of Unit-III. In any case, the Review Petitioner had access to the land for ESP of Unit-III and had initiated work on the same. Thus, there is no error in disallowing the delay.

9. Subsequently, the Respondent ECR, in its written submissions dated 27.12.2024, and Respondents No. 2 & 3, in their written submissions dated 8.1.2025, reiterated their earlier submissions, and the same are not mentioned for the sake of brevity.

### **Rejoinders of the Review Petitioner**

10. The Review Petitioner, in its rejoinders, submitted the following:



- (a) The reference to a review meeting dated 22.1.2015 was made only to show the error on the face of the record, namely, on the date of this meeting, the land for the ESP for Unit-III (0.85 acre) was not available, which was subsequently handed over on 18.2.2016. Further, a Pert Chart/ CPM Network chart was referred to demonstrate that the ESP of Unit-II and Unit-III, as well as the time taken to complete the same, are not comparable. The findings on the construction period and land requirement for ESP of Unit - II (0.68 Acre) and ESP of Unit -III (0.82 Acre) were similar in nature and are an error apparent on the face of the record. The impugned order inadvertently stipulated the status of unacquired land for ESP-II as 0.68 acres instead of 0.63 acres and ESP-II as 0.82 acres instead of 0.85 acres, and overlooked the fact that the land was not similar in quantum, but unacquired ESP-III land was 35% higher than unacquired ESP-II land.
- (b) As per the Bill of materials, the total design weight involved in each ESP is approx. 5600 MT, and considering such a gamut of activities, the time period of 36 months as per schedule is required, especially when the parallel erection of Unit No. 2 ESP was also being done, and the minimum time required cannot be shortened, which otherwise will lead to the risk of failures and accidents.

### **Analysis and Decision**

11. The matter has been examined. The Commission, in the impugned order dated 20.1.2024, observed as under:

*“47. It is observed that the last land patch of ESP and VFD control room of both Units-II and III came in the possession of the Petitioner on 18.2.2016. Subsequently, the work for ESP & VFD of Unit-II resumed in March, 2016 and for Unit-III it resumed in May, 2016. As such, the balance work associated with ESP and VFD as on 18.2.2016 for Units-II and III has not been submitted by the Petitioner. Considering the fact that as on 31.1.2015 (date mentioned in the MOM taken by Chief Secretary, Bihar to discuss the issue of yet to be acquired land for ESP-II and III), the status of unacquired land for ESP-II (0.68 acre) and ESP-III (0.82 acre) was almost similar in quantum. After resuming the ESP work for Unit-II, COD was achieved on 10.9.2017 i.e. after a period of 18 months 9 days. However, in case of Unit-III, after resuming of ESP work on 22.5.2016, the COD was achieved only on 26.2.2019 i.e. in about 33 months. We find no additional reasons which can explain as to why the time taken in the completion of ESP work for Unit-III is in excess of the time taken for the completion of Unit-II from date of start of work, for the respective ESPs. Accordingly, considering the fact that from 1.3.2016 (start date of ESP-II work) the Unit-II achieved COD on 10.9.2017 i.e. after a period of 18 months 9 days, COD of Unit-III could have been achieved in a similar time frame of about 19 months i.e., by 30.11.2017. However, considering the fact that on overall consideration of resources available with the contractors, there is a scheduled gap of six months between CODs of Unit-II and Unit-III and that the time overrun till the COD of Unit-II has been allowed, COD of Unit-III should have been achieved on 10.3.2018 i.e. after six months from the COD of Unit-II which is 10.9.2017. Accordingly, on overall consideration, the time overrun till 10.3.2018 in achieving COD of Unit-III is allowed and the IDC and IEDC for the period from 10.3.2018 till 25.2.2019, will not be allowed as a part of the capital cost of the Project for the purpose of tariff.”*



12. After perusal of the submissions of the Review Petitioner and the Respondents, it is evident that the status of unacquired land for ESP-II and ESP-III was almost similar in quantum. However, in the case of Unit-III, after resuming the ESP work on 22.5.2016, the COD was achieved only on 26.2.2019, i.e., in about 33 months. Therefore, we had taken the conscious decision not to condone the delay of 353 days in the COD of Unit-III. In our considered view, the Review Petitioner has sought to re-argue the case on merits, which is not permissible in review. The Review Petition has a limited purpose and cannot be an appeal in disguise. It is a settled position in terms of the judgment of the Hon'ble Supreme Court in *Parsion Devi v Sumitra Devi* (1997 8 SCC 715) that the review proceedings have to be strictly confined to the scope and ambit of Order 47 Rule 1 of the Civil Procedure Code, 1908 and that the judgment may be open to review, *inter alia*, if there is a mistake or an error apparent on the face of the record and that an error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent requiring the court to exercise its power of review. We, therefore, find no reason to entertain the Review Petition on this count. Accordingly, there is no error apparent on the face of the order, and the prayer of the Review Petitioner for review of the impugned order on this count is rejected.

## **B. Deduction of IDC and Disallowance of IEDC**

### ***Submissions of the Review Petitioner***

13. The Review Petitioner has submitted that the manner of reduction of IDC and financing cost for the time overrun disallowed in the impugned order is incorrect, as IDC should have been reduced on a *pari passu* basis rather than deducting the disallowed period of time overrun directly from the SCOD. It has further submitted that if the principle for capitalization of IDC and financing charges, as laid down in the APTEL judgement dated 27.5.2011 in Appeal No. 99/ 2010 (MSPGCL v. MERC & Ors) would have been followed, the IDC disallowed would have only been Rs.125 crores, as against the actual disallowance of Rs. 280.90 crores. The Review Petitioner has added that the



Commission, in a similar case, disallowed the IEDC disproportionately, as in the case of IDC and FC, and if the proportionate/ pro rata methodology is followed, the IEDC to be disallowed would have been only Rs. 43.73 crores.

### **Reply of the Respondents**

14. Respondent ECR submitted that since the time overrun has not been found to be beyond the control of the Review Petitioner, the increase in capital cost on account of IDC and IEDC needs to be restricted corresponding to the time overrun condoned. Respondent Bihar Discoms submitted that the Commission was correct in allowing the IDC, FC, and IEDC only up to the allowed period because the Review Petitioner is not entitled to claim the IDC, FC, and IEDC for the disallowed period. They have further submitted that the Commission has consistently adopted the methodology of allowing IDC, FC and IEDC only up till the time allowed, as evident from the Commission's order dated 23.7.2018 in Review Petition No. 29/RP/2017 and therefore, there is no error in computing the reduction of IDC, FC and IEDC in the impugned order.

### **Rejoinders of the Review Petitioner**

15. The Review Petitioner has clarified that out of the total time overrun of 2593 days, the time overrun of 353 days (13.6 %) only has been disallowed, and the balance time overrun of 2240 days has been condoned. It has, however, pointed out that when it comes to IDC, out of the total IDC of Rs. 1435.67 crores, the impugned order disallowed the IDC of Rs. 280.96 (19.56%) crores, and the allowed amount is only Rs. 1154.84 crores. The Review Petitioner has stated that the methodology adopted for IEDC is also an error apparent on the face of the record because if the proportionate/ pro rata methodology is followed, the IEDC to be disallowed would have been on Rs. 43.73 Crores instead of Rs. 62.45 Crores.

### **Analysis and Decision**





16. We have considered the submissions of the parties. The Review Petitioner has submitted that the methodology followed for disallowing the IDC and IEDC corresponding to the time overrun not condoned is incorrect, and IDC and IEDC should have been allowed on a pro-rata basis, considering the disallowed time overrun of 353 days over the total time taken for commissioning the respective Units. Referring to the APTEL judgement dated 27.5.2011 in Appeal No. 99/2010, the Review Petitioner submitted that the principles laid down in the said judgement would have to be followed, and the amount of IDC and IEDC should have been allowed on a pro-rata basis. We note that in the present case, the Commission had adopted a consistent methodology in computing the IDC and IEDC for various generating stations, wherein the time overrun was disallowed. A similar issue was raised by the Review Petitioner in Petition No. 29/RP/2017 (in Petition No. 45/GT/2016) wherein the Commission had rejected similar contentions, stating that the principle adopted is a possible alternative approach for the reduction of IDC on account of time overrun. The relevant extracts of the order dated 23.7.2018 in Petition No. 29/RP/2017 are reproduced below:

*“12. ...However, while computing and deducting the IDC for the period of time overrun disallowed, the Commission has adopted the principle which is being followed consistently in similar cases of determination of generation tariff. The principle adopted by the Commission has not been overruled. Therefore, the principle adopted by the Commission is a possible alternative approach for reduction of IDC on account of time overrun. In the above background, we do not find any error apparent on the face of the record and accordingly, review on this ground is rejected.”*

17. In line with the above decision, the prayer of the Review Petitioner to review the computation of IDC and IEDC in the impugned order is rejected. Accordingly, a review on this count fails.

### **C. Disallowance of Notional IDC**

#### ***Submissions of the Review Petitioner***

18. The Review Petitioner has submitted that the Commission, while deciding the notional IDC in para 73 (b) of the impugned order, has restricted the computation up to the original SCOD of the three units, and the revised SCOD has not been accounted





for, even though the time overrun has been condoned. It has further submitted that in all other tariff orders and true up orders including in the Commission's order dated 29.4.2019 in Petition No. 74/GT/2017 and order dated 18.7.2023 in Petition No. 421/GT/2020, the Commission had allowed the notional IDC from the date of infusion of funds and up to the revised SCOD. Accordingly, the Review Petitioner has prayed that the review may be allowed and a consistent stand may be taken in order to maintain certainty.

### **Reply of the Respondents**

19. The Respondents have submitted that the Commission had correctly disallowed the notional IDC beyond the original SCOD, as there is no provision in the 2014 Tariff Regulations permitting such allowance. They have further submitted that IDC on an actual loan beyond the original SCOD is allowable only in cases where the delay is not attributable to the generator in terms of Regulation 11 of the 2014 Tariff Regulations. Further, the Respondents submitted that the absence of any provision allowing the notional IDC till the revised COD is a result of a conscious omission made by the Commission while drafting the 2014 Tariff Regulations, as reaffirmed in the Commission's order dated 22.7.2020 in Review Petition No. 1/RP/2020. Accordingly, the Respondents have stated that the submissions of the Review Petitioner, if accepted, would amount to an amendment of the said Regulations, which is beyond the scope of the Review Petition.

### **Rejoinders of the Review Petitioner**

20. The Review Petitioner, in its rejoinder, clarified that the notional IDC cannot be restricted up to the original SCOD, especially when the time overrun has been condoned. While stating that the notional IDC must be permitted till the revised SCOD, the Review Petitioner has argued that the Commission, in its order dated 29.4.2019 in



Petition No. 74/GT/2017 and order dated 18.7.2023 in Petition No. 421/GT/2020, had allowed the notional IDC, from the date of infusion of funds and up to the revised SCOD.

### **Analysis and Decision**

21. We have examined the submissions. The Review Petitioner has referred to the Commission's order dated 29.4.2019 in Petition No. 74/GT/2017 and order dated 18.7.2023 in Petition No. 421/GT/2020 and submitted that the notional IDC from the date of infusion of funds and up to the revised SCOD had been allowed. It is noticed that in line with the second proviso of Regulation 11A (2) of the 2014 Tariff Regulations, which provides that "*only IDC on actual loan is allowed beyond the SCOD to the extent, the delay is found beyond the control of generating company*", the Commission allowed the normative IDC (up to SCOD) over and above the actual IDC, after considering the quarterly debt-equity position corresponding to actual cash expenditure vide order dated 20.1.2024. We also take note that in a similar issue, APTEL, vide its judgment dated 28.2.2025 in Appeal No. 212/2017 (NTPC Tamil Nadu Energy Company Ltd V AP Transco & ors) decided as under:

*"26. We are also in agreement with the submissions made on behalf of the Appellant that when the Commission condoned some part of delay in achieving commercial operation date by the Appellant and shifted the SCOD to a further date, the IDC ought to have been allowed up to the re-scheduled commercial operation date and should not have been restricted to the commercial operation date originally scheduled as per the LOA."*

*27. Accordingly, we set aside the findings of the Commission on this issue and remand the same back to the Commission for calculation of notional IDC afresh to be allowed to the Appellant for the period 2003-04 to 2007-08 in accordance to what we have observed herein above"*

22. Though the above judgment relates to the 2009 Tariff Regulations, considering the fact that APTEL has interpreted the regulations, which are similar to the 2014 Tariff Regulations (as in the present case), the same principle is applied in the present case. The review on this count is allowed, and the notional IDC is computed up to the revised SCOD. Accordingly, the normative IDC has been re-computed up to revised SCOD (COD arriving after time overrun condoned) as follows:



Unit	Reset/revised COD	Normative IDC (Rs in lakh)
I	15.1.2017	5315.48
II	10.9.2017	8481.78
III	10.3.2018	10491.55

#### **D. Prepayment charges for refinancing of loan**

##### **Submissions of the Review Petitioner**

23. The Review Petitioner submitted the following:

- (a) The Commission inadvertently overlooked the detailed justification along with loan documents submitted in the consolidated petition. The Review Petitioner has taken up the matter of waiving pre-payment charges with REC; however, due to the non-agreement of REC, these charges were finally paid. The pre-payment charges (Rs. 5305.58 lakhs) have been paid to REC on account of the prepayment of the loan as reflected in Note-26 of the balance sheet for the year ending 31.3.2019.
- (b) Further, out of total pre-payment charges paid, an amount of Rs. 29,35,04,409/- was charged to P&L in the books, and the balance has been claimed in IDC with Units for which COD has been achieved. The amount on pre-payment charges being claimed is in accordance with Regulation 26(7) of the 2014 Tariff Regulation, which states that the generating company shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such refinancing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:1.

##### **Reply of the Respondents**

24. Respondent ECR submitted that the documents placed on record by the Review Petitioner have duly been considered and the said charges were disallowed for the want of proper justification, and it is factually incorrect to argue that the documents placed on record have not been considered. It also submitted that the conclusion reached by the Commission cannot be reversed under the garb of a review petition, especially since the Review Petitioner is furnishing new evidence/documents in the review petition to substantiate its claim, which is not permissible in review proceedings. Respondents No. 2 and 3 submitted that the documents provided by the Review Petitioner only reflect that the loan was sanctioned by Vijaya Bank and that it had been disbursed, and it is noticed that the interest rate paid was more than the SBI base rate from 2010 to 2017. The Respondents contended that the Review Petitioner has not furnished any justification



with respect to other available sources of financing and their interest rates and even for the swapping of the loan from REC to Vijaya Bank, and also not provided any details of the interest rates offered by other financial institutions along with the reasons for choosing Vijaya Bank. Accordingly, the Respondents submitted that the prepayment charges for refinancing of the loans have been correctly disallowed in the impugned order.

### **Rejoinders of the Review Petitioner**

25. The Review Petitioner, in its rejoinder, clarified that all the documents in respect of pre-payment charges, which were furnished, have been inadvertently missed by the Commission. It has also submitted that the value of the pre-payment charges appearing in the audited balance sheet, as submitted to the Commission, was sufficient, but for more clarity, the letter dated 13.7.2018, as issued by REC, and the letter dated 26.7.2018 regarding the payment for the closure of the loan were also submitted. The Review Petitioner added that the total pre-payment charges (Rs. 5305.58 lakhs) paid is mentioned in Note-26 of the Balance sheet for the year ending 31.3.2019. Accordingly, the Review Petitioner prayed that the review may be allowed in this count.

### **Analysis and Decision**

26. We have considered the submission of the parties. The Review Petitioner has submitted that it had claimed an amount of Rs. 2935.04 lakh in accordance with Regulation 26(7) of the Tariff Regulations, towards the pre-payment charges to REC in the process of refinancing the existing loan. The Review Petitioner has further submitted that it had paid the total pre-payment charges of Rs. 5305.58 lakh incurred for pre-payment of an existing loan of REC as already reflected in Note-26 to the balance sheet as on year ending 31.3.2019, and submitted the documents pertaining to pre-payment of a loan of REC. The main contention of the Review Petitioner is that the documents submitted towards pre-payment charges have not been considered while issuing the impugned order. It is noticed that the Review Petitioner claimed Rs. 2935.04 lakh



towards the prepayment charges for refinancing of the loan under the capital cost as on 1.4.2018 and 26.2.2019, i.e., COD of Unit-III, and the Commission disallowed the said amount as the same was claimed over and above the audited gross block. The Review Petitioner submitted that in terms of Regulation 26(7) of the 2014 Tariff Regulations, it had refinanced the existing loan of REC with the loan of Vijaya Bank, leading to the reduction in the average interest rates, for which the benefits have also been shared with the beneficiaries. We note that Regulation 26(7) of the Tariff Regulations, quoted below, provides for the sharing of the benefits of re-financing loans with the beneficiaries, and the costs associated with such refinancing shall be passed on to the beneficiaries.

*27. The the generating company shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such refinancing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:1”*

27. In order to refinance the existing loan of REC with Vijaya Bank's lower interest rates loan, the Review Petitioner incurred the pre-payment charges of Rs. 2935.04 lakh and the benefit of the lower interest rate has already been shared with the beneficiaries in terms of Regulation 26(7) of the 2014 Tariff Regulations. However, the cost associated with the re-financing is to be borne by beneficiaries. In view of the above regulations, the review on this ground is maintainable and the pre-payment charges of Rs. 2935.04 lakh is allowed to be recovered directly from the beneficiaries in accordance with the provisions of Regulation 26(7) of the 2014 Tariff Regulations, if the same has been charged to the P&L A/c against Unit-I & Unit-II, after their respective COD's.

#### **E. Claim on account of contingency**

##### **Submissions of the Review Petitioner**

28. The Review Petitioner has submitted that the Commission overlooked the fact that due to land unavailability, the contingent arrangements were required to be made to speed up the project execution. It also submitted that the standard Form 5-B, which



provides the breakup of the capital cost for the period 2014-19, mentions contingency as sub head at S. No. 6.4 under the heading 'Overheads', and the contingency reserve is meant for meeting any unforeseen expenditure, which is beyond the control of the generating company and the same cannot be estimated in advance. The Review Petitioner added that the Commission has consciously included the head of contingency under the heading 'overheads', but the impugned order overlooked this fact. Accordingly, it has prayed for a review of the impugned order on this count.

### **Reply of the Respondents**

29. Respondents have submitted that the Commission has correctly disallowed the claims towards contingency, as there is no provision under the 2014 Tariff Regulations for allowing such expenses. They also pointed out that the Commission has consistently disallowed the contingency claims in its order dated 6.1.2020 in Petition No. 178/ GT/ 2017, order dated 8.1.2020 in Petition No.199/GT/2017, and order dated 24.4.2024 in Petition No. 563/GT/2020. The Respondents submitted that the claim for contingency made by the Review Petitioner, is bereft of any particulars with respect to the basis on which the contingency was made or the reasons for which the contingency may be utilized and therefore, accepting the Petitioner's claim would amount to a modification of the regulations, which is beyond the scope of the review petition.

### **Rejoinders of the Review Petitioner**

30. The Review Petitioner, in its rejoinder clarified that Form 13 of the Tariff filling forms, which call for the breakup of the costs, recognize 'contingency' as a subhead at Serial No. 6.4 (overheads) and therefore, the finding in the impugned order that there is no provision in the 2014 Tariff Regulations to allow such contingency is an error apparent on the face of the record.

### **Analysis and Decision**



31. The submissions of the parties have been considered. The Review Petitioner has submitted that the disallowance of the claim on account of contingency is incorrect and that the Form 5-B (breakup of the capital cost for New Coal/Lignite-based projects) mentions contingency at sl.no. 6.4 under the heading of 'overheads. We note that the impugned order disallowed the contingency claim of the Review Petitioner, as the provisions of the 2014 Tariff Regulations do not provide for the admissibility of any expenditure towards contingency. Further, as per the consistent practice, the claim for contingency has not been considered/allowed while determining the capital cost of the various generating stations. Accordingly, the review on this ground is rejected.

#### **F. Interest on loans: Interest rate for 2018-19**

##### **Submissions of the Review Petitioner**

32. The Review Petitioner has submitted that the Weighted Average Rate of Interest (WAROI) for all the periods has been allowed as per the claim of the Review Petitioner, except for the period 1.4.2018 to 25.2.2019 and 26.2.2019 to 31.3.2019. It also submitted that the loading of interest rate on WAROI, due to prepayment of loans, has been missed out while calculating the interest on loans. The Review Petitioner has further submitted that as per Regulation 8(6) read with Regulation 26(7) of the 2014 Tariff Regulations, the benefits of re-financing of loan, have to be shared with the beneficiaries in the ratio of 2:1 (Beneficiaries: Generator) and the Review Petitioner has applied the same principle, by adjusting the rate of interest of new loans while computing the weighted average rate of interest. It has been added that the average ROI on loan from Vijaya Bank is 8.71%, and the average ROI on loan from REC is 9.64%, and the  $\frac{1}{3}^{\text{rd}}$  of saving on interest on loan  $((9.64-8.71)/3=0.31\%)$  has been adjusted in the rate of interest of Vijaya Bank. The Review Petitioner added that the adjusted ROI now, after considering the benefit of swapping, works out to 9.02%  $(8.71+0.31)$ , which is filled in Form No. 13, but the impugned order inadvertently considered the same as 8.71% only. Accordingly, it has prayed for a review of the impugned order on this count.





### **Reply of the Respondents**

33. The Respondents have submitted that the details of the benefits after refinancing of the loan have been placed on record by the Review Petitioner under Form 13, and after duly considering the said form, the Commission allowed the rate of interest of 8.71% and accordingly calculated the WAROI allowed. They have stated that the findings in the impugned order were based on the actual consideration of the documents and have not been overlooked. The Respondents further submitted that as per Regulation 26(5) of the 2014 Tariff Regulations, WAROI is to be computed based on the actual loan portfolio, and thus, the average Rol for each loan must be based on actuals without any further adjustment. The Respondents argued that the Review Petitioner is seeking to increase the average Rol for the Vijaya Bank loan, to account for the sharing of benefit as per Regulation 26(7) of the 2014 Tariff Regulations, which does not provide that the sharing of the benefit must take place through adjustment of the average Rol for the refinanced loan and the benefit can be given separately as well.

### **Rejoinders of the Review Petitioner**

34. The Review Petitioner, in its rejoinder, clarified that the interest on loan should be considered as 9.02% as the average ROI on loan from Vijaya Bank is 8.71%, and the average ROI on loan from REC is 9.64%. It also submitted that the  $\frac{1}{3}^{\text{rd}}$  of saving on interest on loan  $((9.64 - 8.71) / 3 = 0.31\%)$  would be adjusted in the rate of interest of Vijaya Bank and upon considering the benefit on swapping, the return on interest would be 9.02%, while the impugned order considered it only to be 8.71%, which is an error apparent on the face of the record.

### **Analysis and Decision**

35. The matter has been examined. Regulation 26(5) of the 2014 Tariff Regulations provides as under:



*“26(5) The rate of interest shall be the weighted average rate of interest calculated on the basis of actual loan portfolio after providing appropriate accounting adjustment for interest capitalized”*

36. Sub-clauses (7), (8), and (9) of Regulation 26 of the 2014 Tariff Regulations provide as under:

*“24(7) The generating company or the transmission licensee, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:1.*

*(8) The changes to the terms and conditions of the loans shall be reflected from the date of such re-financing.*

*(9) In case of dispute, any of the parties may make an application in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, as amended from time to time, including statutory re-enactment thereof for settlement of the dispute:*

*Provided that the beneficiaries or the long-term transmission customers /DICs shall not withhold any payment on account of the interest claimed by the generating company or the transmission licensee during the pendency of any dispute arising out of re-financing of loan.”*

37. Therefore, WAROI shall be calculated based on the actual loan portfolio, i.e., with actual loans carrying the actual rate of interest. According to the regulations, the net savings on interest from refinancing the loan are to be shared between the beneficiaries and the generating company or transmission licensee in a 2:1 ratio. The Review Petitioner, instead of claiming the actual rate of interest after refinancing, has claimed the interest rate on refinanced loans, including the one-third share of benefits to be shared with the beneficiaries (i.e., actual rate of interest plus one-third interest rate savings). In the impugned order, the rate of interest on the loan was computed and allowed in line with Regulation 26(5) of the 2014 Tariff Regulations, considering the actual WAROI based on the actual loan portfolio. We find no error regarding the allowance of interest on the loan in line with the provisions of the 2014 Tariff Regulations in the impugned order. It is noted that in the impugned order, the manner of sharing the net savings from refinancing was not clearly indicated. However, the same is explicitly clarified herein. On this account, the manner of sharing the net savings from refinancing is incorporated by this order, and the order to this extent is reviewed.



38. In terms of Regulation 26(7) and Regulation 26(8) of the 2014 Tariff Regulations, the beneficiaries and the Review Petitioner shall share the net savings from refinancing in a 2:1 ratio. In case of any dispute regarding the sharing of net savings, any party may approach the Commission for resolution. However, the beneficiaries shall not withhold any payment on account of the interest claimed by the generating company during the pendency of such a dispute.

### **Revision of tariff**

39. Consequent upon the Issue C-[Disallowance of Notional IDC] being allowed (in para 22 above), the relevant paras of the impugned order stands revised as under:

### **Capital Cost as on COD of units/Station**

40. The table under para 82 of the impugned order is revised as under:

Sl. No.		(Rs in lakh)				
		2016-17	2017-18		2018-19	
		15.1.2017 (COD of Unit-1) to 31.3.2017 (Unit-1)	1.4.2017 to 9.9.2017 (Unit#1)	10.9.2017 (COD of Unit-2) to 31.3.2018 (Units-1&2)	1.4.2018 to 25.2.2019 (Unit#1&2)	26.2.2019 (COD of Unit-3) to 31.3.2019 (Units-1,2&3)
1.0	Opening Capital Cost	227360.20	227640.54	366375.62	369916.61	594236.59
2.0	Add: Additional Capital Expenditure allowed	280.34	1903.24	3540.99	110.44	2284.56
3.0	<b>Closing Capital Cost</b>	<b>227640.54</b>	<b>229543.78</b>	<b>369916.61</b>	<b>370027.06</b>	<b>596521.15</b>
4.0	Average Capital Cost	227500.37	228592.16	368146.12	369971.83	595378.87

### **Return on Equity**

41. The table under para 87 of the impugned order is revised as under:

	(Rs in lakh)				
	2016-17	2017-18		2018-19	
	COD of Unit-I (i.e. 15.01.2017) to 31.3.2017	1.4.2017 to COD of Unit-II (i.e. 9.9.2017)	COD of Unit-II (i.e. 10.9.2017) to 31.3.2018	1.4.2018 to COD of Unit-III (i.e. 25.2.2019)	COD of Unit-III (i.e. 26.2.2019) to 31.3.2019
Normative Equity-Opening	68135.30	68219.40	101109.95	102172.24	169603.23
Addition of Equity due to additional capital expenditure	84.10	525.24	1062.30	31.52	670.97
Normative Equity-Closing	<b>68219.40</b>	<b>68744.65</b>	<b>102172.24</b>	<b>102203.77</b>	<b>170274.20</b>
Average Normative Equity	68177.35	68482.02	101641.09	102188.00	169938.72
Return on Equity (Base Rate)	15.500%	15.500%	15.500%	15.500%	15.500%
Effective Tax Rate for respective years	21.3416%	21.3416%	21.3416%	21.5488%	21.5488%
Rate of Return on Equity (Pre-Tax)	19.705%	19.705%	19.705%	19.758%	19.758%
<b>Return on Equity (Pre-tax) - (annualized)</b>	<b>13434.35</b>	<b>13494.38</b>	<b>20028.38</b>	<b>20190.31</b>	<b>33576.49</b>



### Interest on Loan

42. The table under para 90 of the impugned order is revised as under:

		(Rs in lakh)				
		2016-17	2017-18		2018-19	
		COD of Unit-I (i.e. 15.01.2017) to 31.3.2017	1.4.2017 to COD of Unit-II (i.e. 9.9.2017)	COD of Unit-II (i.e. 10.9.2017) to 31.3.2018	1.4.2018 to COD of Unit-III (i.e. 25.2.2019)	COD of Unit-III (i.e. 26.2.2019) to 31.3.2019
A	Gross opening loan	159224.90	159421.14	265265.68	267744.37	424633.36
B	Cumulative repayment of loan up to previous year	0.00	2115.28	6645.82	16315.14	32159.72
C	Net Loan Opening (A-B)	<b>159224.90</b>	<b>157305.86</b>	<b>258619.86</b>	<b>251429.23</b>	<b>392473.64</b>
D	Addition due to additional capital expenditure	196.24	1377.99	2478.69	78.92	1613.59
E	Repayment of loan during the year	2115.29	4530.54	9669.42	15844.58	2668.80
F	Repayment adjustment on account of de-capitalization	0.00	0.00	0.09	0.00	0.00
G	Net Repayment of loan during the year (E-F)	<b>2115.28</b>	<b>4530.54</b>	<b>9669.32</b>	<b>15844.58</b>	<b>2668.80</b>
H	Net Loan Closing (C+D-G)	<b>157305.86</b>	<b>154153.31</b>	<b>251429.23</b>	<b>235663.57</b>	<b>391418.42</b>
I	Average Loan [(C+H)/2]	158265.38	155729.58	255024.54	243546.40	391946.03
J	WAROI	10.6843%	10.2606%	9.9744%	9.7397%	9.5963%
K	Interest on Loan (J x I)	<b>16909.57</b>	<b>15978.74</b>	<b>25437.25</b>	<b>23720.61</b>	<b>37612.35</b>

### Depreciation

43. The table under para 92 of the impugned order is revised as under:

	(Rs in lakh)				
	2016-17	2017-18		2018-19	
	COD of Unit-I (i.e. 15.01.2017) to 31.3.2017	1.4.2017 to COD of Unit-II (i.e. 9.9.2017)	COD of Unit-II (i.e. 10.9.2017) to 31.3.2018	1.4.2018 to COD of Unit-III (i.e. 25.2.2019)	COD of Unit-III (i.e. 26.2.2019) to 31.3.2019
Average capital cost	227500.37	228592.16	368146.12	369971.83	595378.87
Value of freehold land included above	28007.88	28007.88	28007.88	28007.88	34116.23
Aggregated depreciable Value	179543.25	180525.86	306124.42	307767.56	505136.37
Remaining depreciable value at the beginning of the year	179543.25	178410.57	299478.60	291452.42	472976.65
Weighted average rate of depreciation	4.465%	4.465%	4.723%	4.723%	4.812%
<b>Depreciation for the period</b>	<b>2115.29</b>	<b>4530.54</b>	<b>9669.42</b>	<b>15844.58</b>	<b>2668.80</b>
<b>Depreciation for the year (annualized)</b>	<b>10158.94</b>	<b>10207.69</b>	<b>17385.90</b>	<b>17472.12</b>	<b>28650.40</b>
Cumulative depreciation at the end of the year/period, before adjustment of de-capitalization adjustment	2115.29	6645.82	16315.24	32159.72	34828.52
Less: Cumulative depreciation adjustment on account of de-capitalization	0.00	0.00	0.00	0.00	0.00
<b>Cumulative depreciation, at the end of the year/period</b>	<b>2115.29</b>	<b>6645.82</b>	<b>16315.24</b>	<b>32159.72</b>	<b>34828.52</b>

### Working Capital for Receivables

44. The table under para 138 of the impugned order is revised as under:



(Rs in lakh)

	15.1.2017 to 31.3.2017	1.4.2017 To 9.9.2017 COD Unit II	10.9.2017 to 31.3.2018	1.4.2018 to 25.2.2019 (Unit-I & II)	26.2.2019 (COD of Unit-III) to 31.3.2019 (Unit-I, II & III)
Variable Charges - for two months corresponding to NAPAF	5444.77	5575.97	10784.91	10784.91	16592.39
Fixed Charges - for two months corresponding to NAPAF	8324.58	8277.32	13756.48	13679.56	21791.50
<b>Total</b>	<b>13769.35</b>	<b>13853.29</b>	<b>24541.39</b>	<b>24464.47</b>	<b>38383.89</b>

### ***Interest on Working Capital***

45. The table under para 140 of the impugned order is revised as under:

(Rs in lakh)

	15.1.2017 to 31.3.2017	1.4.2017 to 9.9.2017 COD Unit II	10.9.2017 to 31.3.2018	1.4.2018 to 25.2.2019 (Unit-I & II)	26.2.2019 (COD of Unit-III) to 31.3.2019 (Unit-I, II & III)
Working Capital for Cost of Coal towards Stock (30 days per annum) corresponding to NAPAF	2652.60	2716.52	5252.17	5252.17	8033.21
Working Capital for Cost of Coal towards Generation (30 days per annum) corresponding to NAPAF	2652.60	2716.52	5252.17	5252.17	8033.21
Working Capital for Cost of Secondary fuel oil (2 months per annum) corresponding to NAPAF	64.63	66.19	133.02	133.02	304.51
Working Capital for Maintenance Spares @ 20% of O&M expenses	1350.00	1448.66	2945.80	3142.13	4684.02
Working Capital for Receivables – 2 months per annum corresponding to NAPAF	13769.35	13853.29	24541.39	24464.47	38383.89
Working Capital for O&M expenses – 1 month per annum	562.50	603.61	1227.42	1309.22	1951.68
<b>Total Working Capital</b>	<b>21051.69</b>	<b>21404.79</b>	<b>39351.97</b>	<b>39553.17</b>	<b>61390.52</b>
Rate of Interest	12.800%	12.800%	12.600%	12.600%	12.200%
<b>Interest on Working Capital</b>	<b>2694.62</b>	<b>2739.81</b>	<b>4958.35</b>	<b>4983.70</b>	<b>7489.64</b>

### **Annual Fixed Charges for the period 2016-19**

46. The table under para 141 of the impugned order stand revised as under:

(Rs in lakh)

	2016-17	2017-18		2018-19	
	COD of Unit-I (i.e. 15.01.2017) to 31.3.2017	1.4.2017 to COD of Unit- II (i.e. 9.9.2017)	COD of Unit- II (i.e. 10.9.2017) to 31.3.2018	1.4.2018 to COD of Unit- III (i.e. 25.2.2019)	COD of Unit-III (i.e. 26.2.2019) to 31.3.2019
Depreciation	10158.94	10207.69	17385.90	17472.12	28650.40
Interest on Loan	16909.57	15978.74	25437.25	23720.61	37612.35
Return on Equity	13434.35	13494.38	20028.38	20190.31	33576.49



O&M Expenses	6750.00	7243.30	14729.02	15710.63	23420.12
Interest on Working Capital	2694.62	2739.81	4958.35	4983.70	7489.64
<b>Total annual fixed charges approved</b>	<b>49947.47</b>	<b>49663.92</b>	<b>82538.89</b>	<b>82077.36</b>	<b>130749.00</b>

47. Review Petition No. 11/RP/2024 (in Petition No.23/GT/2017) is disposed of in terms of the above.

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

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

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

