



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500004

R. P. No. 2 of 2021

in

O. P. No. 26 of 2016

Dated 19.02.2022

Present

Sri T. Sriranga Rao, Chairman
Sri M. D. Manohar Raju, Member (Technical)
Sri Bandaru Krishnaiah, Member (Finance)

Between

Telangana State Power Generation Corporation Limited,
Vidyut Soudha, Khairatabad, Hyderabad.

... Review Petitioner.

AND

1. Southern Power Distribution Company of Telangana Limited,
H.No.6-1-50, 5th Floor, Mint Compound, Hyderabad 500 063.
2. Northern Power Distribution Company of Telangana Limited,
H.No.2-5-31/2, Corporate Office, Vidyut Bhavan, Nakkalgutta,
Hanamkonda, Warangal 506 001.
3. Southern Power Distribution Company of Andhra Pradesh Limited,
Tiruchanoor Road, Kesvayana Gunta, Tirupathi 517 501.
4. Eastern Power Distribution Company of Andhra Pradesh Limited,
Seethammadhara, Visakhapatnam 530 020.
5. ESCOMs of Karnataka State. ... Respondents.

This Review Petition came up for virtual hearing through video conference on 29.11.2021 and physical hearing on 13.12.2021 and 03.01.2022. Sri. T. R. K. Rao, Director (Comml. & Fuel) for review petitioner and Sri. D. N. Sarma, OSD (Legal & Comml.) along with Sri Mohammad Bande Ali, Law attaché for respondents No. 1 and 2 and Sri. P. Shiva Rao, Advocate for respondents No. 3 and 4 have appeared

on 29.11.2021. Sri. T. R. K. Rao, Director (Comml. & Fuel) for review petitioner, Sri. Mohammad Bande Ali, Law attaché for respondents No. 1 and 2 and Sri. P. Shiva Rao, Advocate for respondents No. 3 and 4 have appeared on 13.12.2021. Sri. Mohammad Bande Ali, Law attaché for respondents No. 1 and 2 and Sri. G. V. Brahmananda Rao, Advocate representing Sri. P. Shiva Rao, Advocate for respondents No. 3 and 4 and Sri. B. Srikanth, Advocate representing law firm, Just Law for respondents No. 5 have appeared on 03.01.2022. Having heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

1. Telangana State Power Generation Corporation Limited ('TSGenco' or 'review petitioner') has filed this Review Petition (RP) under Section 94 (1) (f) of the Electricity Act, 2003 (Act, 2003) seeking a review on certain issues of Generation Tariff Order (GTO) dated 05.06.2017 passed by the Commission in O. P. No. 26 of 2016 in the matter of determination of generation tariff for 3rd control period 2014-2019 for TSGenco stations.
2. The issues that are identified by the review petitioner and the contentions of review petitioner in review petition are as hereunder:

Issue 1: Operation & Maintenance (O&M) Charges for Hydel Stations

The Commission approved the O&M charges for the existing and new hydel stations, in accordance with APERC Regulation No.1 of 2008, and whereas O&M charges for the existing and new thermal stations, in accordance with CERC Regulations, 2014. It is observed that the Commission has not adopted uniform methodology for computation of the O&M charges in respect of Thermal and Hydel Generating stations. The Commission is requested to review the O&M charges of existing and new hydel stations as per CERC Regulations, 2014 on par with thermal stations.

Issue 2: Depreciation

TSGenco filed the depreciation on assets of the existing and new stations as per the depreciation rates approved by Ministry of Power (MoP), Government of India (GoI) notification in 1994, which were adopted by the Commission in Regulation No, 1 of 2008. Further in respect of old stations the year wise depreciation claimed as per the previous control period order duly limiting to the overall depreciation claim 90% of GFA. In this connection, the Commission has stated that –

“During the prudence check, the Commission observed a difference in GFA of assets provided as per Form-12 and closing GFA as on 31.03.2014 as approved in the tariff order for the control period 2009-14 passed by the erstwhile APERC. In the absence of information on disallowance of capital expenditure in second control period (2009-14) and also on addition of assets in FY 2014-15 and FY 2015-16, the Commission computed the depreciation on old assets on pro-rata basis on the GFA approved in the second control period tariff due to difference in asset details provided in Form-12 and GFA approved in the said order. In respect of additions to assets approved in the current tariff order, the depreciation is computed as per Clause 27 of CERC Regulations, 2014. First year depreciation for all assets added is approved at 50% of annual depreciation based on the normal regulatory practice where date of actual capitalization is not furnished.”

In this connection it is brought to the notice of the Commission the following observations made by review petitioner

- i) TSGenco provided the station wise net asset values of old stations in Form-12, whereas the Commission compared the net asset value with gross asset values.
- ii) The Commission stated that, on the additional assets approved in the current tariff order, the depreciation is computed as per Clause No.27 of CERC Regulations, 2014. In reality the depreciation rate specified in the Appendix-II applicable for the first 12 years from the effective date of commercial operations of the station were followed. But the subsequent rule regarding remaining depreciable value spread over the balance useful life of the assets was not taken into account.
- iii) KTPS O & M: The APERC allowed depreciation of Rs. 68.74 crore year wise for the control period 2009-14 and the same was filed for the control period 2014-19 and the Commission approved depreciation as set out in '*Table 4.4: Deprecation*' of the order.
- iv) KTPS Stage-V: The APERC allowed depreciation of Rs. 32 crore year wise for the control period 2009-14 and the same was filed for the control period 2014-19 and the Commission approved depreciation as set out in '*Table 4.4: Deprecation*' of the order.

In this connection, it is submitted that historically APGenco / TSGenco since inception applied the depreciation rates as per the MoP, GoI notification, S.O.266 / E dated 29.03.1994. The Commission adopted those depreciation rates in Regulation 1 of 2008. The application of different depreciation rates in for old stations and new stations and within old station for the additional capitalization now approved and for the capital cost approved in the previous control period will leads to huge implication in the maintenance of books of accounts and comparison of annual finance accounts and regulatory records etc. In this connection it is pertinent to inform that the Commission in its Transmission Tariff order on 9th May 2014 at page No.37 of 90, it was noted that –

“depreciation rate historically applied by APTransco were based on the rates approved by MoP, GoI rates. These rates have been applied in its annual accounts, since the creation of APTransco. Reviewing this practice and adopting a difference depreciation system (i.e., depreciation rate as per CERC) now will require a very high compliance cost. Further, allowing two different system of depreciation to prevail (one adopted by the Commission and the other by Transco), will lead to complication in the true up.”

Similarly, the APERC in its APGenco Tariff order on 26th March 2016 allowed the depreciation rates as per MoP, GoI notification. As per the observation of TSGenco based on the factual information provided above depreciation of old station is neither as per CERC Regulations nor the Commission Regulation nor as per the Commission earlier orders. Hence the Commission is requested to arrange verify the depreciation methodology allowed in respect of old station & new stations and to consider allowing the depreciation as per MoP 1994, notified rates.

Issue 3: Penalties

As regards to Release of Liquidated Damages (LD) held as miscellaneous deposits (As per Commission Penalties Waived). The Commission (in page 27 of 56) stated that –

“Since these penalties did not form part of the capital cost approved by the erstwhile APERC, they cannot be allowed at a later stage more so beyond the cut-off date.”

- i) It is to submit that as per the contract provisions any delays attract LD as per contractual terms. However, the erstwhile APGenco or now

TSGenco initially recovered LD for any delays out of the running bills of the contractor as per contractual provision pending assessment of the reasons for delay, whether it is attributable to the contractor or otherwise.

- ii) On closure of the project at the time of final settlement based on the prudent assessment of the reasons for delay in completion of projects the LD imposed may be released or retained as the case may be.
- iii) As per this practice the erstwhile APGenco deducted amounts towards LD and kept as miscellaneous deposit as undischarged liability in its books of accounts (it can be verified from the audit accounts of the company in the erstwhile APGenco as well as in TSGenco) but APERC considered these deductions as penalties levied and reduced the project cost. As a corollary any release of such LD may partially or fully restore the project cost depending on the amount of penalty refunded. But the reasonability of the amount or the rationale for refund may be assessed only at the closure of the contract.
- iv) As per the APERC Regulation No. 1 of 2008, undischarged liabilities (payable) at future date shall be a part of the capital cost. Similarly, as per clause No. 14 (3) (v) of CERC Regulations, 2014, the capital expenditure in respect of existing generation station after the cut-off date, may be admitted by the Commission.

The review petitioner requested the Commission to consider and approve the penalties waived to contractors by TSGenco on the above stations and consequent changes to the fixed charges component of tariff.

Issue 4: Capital Cost of New Projects (IDC & EC)

The Commission allowed the Interest During Construction (IDC) and Establishment Charges (EC) of new projects commissioned during the control period as detailed below:

- i) **For KTHP-II:** In respect of Kakatiya Thermal Power Plant (KTHP) Stage-II project, the Commission stated that the Commission allowed 80% of IDC and EC rely on the ratio laid down by the Hon'ble Appellate Tribunal for Electricity (APTEL) No.108 of 2014 dated 15.05.2015. It is to submit that Hon'ble APTEL order has not specified any ratio. In fact,

in the said order the Hon'ble APTEL has authorized the regulatory Commission to allow the capital cost incurred in delayed period in case the delay is justified after prudent check. In this connection the TSERC noted the performance of TSGenco in completion of the project after formation of Telangana State. Hence it submitted the Commission to consider allow the IDC and EC as per the actual cost incurred in the project as the same is as per said Hon'ble APTEL order.

- ii) **For LJHES:** In respect of Lower Jurala Hydro Electric Scheme (LJHES) project the Commission stated that the Commission allowed a total delay of 45 months for the project reasonable. Hence the delay not accepted by the Commission is 6 months for which a huge reduction of TSGenco IDC claims by Rs. 267.36 crore. It is to submit that the Commission not provided the calculation for the reduction in IDC by Rs.267.36 crore for the 6 month delay period not accepted by the Commission. It is to submit that the total loan including IDC on the project as on the date of COD is Rs.1322 crore. The interest (@12.5% per year) per month worked out to Rs. 13.75 crore and per the 6 months period it works out to Rs.82.50 crore as against that the reduction of Rs.267 crore by the Commission, which is on high side. Hence it is submitted to the Commission to consider allowing the IDC and EC as per actual consequent changes to the fixed charges component of tariff.
- iii) **For PCHES:** Similarly, in respect of Pulichintala Hydro Electric Scheme (PCHES) project the Commission stated that the Commission allowed a total delay of 24 months for the project is reasonable. Hence the delay not accepted by the Commission is 39 months period for which a huge reduction of TSGenco IDC claim of Rs.61.23 crore and EC claim of Rs. 21.92 crore is also on higher side. It is to submit that the Commission not provided the calculation for the reduction in IDC Rs. 61.23 crore for the 39 month delay period not accepted by the Commission.

The review petitioner requested the Commission to consider and revise the IDC and EC as per actual and consequent changes to the fixed charges component of tariff.

Issue 5: Return on Capital Employed (RoCE)

The Commission approved the RoCE for new projects (KTPP-II, LJHES & PCHES) as net asset arrived by deduct accumulated depreciation inclusion of current financial year from capital cost of the projects. The review petitioner requested the Commission to review the RoCE computation for new projects as net assets arrived by deducted accumulated depreciation up to the previous financial year from capital cost of the projects.

Issue 6: Operation Norms for KTPP-II (1x600 MW)

The Commission adopted operating norms of KTPP-II (1 x 600 MW) in line with CERC Regulations, 2014. The review petitioner requested the Commission to consider the operating norms of KTPP-II on par with APERC Regulation 1 of 2008 since the operating norms of 500 MW capacity adopted to the 600 MW capacity till issuance of new Regulations.

3. The review petitioner therefore prays this Commission to allow the review petition and review the order dated 05.06.2017 passed by the Commission in O. P. No. 26 of 2016 and that the Commission may be pleased to:

- (i) To allow the O&M charges of existing and new hydel stations as per CERC Regulations, 2014 to maintain parity with O&M charges allowed to thermal stations on par with thermal stations.
- (ii) To consider and allow depreciation rates as per MoP 1994 notified in respect of thermal and hydel stations as per filings.
- (iii) To consider the penalties which has been released to the contractors in respect of KTPS VI of Rs.114.47 crore and KTPP Stage-I of Rs.134.59 crore.
- (iv) To consider the IDC, establishment charges and other expenditure of new thermal and hydel stations as per filings.
- (v) To consider the RoCE computation for new projects as net assets arrived by deducting accumulated depreciation up to the previous financial year from capital cost of the projects.
- (vi) To adopt the operating norms of KTPP Stage-II (1 x 600 MW) on par with APERC Regulation 1 of 2008 since the operating norms of 500

MW capacity adopted to the 600 MW capacity till issuance of new regulations.

Admission of Review Petition

4. Initially the Commission heard the Review Petition on 15.09.2021 and 27.09.2021 at its admission stage on its maintainability. Having perused the material placed for consideration of review petition and having heard the representative of the review petitioner the Commission passed order dated 07.10.2021 in R. P. (SR) No. 28 of 2017 in O. P. No. 26 of 2016 and held that -

- “3. The Commission is of the considered view that, the review petitioner has made out a case for reviewing the order passed by the Commission. That apart, the several aspects raised in the review petition need a detailed review and it is also necessary to take views of all the stakeholders, who raised objections in the original petition, on the contentions raised by the review petitioner.
4. In view of the above, the Commission is inclined to admit the review petition. The office is directed to number the review petition and issue notice to all the respondents 1 to 5 and to all the stakeholders, who raised objection in the original petition.”

Accordingly, the review petition is admitted, taken on record and assigned R. P. No. 2 of 2021.

Notification

5. Pursuant to the directions given by the Commission, the office of the Commission issued notice on 20.10.2021 to all the respondents 1 to 5 and to all the stakeholders, who raised objection in the original petition duly enclosing the review petition along with the material papers and the hard copy of .ppt (presentation made by the review petitioner before admitting the matter) for reference and their record. The copy of the Notice is placed as Annexure-I. The notice is mainly to inform that the review petitioner has filed a review petition before the Commission and respondents may file their counter affidavit and stakeholders may submit their comments/objections on the review petition. Also, informed review petitioner to file a rejoinder to the counter affidavit and reply to the comments/objections of the

stakeholders. Further, informed that the review petition stands posted for hearing before the Commission on 11.11.2021 at 11.30 hours through online mode of video conference. Later on, due to administrative grounds the date of hearing was rescheduled to 29.11.2021.

Response to Notice

6. In response to the Notice and as the Commission on the date of hearing on 03.01.2022 gave liberty to Respondent No.5 to file written arguments, two (2) counter affidavits were filed by the Respondents No.3 and 4 and Respondents No.5 and written comments/objections were received from One (1) stakeholder. The details are given in Annexure-II.

Commission Hearings

7. The Commission held virtual hearing through video conference on 29.11.2021 and physical hearing on 13.12.2021 and 03.01.2022. The record of proceedings for the dates of hearing are extracted below:

Record of proceeding dated 29.11.2021

“... .. The representative of the review petitioner stated that the matter was admitted and only one objection has been received from Sri Thimma Reddy. Reply to the objections have also been filed. The counsel representing the respondents No.3 and 4 sought time for filing counter affidavit by four weeks. At this stage, the Commission made it clear that this is an old matter and is required to be disposed of early. Therefore, granting of long time is not feasible.”

Record of proceeding dated 13.12.2021

“... .. While proceeding to hear the review petition, the Commission noticed that a letter along with Vakalat on behalf of PKCL (respondents No.5) has been received from the law firm Just Law, seeking adjournment of the hearing by three weeks. After ascertaining the convenience of the other parties, to the proceedings, who are present, the Commission adjourned the hearing.”

Record of proceeding dated 03.01.2022

“... .. The counsel for review petitioner stated that the review petition was filed in the year 2017 itself and it was within the limitation as specified by the Commission in the Conduct of Business Regulation. The objection taken by

the respondent Nos. 3 to 5 is untenable as the review petition is against the order dated 05.06.2017. The contentions raised in the review petition do not constitute grounds for appeal as specific issues relating to the conditions of review being arithmetical mistakes or error apparent on the face of the record have been undertaken in the review petition.

The counsel for review petitioner elaborately dealt with the aspects of review and demonstrated the requirement of reviewing the order passed by the Commission with regard to arithmetical mistakes and error apparent on the face of the record. He waded through the various tables and figures mentioned in the original filings and the order passed thereof insofar as those aspects are concerned. It is his contention that the application of regulations and the provisions of the tariff determination exercised have resulted in miscalculations and wrong findings causing loss to the review petitioner.

The Commission undertook the determination of tariff for the control period based on the submissions of the review petitioner and different stakeholders, but applied inappropriate regulations, which is detrimental to the interest of the review petitioner. Therefore, it is absolutely necessary that the Commission reviewed the order to correct the errors as pointed out by the review petitioner.

The counsel appearing for respondent Nos. 3 to 5 have sought further time to file the counter affidavit. However, the Commission expresses its displeasure in granting further time, but allowed them to file written arguments in the matter on or before 17.01.2022.

Having heard the counsel for review petitioner, the matter is reserved for orders.”

8. The Commission having heard the representative of the review petitioner and representative of the respondents and having perused the relevant material including the original order passed by the Commission in O.P.No.26 of 2016 has summarized issue wise submissions of the Petitioner, contentions of respondents in their counter affidavits and comments/objections of the stakeholder, response of the review petitioner and views of the Commission in the following paragraphs.

Maintainability of Review Petition

Respondents' contention / Stakeholders' comment

9. The present review petition has been filed seeking for review of the Order dated 05.06.2017 due to non-appreciation of grounds urged by the review petitioner in the original petition bearing O.P.No.26 of 2016. It is at the outset submitted that the present review petition is not maintainable since the Petitioner has failed to make out any grounds for review. The Hon'ble Supreme Court in *Kamlesh Verma Vs. Mayawati, reported in 2013 (8) SCC* has laid down the principles of a review petition:

"20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him; (ii) Mistake or error apparent on the face of the record;

(ii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in *Chhaju Ram v. Neki* [(1921-22) 49 IA 144: (1922) 16 LW37: AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios CathoZicos v. Most Rev. Mar Poulouse Athanasius* [AIR 1954 SC 526: (1955) 1 SCR 520] to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.* [(2013) 8 SCC 337: JT (2013) 8 SC 275]

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its

soundness or results in miscarriage of justice.

- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

10. It is submitted that based on the above principles, the Petitioner has not put forth the error in the impugned Order. The Hon'ble Supreme Court in its Order in Lily Thomas Vs. Union of India (reported in AIR 2000 SC 1650) held that the power of review is to correct the mistake apparent on the face of the record and does not mean error which has to be searched and fished out.

11. Further, the Hon'ble Supreme Court in Meera BhanJa Vs. Nirmata Kumari Choudhury, (1995) 1 SCC 170, held that an error apparent on the face of record must be on the face of it and would not require any long-drawn process of reasoning on points where there may be two opinions. It was also held that review is in no way a form of an appeal. The relevant para is extracted hereunder for ready reference:

"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleswar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389: AIR

1979 SC 1047], speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* [AIR 1963 SC 1909], there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* [AIR 1960 SC 137: (1960) 1 SCR 890] wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can

hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ"

12. The Petitioner is attempting to re-agitate his case and the same is impermissible in law. It is submitted that the existence of an alternative view cannot be the reason for the review of the Order. On this ground alone, the present Review Petition deserves to be rejected.
13. It is submitted that the Petitioner in the present matter is trying to re-agitate the issues that were already considered by the Commission in the impugned Order. The Hon'ble Supreme Court in the matter of Devender Pal Singh v. State (NCT of Delhi), (2003) 2 SCC 501: 2003 SCC (Cri) 572, held that review is not rehearing of the appeal all over again. The review is not an appeal in disguise. Therefore, in the light of the above, the present review petition deserves rejection.
14. It is submitted that once the original proceedings are concluded, the Commission becomes *functus officio* except when there's an error apparent on the face of the record. The review petitioner having failed to make out any error apparent, the present review petition is not maintainable.
15. In addition to the above, it is submitted as per Clause 32 of the TSERC (Conduct of Business) Regulations, 2015, review of an order of the Commission is to be filed within 75 days from the date of the order. It is submitted that the impugned order was passed on 05.06.2017. It is submitted the Respondent herein received the notice only on 22.10.2021 which is after a delay of more than 4 years. No explanation has been furnished whatsoever for the delay. Therefore, the present review petition being barred by limitation deserves no consideration from this Commission.
16. A review petition can be taken up only when there are apparent errors in the order passed by the Commission, and it cannot be taken up as a re-

examination of the issues under consideration. Perusal of the present review petition of TSGenco shows that it does not show errors in the order passed by the Commission but wants the Commission to re-examine some substantive issues. As such this review petition has limited scope and it is liable to be dismissed.

17. It is submitted that the present review petition is not maintainable since it is being considered with reasonable delay of 4 years without any reasonable grounds. Seeking review of the matter/Orders passed in O. P. No. 26 of 2016, dated 05.06.2017, at this belated stage is not permissible in law. The Conduct of Business Regulations of this Commission prescribes only 45 days for review. The object of such periodic limitation is to reconsider if any requires prior to the stage things are settled. In fact, as per the earlier orders of this Commission, things are already settled. Therefore, as per the settled position of law things which are already settled are not permitted to be unsettled.
18. It is submitted that the Hon'ble APTEL in one other case held that the review of orders of Commission shall be limited to the grounds specified in Order 47 Rule 1 of Civil Procedure Code. The said grounds are that from discovery of any new and important matter or evidence which after exercise of due diligence was not within the knowledge or could not be produced by him when the order was passed or on account of some mistake or error apparent on the face of record or for any other sufficient reason. But the review petitioner could not say any of the said three grounds to modify the earlier Order passed by this Commission.
19. The grounds / matters stated in the review petition are already canvassed by the review petitioner during the hearing of the matter in 2017, and the Commission has considered the said aspects and decided otherwise. Therefore, since the matters are already once considered by the Commission, through the present review, such matters cannot be considered again to arrive at a different finding. Such grounds are permissible only in appeal but not in review.

TSGencos' response

20. The Section 94 (1) (f) of the Electricity Act, 2003 (Act, 2003) specifies that the appropriate Commission shall have the powers for reviewing its decisions, directions and orders. TSGenco has filed the review petition as per the Section 94 (1) (f) of the Electricity Act, 2003 (Act, 2003) seeking review of the Order dated 05.06.2017 in O. P. No. 26 of 2016 passed by the Commission regarding determination of generation tariff for TSGenco Stations for the period 2014-19.
21. Section 32 (1) of TSERC (Conduct of Business) Regulations No.2 of 2015 specifies that the Commission may on its own motion or on the application of any person or parties concerned within 75 days of any decision, direction or order review such decision direction or order as the case be. Further, the Commission may allow on production of sufficient cause to the petitioner, a further period not exceeding 30 days for filing the review petition.
22. The review petition on Generation Tariff Order dated 05.06.2017 filed before the Commission on 19.08.2017 within 75 days as specified in the Regulation. So, the objection raised stating delay in seeking review of the matter/Orders passed in O. P. No. 26 of 2016, dated 05.06.2017 is incorrect.
23. The detailed grounds made in support of the prayers made in the application for review of issues raised in the Review petition are permissible as the discrepancies can be rectified / cured by the Commission and as stated above, the reasons for filing the present review petition (supra) are sound enough to be permissible under Law.
24. It is also to note that there are discrepancies with respect to the quantum of Interest During Construction (IDC) and Establishment Charges (EC) amounts when compared with the delay period condoned. In other words, it is to state that the amounts of IDC & EC disallowed is disproportionate to the delay period. Therefore, there is a need of detailed examination with respect to the discrepancies.

25. The Commission has perused the material placed for consideration of review petition filed by TSGenco and heard the representative of the review petitioner. The Commission opined that several aspects raised in the review petition need a detailed review and admitted the review petition. The Commission has rightly admitted the review petition vide R. P. No. 2 of 2021.

Commission's view

26. The Commission is very clear that the review petition seeking a review on certain issues of Generation Tariff Order dated 05.06.2017 passed by the Commission in O. P. No. 26 of 2016 in the matter of determination of generation tariff for 3rd control period 2014-2019 for TSGenco stations has been filed by TSGenco on 19.08.2017 within 75 days as specified in clause 32 (1) of the TSERC (Conduct of Business) Regulations No. 2 of 2015. So, there is no delay in seeking review of the orders passed in O. P. No. 26 of 2016. The respondents have relied on the judgements of Hon'ble Supreme Court on the issue of maintainability of review petition. The Commission is conscious that review on a decision made by it is to be undertaken in terms of Order XLVII Rule 1 of C.P.C.

27. Further, the Commission in its order dated 07.10.2021 in R. P. (SR) No. 28 of 2017 in O. P. No. 26 of 2016 has taken a view that,

“the review petitioner has made out a case for reviewing the order passed by the Commission. That apart, the several aspects raised in the review petition need a detailed review. Therefore, the Commission admitted the review petition of TSGenco.”

Therefore, the Commission do not find any merit in the Respondents' contention / stakeholders' comment

Issue No.1: O&M Charges for Hydel Stations

Respondents' contention / Stakeholders' comment

28. TSGenco contended that the Commission approved O&M charges for hydel stations in accordance with APERC Regulation No.1 of 2008 whereas for thermal stations in accordance with CERC Tariff Regulations, 2014. According to TSGenco, the Regulation No. 1 of 2008 was based on CERC Tariff Regulations, 2004. The Regulation No. 1 of 2008 also contained a

provision vide Clause 10 for implementation of CERC amendments or guidelines. However, in the case of hydel stations, subsequent CERC amendments were not considered. TSGenco contended that because of not adopting amended CERC guidelines in the case of hydel stations, its claims to the extent of Rs.296 crore towards O&M charges of hydel stations were not allowed.

29. According to Clause 10 of Regulation No. 1 of 2008,
"Tariffs under this Part shall be determined in accordance with the norms specified herein, guided by the principles and methodologies specified in CERC (Terms and Conditions of Tariff) Regulations 2004; any further amendments thereto shall be applicable on their adoption by the Commission, by means of a general or special order, with or without any modifications."

From this, it is clear that amendments to CERC Regulations are not applicable automatically unless they are formally adopted by the Commission.

30. As pointed out by TSGenco, the Commission in its Order dated 05.06.2017 in O. P. No. 26 of 2016 adopted CERC norms 2014 in the case of thermal stations and adopted APERC Regulation No. 1 of 2008 in the case of hydel stations. It would have been better had the Commission noted the reasons for adopting CERC norms in the case of thermal stations and for not adopting CERC norms in the case of hydel stations.
31. The Commission in the above order has considered pay revision commitment of 40% with effect from 1st April 2014. Employee costs accounts for about 50% of the total O&M expenses. Thus, pay revision of 40% increase in employee remuneration translates to 20% increase in O&M expenses. This must have addressed the grievance of TSGenco related to adoption of lower norms in the case of hydel stations to a large extent as this pay revision must have been applicable to hydel stations also. To assess this, actual expenditure incurred by TSGenco hydel units needs to be examined. Further, TSGenco in its True up Petition for the period 2014-19 claimed Rs. 5558.64 crore towards O&M charges. This is Rs.126.91 crore higher than that approved by the Commission in the above Order. If this is justifiable, the

Commission may adopt this but not Rs.296 crore as claimed in the present review petition.

32. The review petitioner has contended that there's inconsistency in the methodology adopted in the impugned Order for computation of O & M charges in respect of Thermal and Hydel Generating stations as in respect to thermal stations norms as per the CERC Regulations allowed. It is submitted that Hydel Station are located within the jurisdiction of this Commission and is bound by the Regulation of this Commission i.e., APERC (Terms and Conditions for determination of tariff for supply of electricity by generating Company to a distribution licensee and purchase of electricity by a distribution licensee), 2008. The said Regulation prescribes methodology for determination of O&M charges for hydel plants, which has been rightly adopted by this Commission. Such being the case, the question of re-determining the tariff does not arise in a review petition. The review petitioner has failed to substantiate the need for a review of the methodology adopted for determination of O&M charges. Therefore, the present review petition deserves to be rejected.

TSGencos' response

33. The actual O&M expenditure incurred by TSGenco (for Thermal & Hydel Stations) during FY 2014-15 to 2018-19 is more than the O&M expenses claimed by TSGenco in its True-up filings (including 20% PRC in FY 2018-19) amounting to Rs. 1,432 crore. TSGenco met the balance additional burden without passing it through True-up claims. Further, the actual O&M expenditure incurred by TSGenco Hydel stations during the FY 2014-15 to 2018-19 is more than the O&M expenses claimed by TSGenco in its True-up filings (including 20% PRC in FY 2018-19) amounting to Rs.624.17 crore. Hence, the request of TSGenco to admit the O&M charges of Hydel stations as per CERC Tariff Regulations, 2014 is reasonable and justified.
34. The O & M expenditure in True-up petition is made without considering submission pending before the Commission in the Review petition. The differential charges, if any, will be claimed after finalizing the review petition by

the Commission. The same was mentioned in the True-up petition at para no. 19. However, the final decision is under purview of the Commission.

Commission's view

35. TSGenco, in its MYT Petition, had submitted O&M expenses for both thermal power stations and hydel power stations considering the CERC Tariff Regulations, 2014. The Commission in the Tariff Order dated 05.06.2017 had considered CERC Tariff Regulations for thermal stations. For hydel stations, the Commission had adopted O & M in accordance with Clause 12.3 of the APERC Regulation No. 1 of 2008 and accordingly approved the O&M Charges for hydel stations.
36. In the present review petition, TSGenco has requested the Commission to review the O & M charges of existing and new hydel stations as per CERC Tariff Regulations, 2014. It is to be noted that in terms of Section 61(a) of the Act, 2003, the principles and methodologies specified by CERC shall be guiding purpose and are not mandatory. The Commission had considered what is appropriate in the interest of all the stakeholders. Further, it was a conscious decision of the Commission to consider CERC Tariff Regulations only for thermal stations and not for hydel stations. There is no mistake apparent on the face of the record as contended by the review petitioner and therefore, the review sought is not maintainable. Therefore, the Commission is not inclined to consider TSGenco's submission to adopt the CERC Tariff Regulations for hydel stations.

Issue No.2: Depreciation

Respondents' contention / Stakeholders' comment

37. TSGenco claims to reconsider and allow depreciation rates as per Ministry of Power 1994 notified in respect of thermal and Hydel stations. In this regard, it is to submit that the Commission has already examined the said claim of TSGenco while approving the tariff for control period 2014-19 in exercise of their powers under clause no.10 of Regulation No.1 of 2008 issued by APERC. In this regard, while approving the depreciation rates, the Commission has specifically mentioned the following at Chapter 3 at page no.

24 of 56 of Order dated 05.06.2017 in O. P. 26 of 2016 and the same is reproduced hereunder:

"Depreciation on old assets acquired before 2009 is determined as per the MoP rates notified in 1994 notification and for new asset additions, depreciation is allowed as per the CERC Regulations, 2014".

38. Therefore, since the above matter already once considered by the Commission, through the review such matters cannot be considered to arrive at different findings.
39. It is submitted that the Commission has correctly held that depreciation on old assets acquired before 2009 is to be determined as per the rates notified in MOP notification and for new asset additions, depreciation is to adopt CERC Tariff Regulations, 2014, There is no disparity in the procedure adopted by the Commission. The petitioner has failed to substantiate the need for reconsideration of the methodology adopted by the Commission for determination of depreciation rates. The existence of an alternative view cannot be the reason for review of an order. Hence, the present review petition is bereft of merits and deserves rejection.

TSGencos' response

40. TSGenco prayed the Commission to approve depreciation as per MoP 1994 rates, as the Commission ought to have followed MoP 1994 rates or CERC rates, instead the Commission has followed combination of MoP and CERC depreciation rates for 3rd control period 2014-19, which is not as per regulation of either CERC or APERC (TSERC). Further, while applying CERC depreciation rate, the balance useful life concept was not considered; because of which TSGenco was unable to claim the depreciation up to 90% value of additional capital cost approved by the Commission in respect of KTPS O&M units, vide Tariff Order dated 05.06.2017.

Commission's view

41. TSGenco, in its MYT Petition, had submitted Depreciation on the assets of the existing and new stations as per Depreciation rates approved by MOP notification in 1994, which were adopted by APERC in Regulation No.1 of

2008. However, the Commission in the Tariff Order had computed Depreciation as per Clause 27 of CERC Tariff Regulations, 2014 in respect of additions to assets approved in the Tariff Order.

42. The main contention of TSGenco's submission in the review petition is to allow the Depreciation as per the MOP-1994 notified rates for the existing and new stations. It is to be noted that the Commission had considered what is appropriate in the interest of all the stakeholders. Further, it was a conscious decision of the Commission to consider CERC Tariff Regulations for Depreciation. There is no mistake apparent on the face of the record as contended by the review petitioner and therefore, the review sought is not maintainable. Therefore, the Commission has not considered TSGenco's submission in this regard.

Issue No.3: Penalties

Respondents' contention / Stakeholders' comment

43. In the review petition, TSGenco requested the Commission to consider the penalties which were released to the contractors to the extent of Rs.114.47 crore in respect of KTPS-VI and Rs.134.59 crore in respect of KTPP-Stage-I as part of capital cost of these plants. These penalties were imposed as liquidated damages on the contractors for delay in execution of these plants. Inordinate delay in execution of these plants is a fact. Even if TSGenco wants to exonerate the contractors for the delay it cannot escape its responsibility for the inefficient execution of these plants. As the Power Purchase Agreements (PPAs) are between TSGenco and TSDiscoms but not between the contractors engaged by TSGenco and TSDiscoms, TSGenco shall continue to be held responsible for the delay in execution of these plants and as such has to take the burden of liquidated damages and this cannot be transferred to TSDiscoms and in turn on to electricity consumers in the State.
44. In this context, it is highly relevant to take in to account the Hon'ble ATE's Judgment in Appeal No. 72 of 2010 as pointed out by the Commission in its Order dated 19.06.2017 in O. P. No. 9 of 2016. Following the above Order of ATE, as the delay in execution of the plant was due to inefficiencies of the Generator, TSGenco in the present context and contactors chosen by it, all

costs due to time over run has to be borne by the Generator and the same shall not be passed on to the TSDICOMs and in turn on electricity consumers in the state.

45. As regards the prayer of TSGenco consider the penalties which were released to the contractors in respect of KTPS-VI and KTPP stage-1, it is to submit that Commission has already examined the said claim of TSGenco and approved the additional capital expenditure for FY 2014-15 to FY 2018-19. Further, while approving the additional capital expenditure of KTPP-1 and KTPP-VI, the Commission has specifically mentioned its views in Chapter 4 at page no.26 & 27 of 56 of Order dated.05.06.2017 in O. P. 26 of 2016. As such, since the matters are already once considered by the Commission, through the present review petition such matters cannot be considered to arrive at a different finding. Such grounds are permissible in appeal but not in review.
46. The Commission in the impugned Order approved the capital cost of new projects after due check on prudence of each item of capital expenditure and further, examined the causes for delay. The Commission admitted the impact of delays in capital cost based on justification provided by TSGenco and wherever the justification was not satisfactory, the Commission followed the approach mentioned in Chapter 4 of impugned Order, taking the best interests of consumers into consideration. It is submitted that the review petitioner has not provided any sufficient reason as to why there is a need for review of the impugned Order when the Commission has considered all the parameters furnished by the review petitioner in the original proceedings. Therefore, the present review petition is not maintainable and deserves rejection.

TSGencos' response

47. The Commission has reduced the penalties levied on contractors by TSGenco in arriving capital cost of KTPS-VI by Rs. 114.47 crore and KTPP-I by Rs.134.59 crore based on the information available as on the date of Tariff Determination for the control period 2014-19.

48. TSGenco initially recovered certain amount under liquidated damages head, from the running bills of the contractor as per contractual provisions pending assessment of the reasons for delay, whether it is attributable to the contractor or otherwise. As on the date of tariff determination by the Commission, the contracts were still in live, the amount recovered under liquidated damages head by the company were not final.
49. LD / Penalty included in the purchase order is only to ensure timely completion but not as a measure to penalize them. Constructive assessment of reasons for delay shall be deciding factors for waiver or imposition of LD / penalty. Based on the prudent assessment of the reasons for delay in completion of projects, TSGenco has released these withheld liquidated damages to contractors.
50. As per the APERC Regulation No.1 of 2008, undischarged liabilities payable at future date shall be part of the capital cost and the clause No.14 (3) (v) of CERC Tariff Regulations, 2014, also provides for the same. Also, the Hon'ble APTEL in its judgment dated 27.04.2011 (in Appeal No. 72 of 2010 in the matter of Maharashtra State Power Generation Co. Ltd. Vs. MERC & Ors.) has laid down that the benefit of Liquidated Damages recovered from the contractors only shall be given to the consumers.
51. TSGenco has released the penalties amounting to Rs. 114.47 crore in KTPS-VI and Rs. 134.59 crore in KTPP-I to the contractors. Hence, the request of TSGenco is reasonable and requested the Commission to allow the same as the discretion lies with the Commission.

Commission's view

52. The Commission in the Tariff Order dated 05.06.2017 had observed that the additional capitalisation claimed for the new stations for the second control period included the penalties waived by TSGenco to the contractor due to the mutual agreement between TSGenco and contractors of the respective projects. Therefore, the Commission had reduced the penalties levied on contractors by TSGenco in arriving capital cost of KTPS-VI and KTPP-I based on the information available as on the date of Tariff determination for the

control period 2014-19. The Commission had considered closing GFA as on 31.03.14 approved by the erstwhile APERC as opening GFA for FY 2014-15.

53. In the review petition, TSGenco has clarified that TSGenco initially withheld certain amount under liquidated damages head from the running bills of the contractor as per contractual provisions pending assessment of the reasons for delay, whether it is attributable to the contractor or otherwise. TSGenco has also submitted that it has released these withheld liquidated damages to contractors. TSGenco has requested the Commission to approve the penalties waived to contractors by TSGenco on the above stations.
54. However, it is noted that neither is there an error on the face of record nor has TSGenco submitted any new facts on the record which were not available at the time of proceeding of the Impugned Order. In the present review petition, TSGenco has merely repeated its submissions made at the time of Tariff Petition, which have already been considered by the Commission, before arriving at a decision in the Impugned Order. Hence, the review of the impugned Order is not allowed on this count.

Issue No.4: Capital Cost of New Projects (IDC & EC)

Respondents' contention / Stakeholders' comment

55. TSGNCO has requested the Commission to reconsider its Order in reducing IDC of new power plants due to delay in their execution and allow the total IDC as claimed by it. IDC beyond the scheduled commercial operation date (COD) shall not be allowed as reiterated by the ATE in several of its Orders.

TSGencos' response

56. The amounts of IDC & EC disallowed is disproportionate to the delay period. Hence, the review petition was filed to re-examine the IDC & EC claims of TSGenco in respect of LJHES and PCHES and allow the IDC & EC claims.

Commission's view

57. The Commission in the Tariff Order for TSGenco for control period 2014-19 had provisionally approved the capital cost for new stations. The Commission

had considered the reasons furnished by TSGenco for delay of 44 months in completion of KTPP-II project. In this context, the Commission had relied on the ratio laid down by the Hon'ble APTEL Appeal no. 108 of 2014 dated 15.05.2015 in Power company of Karnataka Ltd & 5 others vs CERC & 3 others and had allowed 80% of the IDC and establishment charges claimed by the petitioner in the petition.

58. TSGenco in the review petition has submitted that the Hon'ble APTEL judgment had not specified any ratio and the Hon'ble APTEL has authorized the Commission to allow the capital cost incurred in delayed period in case the delay is justified after prudent check. The Petitioner has requested the Commission to allow IDC and EDC as per the actual cost incurred on the project.
59. However, it is to be noted that TSGenco has erroneously interpreted the word “ratio” as a numeric value. The word “ratio” in the Commission’s Order refers to the relationship laid down by Hon’ble APTEL judgment between the reasons for delay and its opinion and further the process adopted by Hon'ble APTEL to calculate / estimate IDC for the reasons of delay. The Commission had adopted the Hon'ble APTEL judgment to estimate the IDC based on reasons for delay. Based on justification provided by TSGenco and considering the performance of TSGenco in completion of the project after formation of the Telangana State, the Commission had allowed 80% of the IDC and establishment charges claimed by TSGenco.
60. There is no mistake apparent on the face of the record as contended by the review petitioner and therefore, the review sought is not maintainable. Therefore, the Commission is not inclined to consider TSGenco’s submission to allow IDC and EDC as per the actual cost incurred for KTPP-II.
61. As regards the IDC & EC of LJHES and PCHES, the Commission, after taking into consideration the submissions in the Original Petition, approved the IDC & EC for the respective stations as deemed prudent. The Review Petitioner has merely relied on some proportions of total delay vis-a-vis the allowed delay in seeking review. The Commission, nowhere in the Order ruled that the

IDC & EC had been approved based on such proportion as stated by the Review Petitioner. There is no mistake apparent on the face of the record as contended by the review petitioner and therefore, the review sought is not maintainable in this regard.

Issue No.5: Return of Capital Employed (RoCE) Computation

Respondents' contention / Stakeholders' comment

62. In the review petition, TSGenco requested the Commission "to review the ROCE computation for new projects as net assets arrived by deducted accumulated depreciation up to the previous financial year from capital cost of the project." In the presentation during the virtual hearing held on 27.09.2021, TSGenco pointed out that as per the Commission's guidelines, ROCE need to be computed based on the Net Fixed Asset (NFA) value at the beginning of the Financial Year, whereas in respect of new stations ROCE was allowed based on the NFA at the end of the Financial Year, and requested the Commission to adopt ROCE of new stations based on the NFA at the beginning of the financial year. Neither in the review petition nor in the presentation during the virtual hearing, TSGenco presented the concrete figures to uphold its contention. In the absence of concrete figures, it is difficult to examine TSGenco's contention.
63. While the Commission allowed Rs. 8,177.75 crore towards ROCE for the period 2014-19, TSGenco in its True up Petition for the same period claimed Rs. 8,073 crore (including new plant KTPS VII) towards the same. The amount claimed by TSGenco under True up is less than that allowed by the Commission. In such situation, TSGenco's contention related to calculation of ROCE may not be taken up under the present review petition. However, its relevance may be examined in the case of the period 2019-24.

TSGencos' response

64. Depreciation allowed for New Stations in GTO for control period 2014-19 is tabulated below:

Table 1: Depreciation allowed for new stations in GTO for Control Period FY 2014-19 (Rs.crore)

Station	2014-15	2015-16	2016-17	2017-18	2018-19
KTPP-II	0.00	0.00	164.67	171.01	171.01
LJHES	0.00	21.29	58.65	66.95	66.95
PCHES	0.00	0.00	2.71	18.62	19.16

65. Accumulated Depreciation considered in computation of RoCE for New Stations in the GTO for the control period 2014-19 are tabulated below:

Table 2: Accumulated Depreciation considered in computation of RoCE for new stations in GTO for Control Period FY 2014-19 (Rs. crore)

Station	2014-15	2015-16	2016-17	2017-18	2018-19
KTPP-II	0.00	0.00	164.67	335.68	506.68
LJHES	0.00	21.29	79.95	146.90	213.85
PCHES	0.00	0.00	2.71	21.34	40.50

66. From the above tables, it is evident that the depreciation approved in a year considered in the same financial year for computation of accumulated depreciation and Net Fixed Assets. As per Regulation, the depreciation allowed in a financial year shall be accounted in the next financial year for computation of accumulated depreciation and Net Fixed Assets in line with old stations.

Commission's view

67. Upon verification of the computations of ROCE, it is observed that for KTPP-II, LJHES and PCHES, the Commission had inadvertently considered the current year depreciation also while deducting the accumulated depreciation from the original capital cost. There is an error apparent on the face of the record in the computation of ROCE. Accordingly, the review is allowed on this issue.
68. The revised ROCE approved for KTPP-II, LJHES and PCHES for 3rd control period 2014-19 is as under:

Table 3: Revised ROCE approved for FY 2014-15 (Rs. crore)

Plant		GFA Opening	Acc. Dep.	Net Block	Working Capital	WACC	RoCE
KTPP-II	Approved in GTO	0.00	0.00	0.00	0.00	13.19%	0.00
	As filed and as claimed in RP	0.00	0.00	0.00	0.00	14.00%	0.00
	Approved in RP	0.00	0.00	0.00	0.00	13.19%	0.00
LJHES	Approved in GTO	0.00	0.00	0.00	0.00	13.35%	0.00
	As filed and as claimed in RP	0.00	0.00	0.00	0.00	14.00%	0.00
	Approved in RP	0.00	0.00	0.00	0.00	13.35%	0.00
PCHES	Approved in GTO	0.00	0.00	0.00	0.00	12.88%	0.00
	As filed and as claimed in RP	0.00	0.00	0.00	0.00	14.00%	0.00
	Approved in RP	0.00	0.00	0.00	0.00	12.88%	0.00

Table 4: Revised ROCE approved for FY 2015-16 (Rs. crore)

Plant		GFA Opening	Acc. Dep.	Net Block	Working Capital	WACC	RoCE
KTPP-II	Approved in GTO	3229.78	0.00	3229.78	446.40	13.19%	10.60
	As filed and as claimed in RP	3237.85	0.00	3237.85	407.22	14.00%	11.15
	Approved in RP	3229.78	0.00	3229.78	446.40	13.19%	10.60
LJHES	Approved in GTO	1332.59	21.29	1311.30	61.32	13.35%	86.14
	As filed and as claimed in RP	1332.59	0.00	1332.59	55.73	14.00%	91.34
	Approved in RP	1332.59	0.00	1332.59	61.80	13.35%	87.50
PCHES	Approved in GTO	0.00	0.00	0.00	0.00	12.88%	0.00
	As filed and as claimed in RP	0.00	0.00	0.00	0.00	14.00%	0.00
	Approved in RP	0.00	0.00	0.00	0.00	12.88%	0.00

Table 5: Revised ROCE approved for FY 2016-17 (Rs. crore)

Plant		GFA Opening	Acc. Dep.	Net Block	Working Capital	WACC	RoCE
KTPP-II	Approved in GTO	3470.62	164.67	3305.95	480.36	13.19%	499.42
	As filed and as claimed in RP	3237.85	0.00	3237.85	472.26	14.00%	519.42
	Approved in RP	3229.78	0.00	3229.78	484.06	13.19%	521.63
LJHES	Approved in GTO	1542.78	79.95	1462.83	70.52	13.35%	152.39
	As filed and as claimed in RP	1969.14	21.29	1947.85	83.56	14.00%	211.68
	Approved in RP	1332.59	21.29	1311.30	71.85	13.35%	158.36
PCHES	Approved in GTO	228.21	2.71	225.50	10.40	12.88%	15.23
	As filed and as claimed in RP	425.30	0.00	425.30	18.15	14.00%	11.65
	Approved in RP	228.21	0.00	228.21	10.46	12.88%	15.41

Table 6: Revised ROCE approved for FY 2017-18 (Rs. crore)

Plant		GFA Opening	Acc. Dep.	Net Block	Working Capital	WACC	RoCE
KTPP-II	Approved in GTO	3470.62	335.68	3134.94	481.01	13.19%	476.95
	As filed and as claimed in RP	4334.11	253.85	4080.26	521.95	14.00%	644.31
	Approved in RP	3470.62	164.67	3305.95	484.85	13.19%	500.01
LJHES	Approved in GTO	1542.78	146.90	1395.88	67.80	13.35%	195.45
	As filed and as claimed in RP	1969.14	79.94	1889.20	94.72	14.00%	277.75
	Approved in RP	1542.78	79.95	1462.83	69.32	13.35%	204.59
PCHES	Approved in GTO	433.85	21.34	412.51	21.65	12.88%	45.33
	As filed and as claimed in RP	563.50	2.71	560.79	30.05	14.00%	82.72
	Approved in RP	433.85	2.71	431.13	22.06	12.88%	47.32

Table 7: Revised ROCE approved for FY 2018-19 (Rs. crore)

Plant		GFA Opening	Acc. Dep.	Net Block	Working Capital	WACC	RoCE
KTPP-II	Approved in GTO	3470.62	506.68	2963.94	480.74	13.19%	454.36
	Filings	4334.11	593.64	3740.47	517.67	14.00%	596.14
	Approved in RP	3470.62	335.68	3134.94	484.59	13.19%	477.42
LJHES	Approved in GTO	1542.78	213.85	1328.93	67.25	13.35%	186.43
	Filings	1969.14	146.89	1822.25	95.10	14.00%	268.43
	Approved in RP	1542.78	146.90	1395.88	68.78	13.35%	195.58
PCHES	Approved in GTO	433.85	40.50	393.35	20.94	12.88%	53.34
	Filings	563.50	21.87	541.63	30.32	14.00%	80.07
	Approved in RP	433.85	21.87	411.97	21.35	12.88%	55.79

69. Accordingly, the revised Annual Fixed Charges (AFC) approved for KTPP-II, LJHES and PCHES for 3rd control period 2014-19 is as under:

Table 8: Revised Fixed Charges approved for KTPP-II, LJHES and PCHES for FY 2014-15. (Rs. crore)

Plant		Depreciation	O & M Charges	ROCE	Fixed Charges
KTPP-II	Approved in GTO	0.00	0.00	0.00	0.00
	As filed and as claimed in RP	0.00	0.00	0.00	0.00
	Approved in RP	0.00	0.00	0.00	0.00
LJHES	Approved in GTO	0.00	0.00	0.00	0.00
	As filed and as claimed in RP	0.00	0.00	0.00	0.00
	Approved in RP	0.00	0.00	0.00	0.00
		0.00	0.00	0.00	0.00
		PCHES	Approved in GTO	0.00	0.00
	Approved in RP	0.00	As filed and as claimed in RP	0.00	0.00

Plant	Depreciation	O & M Charges	ROCE	Fixed Charges
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Table 9: Revised Fixed Charges approved for KTPP-II, LJHES and PCHES for FY 2015-16 (Rs. crore)

Plant	Depreciation	O & M Charges	ROCE	Fixed Charges	
KTPP-II	Approved in GTO	0.00	2.41	10.60	13.01
	As filed and as claimed in RP	0.00	2.41	11.15	13.56
	Approved in RP	0.00	2.41	10.60	13.01
LJHES	Approved in GTO	21.29	11.27	86.14	118.70
	As filed and as claimed in RP	21.29	9.25	91.34	121.88
	Approved in RP	21.29	11.27	87.50	120.07
PCHES	Approved in GTO	0.00	0.00	0.00	0.00
	As filed and as claimed in RP	0.00	0.00	0.00	0.00
	Approved in RP	0.00	0.00	0.00	0.00

Table 10: Revised Fixed Charges approved for KTPP-II, LJHES and PCHES for FY 2016-17 (Rs. crore)

Plant	Depreciation	O & M Charges	ROCE	Fixed Charges	
KTPP-II	Approved in GTO	164.67	117.14	499.42	781.23
	As filed and as claimed in RP	253.85	117.14	519.42	890.41
	Approved in RP	164.67	117.14	521.63	803.44
LJHES	Approved in GTO	58.65	27.28	152.39	238.32
	As filed and as claimed in RP	58.65	46.89	211.68	317.22
	Approved in RP	58.65	27.28	158.36	244.29
PCHES	Approved in GTO	2.71	2.06	15.23	20.00
	As filed and as claimed in RP	2.71	5.08	11.65	19.44
	Approved in RP	2.71	2.06	15.41	20.18

Plant	Depreciation	O & M Charges	ROCE	Fixed Charges
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**Table 11: Revised Fixed Charges approved for KTPP-II, LJHES and PCHES for
FY 2017-18 (Rs. crore)**

Plant	Depreciation	O & M Charges	ROCE	Fixed Charges	
KTPP-II	Approved in GTO	171.01	124.56	476.95	772.52
	As filed and as claimed in RP	339.79	124.56	644.31	1108.66
	Approved in RP	171.01	124.56	500.01	795.58
LJHES	Approved in GTO	66.95	29.88	195.45	292.28
	As filed and as claimed in RP	66.95	67.18	277.75	411.88
	Approved in RP	66.95	29.88	204.59	301.42
PCHES	Approved in GTO	18.62	7.04	45.33	70.99
	As filed and as claimed in RP	19.16	28.84	82.72	130.72
	Approved in RP	19.16	7.04	47.32	73.52

**Table 12: Revised Fixed Charges approved for KTPP-II, LJHES and PCHES for
FY 2018-19 (Rs. crore)**

Plant	Depreciation	O&M Charges	ROCE	Fixed Charges	
KTPP-II	Approved in GTO	171.01	132.34	454.36	757.71
	As filed and as claimed in RP	339.79	132.34	596.14	1068.27
	Approved in RP	171.01	132.34	477.42	780.76
LJHES	Approved in GTO	66.95	31.07	186.43	284.45
	As filed and as claimed in RP	66.95	71.64	268.43	407.02
	Approved in RP	66.95	31.07	195.58	293.61
PCHES	Approved in GTO	19.16	8.29	53.34	80.79
	As filed and as claimed in RP	19.16	30.76	80.07	129.99
	Approved in RP	19.16	8.29	55.79	83.24

70. Consequently, the Fixed cost per unit approved for KTHP-II, LJHES and PCHES are as shown below:

Table 13: Revised Fixed cost per unit for KTHP-II, LJHES and PCHES for 3rd control period i.e., FY 2014-15 to FY 2018-19 (Rs. / unit)

Plant		2014-15	2015-16	2016-17	2017-18	2018-19
KTHP-II	Approved in GTO	0.00	1.40	1.85	1.82	1.79
	Approved in RP	0.00	1.40	1.90	1.88	1.84
LJHES	Approved in GTO	0.00	14.21	6.02	5.50	5.35
	Approved in RP	0.00	14.38	6.17	5.67	5.52
PCHES	Approved in GTO	0.00	0.00	7.31	4.74	3.70
	Approved in RP	0.00	0.00	7.37	4.91	3.81

Issue No.6: Operating Norms for KTHP Stage-II (1x600 MW)

Respondents' contention/Stakeholders' comment

71. TSGenco requested the Commission to consider operating norms for KTHP Stage-II (600 MW) plant on par with APERC Regulation No.1 of 2008 instead of CERC Tariff Regulations, 2014 until the issuance of new regulations. While in some cases, TSGenco wants norms on the basis of CERC Regulations, 2014 (e.g., O & M charges for hydel stations) in some cases it does not want norms under CERC Regulations, 2014. There is no consistency in its stands. As the Commission has already adopted new TSERC Regulation No.1 of 2019 related to generation tariff, this request of TSGenco need not be upheld.

TSGencos' response

72. The Commission has adopted operating norms of KTHP-II (1x600 MW) in line with CERC Tariff Regulations, 2014. The Commission is requested to consider the operating norms of KTHP-II on par with APERC Regulation No.1 of 2008, as per the operating norms applicable to 500 MW capacity plant, till the issuance of new operating norms for 600 MW plants by the Commission. It is pertinent to inform that the Commission has issued operating norms for 600 MW and above plants in its latest Regulation No.1 of 2019.

Commission's view

73. APERC Regulation No.1 of 2008 is applicable to generating units of 500 MW whereas the KTPP Stage-II plant is of 600 MW. Considering this aspect, the Commission in the Tariff Order for TSGenco for control period 2014 to 2019, had adopted operating norms for KTPP Stage-II (1x600 MW) as per CERC Tariff Regulations, 2014.
74. The Commission in Order dated 19.06.2017 in O. P. No. 9 of 2016 for Singareni Collieries Company Ltd. (SCCL) for 'Determination of Capital Cost and Generation Tariff for 2x600 MW Thermal Power Project of SCCL for FY 2016-17 to FY 2018-19' had also adopted operating norms as per CERC Tariff Regulations, 2014 because KTPP-II and SCCL TPP are similarly placed generating stations of 600 MW units. The Commission had given the detailed reasoning for adopting the CERC norms for SCCL TPP in its MYT Order which is reproduced as below:
- “2.6.3 The provisions of Regulation No.1 of 2008 were guided by the CERC (Terms and Conditions of Tariff) Regulations, 2004 and its First Amendment issued on 01.06.2006. Regulation No.1 of 2008 provides for the adoption of any further amendments to the aforesaid CERC Regulations by means of a general or special order, with or without any modifications. As Regulation No.1 of 2008 did not specify the norms of operation for Unit sizes of capacity of 600 MW and above, the Commission has adopted the norms of operation as specified in the CERC (Terms and Conditions of Tariff) Regulations, 2014 specified by the CERC for the Control Period FY 2014-15 to FY 2018-19.”
75. It is to be noted that SCCL had preferred an Appeal before the Hon'ble APTEL on the Commission's Order dated 19.06.2017 wherein the Commission's decision to adopt CERC norms has been challenged and the matter is sub-judice. In view of the above, the Commission is not inclined to consider TSGenco's prayer to adopt the operating norms of KTPP-II on par with APERC Regulation No.1 of 2008.

Other Issue 7: Interest on Pension Bonds

Respondents' contention / Stakeholders' comment

76. TSGenco in its presentation before the Commission during the virtual hearing on 27.09.2021 claimed Rs.108.70 crore more towards interest on pension bonds. No explanation was provided for this higher claim. This also did not figure in its original review petition. As such, this claim for higher interest on pension funds shall not be allowed.

TSGencos' response

77. The additional interest on pension bonds figured in the Presentation is difference between the tariff filings for control period 2014-19 against approved by the Commission. This is not claimed in the Review petition as actual pension liability has been claimed in True-up Petition.

Commission's view

78. The Commission finds the reply of TSGenco in order.

Summary of revised Annual Fixed Charges (AFC) for 3rd control period 2014-19

79. Based on the above views of the Commission, the summary of the revised AFC for KTPP-II, LJHES and PCHES for 3rd control period 2014-19 is as shown below:

Table 14: Summary of revised fixed charges for KTPP-II, LJHES and PCHES for the 3rd control period 2014-19 (Rs. crore)

Name of the Station		2014-15	2015-16	2016-17	2017-18	2018-19	Total
KTPP-II(a)	Approved in GTO	0.00	13.01	781.23	772.51	757.70	2324.45
	As filed and as claimed in RP	0.00	13.56	890.37	1108.64	1068.25	3080.82
	Approved in RP	0.00	13.01	803.44	795.58	780.76	2392.79
LJHES(b)	Approved in GTO	0.00	118.70	238.32	292.28	284.46	933.76
	As filed and as claimed in RP	0.00	121.89	317.21	411.88	407.02	1258.00
	Approved in RP	0.00	120.07	244.29	301.42	293.61	959.38

Name of the Station		2014-15	2015-16	2016-17	2017-18	2018-19	Total
PCHES(c)	Approved in GTO	0.00	0.00	20.00	71.00	80.79	171.79
	As filed and as claimed in RP	0.00	0.00	19.44	130.72	129.99	280.15
	Approved in RP	0.00	0.00	20.18	73.52	83.24	176.94
Total (a+b+c)	Filings	0.00	135.45	1227.02	1651.24	1605.26	4618.97
	Approved in GTO	0.00	131.71	1039.55	1135.79	1122.95	3430.00
	Approved in RP	0.00	133.08	1067.91	1170.52	1157.61	3529.12
Difference		0.00	1.37	28.36	34.73	34.66	99.12

80. The total revised AFC for KTPP-II, LJHES and PCHES for 3rd control period 2014-19 is Rs.3529.12 crore as against Rs.3430.00 crore approved in the Tariff Order dated 05.06.2017 in O. P. No. 26 of 2016 for the control period 2014-19 and as against Rs.4618.97 crore now claimed in this review petition. The Commission allows the differential AFC of Rs. 99.12 crore for KTPP-II, LJHES and PCHES for 3rd control period FY 2014-19. The Commission directs TSGenco to bill the differential AFC approved in this order for recovery from its beneficiaries.
81. **Before parting, the Commission intends to make some observations on the Respondents No. 1 & 2 in the context of the present proceedings. In general, the Respondent(s) are equally responsible as the Petitioner(s) for assisting the Commission in taking an equilibrated decision on any matter. The Respondents No. 1 & 2 have the responsibility to protect their interest in the ultimate objective of protection of their consumers' interest. Despite the Respondents No. 1 & 2 having the majority share in generation capacity of the Review Petitioner, there was no whisper whatsoever on the claims of the Review Petitioner, let alone the non-filing of detailed submissions. The Commission expresses profound regret on the same. The Commission would also wish to pass strictures on the Respondents No. 1 & 2 but abstain from doing so with the trust that they do not wither away from their responsibilities henceforth.**

82. The Review Petition is disposed of in the above terms.

This Order is corrected and signed on this the 19th day of February, 2022.

Sd/- (BANDARU KRISHNAIAH) MEMBER	Sd/- (M.D.MANO HAR RAJU) MEMBER	Sd/- (T.SRIRANGA RAO) CHAIRMAN
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//CERTIFIED COPY//



Annexure-I
Notice



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
#11-4-660, 5th Floor, Singareni Bhavan, Red Hills,
Hyderabad – 500004.

R. P. No. 2 of 2021
in
O. P. No. 26 of 2016

Between

Telangana State Power Generation Corporation Limited,
Vidyut Soudha, Khairatabad, Hyderabad.

....Review petitioner.

AND

1. Sothern Power Distribution Company of Telangana Ltd.,
H. No. 6-1-50, 5th Floor, Mint Compound,
Hyderabad – 500 083.
2. Northern Power Distribution Company of Telangana Ltd.,
H. No. 2-5-31 / 2, Corporate Office, Vidyut Bhavan,
Nakkalgutta, Hanamkonda, Warangal – 506 001.
3. Southern Power Distribution Company of
Andhra Pradesh Limited, Tiruchanoor Road,
Kesvayana Gunta, Tirupathi – 517 501.
4. Eastern Power Distribution Company of
Andhra Pradesh Limited, Seethammadhara,
Visakhapatnam – 530 020.
5. ESCOMs of Kamataka State,
PCKL & KPTCL Room No. 501,
5th Floor, KPTCL Building,
Kaveri Bhavan, Bangalore – 560 009.

..... Respondents.

NOTICE

Take notice that the above named review petitioner has filed a review petition, seeking review of the order dated 05.06.2017 in O. P. No. 26 of 2016 passed by the Commission regarding determination of the tariff for TSGENCO stations.

Copy of the above mentioned review petition along with material papers is enclosed to this notice for reference of the respondents and their record. The

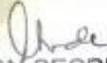
respondents may file counter-affidavit / comments / objections so as to reach this Commission on or before the date of hearing. The counter-affidavit / objections / comments should be in a verified form as provided in **Conduct of Business Regulation 2 of 2015**. A copy of objections / comments should also be served on the review petitioner and acknowledgment thereof shall be filed on or before the date of hearing. The review petitioner desirous to file a re-joinder / reply to the counter-affidavit, shall do so on or before the date of hearing. The re-joinder / reply to the counter-affidavit should be in a verified form as provided in **Conduct of Business regulation 2 of 2015** and the same should also be served on the respondents and acknowledgment thereof shall be filed on or before the date of hearing.. The counter affidavit and rejoinder may be sent by email by either parties between them and also to the Commission at secy@tserc.gov.in.

The presentation made by the review petitioner before admitting the matter is also enclosed to this notice.

ALSO TAKE NOTICE that the review petition stands posted for hearing before the Commission on **11.11.2021 at 11.30 AM**.

The matter will be heard through online mode of video conference. In that regard the concerned advocates / authorized persons appearing on behalf of the parties, who wish to appear for virtual hearing shall provide their email address to secy@tserc.gov.in for communicating the link for enabling their appearance in the matter.

// BY ORDER //

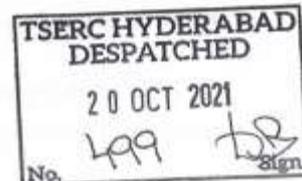

COMMISSION SECRETARY (FAC)

SECRETARY

T.S. Electricity Regulatory Commission
D.No. 11-4-650, 5th Floor, Singareni Bhavan,
Red Hills, Hyderabad-500 004.

To

1. The Chairman & Managing Director,
TSGENCO, Vidyut Soudha, Khairatabad,
Hyderabad – 500 082.
2. The Chairman & Managing Director,
Sothern Power Distribution Company of Telangana Ltd.,
H. No. 6-1-50, 5th Floor, Mint Compound,
Hyderabad – 500 063.



3. The Chairman & Managing Director,
Northern Power Distribution Company of Telangana Ltd.,
H. No. 2-5-31 / 2, Corporate Office, Vidyut Bhavan,
Nakkalgutta, Hanamkonda, Warangal – 506 001.
4. The Chairman & Managing Director,
Southern Power Distribution Company of
Andhra Pradesh Limited, #19-13-65/A
SRINIVASAPURAM, TIRUCHANOUR ROAD,
TIRUPATI – 517503.
5. The Chairman & Managing Director,
Eastern Power Distribution Company of
Andhra Pradesh Limited, Corporate Office,
P & T Colony, Seethammadhara,
Visakhapatnam, Andhra Pradesh-500013.
6. The Chairman,
ESCOMs of Karnataka State,
PCKL & KPTCL Room No. 501,
5th Floor, KPTCL Building,
Kaveri Bhavan, Bangalore – 560 009.

OBJECTORS IN THE ORIGINAL FILING OF TARIFF.

7. The Director (Projects),
Power Corporation of Karnataka Limited,
Room No. 501, 5th Floor, KPTCL Building,
Kaveri Bhavan, Bangalore – 560 009.
8. Sri M. Venugopala Rao, Senior Journalist
& Convener, Centre for Power Studies,
H.No.1-100 / MP / 101, Monarch Prestige,
Journalists' Colony, Gopanpally,
Serilingampally Mandal, Hyderabad - 500 032.
9. Sri. M. Thimma Reddy, Convener,
People's Monitoring Group on Electricity Regulation,
139, Kakatiyanagar, Hyderabad – 500 008.
10. Sri. D. Narsimha Reddy,
201, Aarthi Residency, L. N. Colony,
Saidabad, Hyderabad – 500 059.
11. The Convener, Policy Research,
Bharatiya Janata Party,
Dr. Shyamprasad Mukharjee Bhavan,
Opp: Exhibition Ground,
Nampally, Hyderabad, Telangana – 500 001.

Annexire-II

List of respondents who filed counter affidavit / stakeholders who submitted comments / objections

Sl. No.	Description	Name of the Respondent/Stakeholder
1.	Comments / objections	Sri M.Thimma Reddy, Convenor, People's Monitoring Group on Electricity Regulation, H.No.3-4-107/1 (Plot No.39), Radha Krishna Nagar, Attapur, Hyderabad - 500 048.
2.	Counter Affidavit	Southern Power Distribution Company of Andhra Pradesh Limited, Tiruchanoor Road, Kesvayana Gunta, Tirupati - 517 501 Eastern Power Distribution Company of Andhra Pradesh Limited, Seethammadhara, Visakhapatnam 530 020.
3.	Counter Affidavit	ESCOMs of Karnataka State.

