IN THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION AT RANCHI

Case No. O6 of 2018

Tata Power Company Limited (TPCL) .... Petitioner

Versus

Tata Steel Limited (TSL) .... Respondent

CORAM: HON'BLE MR. (DR) ARBIND PRASAD, CHAIRPERSON
HON'BLE MR. R.N. SINGH, MEMBER (ENGINEERING)

For the Petitioner : Mr. Venkatesh, Advocate,
Mr. Pankaj Prakash, Representative

For the Respondent (TSL): Mr. Manish Mishra, Advocate

O R D E R

Date - 09th January, 2019

1. This review petition has been filed by Tata Power Company Limited (hereinafter referred to as 'TPCL') under Section 94(1) (f) of the Electricity Act, 2003 read with Regulation 41.1 of the JSERC (Conduct of Business) Regulations 2016 against the order dated 19.02.2018 (hereinafter referred to as **Impugned order**) passed by the Jharkhand State Electricity Regulatory Commission (hereinafter referred to as '**JSERC**' or the '**Commission**') in Case no. 16 of 2016 and 05 of 2017 relating to determination of MYT for FY 2017-21 and True-up for FY 2015-16 for sale of electricity from 2 x 120MW Unit 2 and unit 3 at Jojobera Power Plant, Jamshedpur.

2. The Petitioner has submitted that the Review Petition has been filed within the limitation period prescribed under Regulation 41.4 of the Jharkhand State Electricity Regulatory Commission (Conduct of Business) Regulations, 2016 and is well within the review jurisdiction of the Commission as provided under Section 94 (1) (f) of Electricity Act 2003, and the JSERC Conduct of Business Regulation, 2016.

3. Heard Learned Counsel for the Petitioner as well as Learned Counsel for the Respondent. Learned Counsel for the Petitioner submitted the following issues for review :-

A. ISSUES PERTAINING TO TRUING UP ORDER FOR FY 2015-16:

(i) Disallowance of Raw Water Charges for FY 2015-16 (including arrears for the period 01.04.2011 to 31.08.2015);

(ii) Disallowance of Cost of Secondary Fuel oil on Normative Basis for FY 2015-16;

(iii) Disallowance of Normative Transit loss on MCL, Tailing (Road), Washery Coal;

(iv) Clarification on methodology of computing Carrying Costs.

B. ISSUES PERTAINING TO MYT ORDER FOR FY 2016-17 TO FY 2020-21:

(i) Revision of targets on specific fuel oil consumption for the control period FY 2016-17 to FY 2020-21;

(ii) Partial disallowance of interest of working capital for the control period FY 2016-17 to FY 2020-21;

(iii) Non-consideration of transit loss of 1% in the middling coal.

Each issue is discussed below:-

A. ISSUES PERTAINING TO TRUING UP ORDER FOR FY 2015-16:

(i) Disallowance of raw water charges for FY 2015-16 (including arrears for the period 01.04.2011 to 31.08.2015)

Submission of the Petitioner

a) Learned Counsel for the petitioner submitted that the Commission while passing the order has disallowed the Raw Water expenses for FY 2015-16 and held that allowance of Raw Water Charges is not in line with the provisions of the JSERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2010. Learned Counsel further submitted that the above finding of the Commission is an error apparent on the face of the record for the following reasons:-

(i) As per Regulation 7.41 (c) read with Regulation 2(34)of the JSERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2010, the O&M Expenses of an existing Generating Station is to be determined on the basis of the past performance, which necessarily includes water under consumables. Relevant regulations are reproduced herein-below:

"2 (34) ***Operation and Maintenance Expenses****" or '****O&M expenses****' means the expenditure incurred on operation and maintenance of the project, or part thereof, and includes the expenditure on manpower, repairs, spares,* ***consumables****, insurance and overheads;"…*

"7.41 Existing Thermal Generating Stations:

....

(b) The Applicant shall submit details on O&M expenses as required by the Commission. The O&M expenses excluding terminal liabilities for the Base Year shall be determined based on latest accounting statements, estimates of the Generating Company for relevant years and other factors considered relevant.

(c) The O&M expenses excluding terminal liabilities permissible towards determination of tariff for each year of the Control Period shall be determined after a prudency check by the Commission based on submissions of the Generating Company, previous years' actual expenses and any other factor considered relevant.

(d) ...."

(ii) Learned Counsel for the Petitioner submitted that the definition of O&M Expenses and norms of New Generating Stations in JSERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2010 were based on CERC Tariff Regulations 2009 and those in JSERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 is based on CERC Tariff Regulations 2014. Learned Counsel further submitted that the norm of O&M Expenses specified in Rs. Lakh/MW for New Generating Stations given in Regulation 7.44 of JSERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2010, which is based on CERC Tariff Regulations 2009, is inclusive of water charges, which is brought out clearly in the Statement of Reasons SOR issued by CERC along with their 2009 Regulations. However, in CERC Tariff Regulations 2014, water charges have been excluded from the definition of O&M expenses and also from the norm of O&M Expenses specified for the period 2014-19. However, water charges have been allowed through a separate regulation based on water requirement and type of cooling water system etc. which has also been clearly brought out in SOR of 2014 Regulations. Learned Counsel for the Petitioner submitted the following Table which depicts these facts (2014-15 and 2015-16 new norm is lower):

O&M Expense Norm in Rs. Lakh/MW

Year	*CERC 2009*	*GTR 2010*	*CERC 2014*	*GTR 2015*
FY 2009-10	18.20			
FY 2010-11	19.24			
FY 2011-12	20.34	20.34		
FY 2012-13	21.51	21.51		
FY 2013-14	22.74	22.74		
FY 2014-15		**24.04**	**23.90**	
FY 2015-16		**25.42**	**25.40**	
FY 2016-17			27.00	27.00
FY 2017-18			28.70	28.7
FY 2018-19			30.51	30.51
FY 2019-20				32.43
FY 2020-21				34.48

(iii) Learned Counsel also submitted that JSERC in its MYT order dated 31.05.2012 did not allow water charges due to lack of material evidence of payment of such charges. However, when TPCL submitted material evidence of payment, the Commission allowed the water charges for the control period FY 2012-13 to FY 2015-16 vide its order dated 21.11.2012 in Review Case No. 12 of 2012 and the same have been trued up every year till 2014-15 based on actuals reflected in audited accounts.

b) Learned Counsel for the Petitioner further submitted that the bill for water charges has been raised on TPCL in 2015-16, they have been booked in audited accounts as an expense and the water expenses for Unit 2 and 3 have been paid by the TPCL which includes the arrears of Rs. 13.17 Crore for the period 01.04.2011 to 31.08.2015. Learned Counsel also submitted that the liability for payment of arrears of past period also has arisen and gets frozen in FY 2015-16 as soon as the bill for arrears was raised on TPCL in September 2015.

c) Learned Counsel further submitted that the water charges for the FY 2015-16 should be approved as these are legitimate expenses and same were also approved by the Commission vide review order dated 26.06.2012 in Case no. 12 of 2012, the relevant extract of which has reproduced below:

> *"As the petitioner has submitted the proof of payment of Raw water charges for the FY 2011-12, and has also filed an affidavit that the* ***Raw water consumption, in question, relates to the generation of electricity by the aforesaid five units and for related activities and that the Raw water is not used for any other purposes, and as such the same is acknowledged. Further the Commission has provisionally arrived at and allows the Raw water consumption and Raw water charges for unit no. 2 and 3 as under subject to true up at the end of each Financial Year****."*
>
> ***(Emphasis added)***

Submission of the Respondent

a) The Respondent through its reply in para 10 submitted

> "*……….that the Govt. of Jharkhand had increased the water charges from Rs. 4.5 MGD to 26.00 MGD vide notification dated 01.04.2011 issued by the Water Resources Department, Government of Jharkhand.* ***The respondent company sought to challenge the exorbitant increase in water charges by preferring a writ petition being WPC No. 4544 of 2011 before the Hon'ble Jharkhand High Court. The Hon'ble High Court was pleased to pass favourable interim orders in favour of the Company by permitting it to pay Rs. 1.00 Cr per month towards water charges till the pending writ petition was decided."***
>
> (***Emphasis added)***

Further, the respondent in para 14 of its reply has quoted clause 7.41(c) of Generation Tariff Regulation which requires the Commission to determine the O&M expenses to be determined based on previous years actual expenses. Para 14 of the reply of respondent is quoted below:

> *That clause 7.41(C) of GTR 2010 provides as follows:*
>
> *"The O&M expenses excluding terminal liabilities permissible towards determination of tariff for each year of the Control Period shall be determined after a prudency check by the Commission based on submission of the Generation Company,* ***previous years' actual expenses*** *and any other factor considered relevant."*
>
> (***Emphasis added)***

Commission's observations

a. As submitted by the Petitioner the Commission in its Judgement dated 26.06.2012 in the review petition of Case no. 12 of 2012 approved the water charges after due apportionment to the units 2 and 3 which are under the regulatory review of the Commission.

b. Even though the JSERC (Terms and conditions for determination of Generation Tariff) Regulations, 2010 do not have any provision for payment of water charges, the Commission based on the reliance on the mentioned review petition (Case no. 12 of 2012) has allowed the same to the Petitioner for true up till FY 2014-15. Since the year FY 2015-16 is the last year of the same control period, we allow the raw water charges for this year as well.

c. With respect to the arrears of raw water charges for the period from 01.04.2011 to 31.08.2015, the matter is subjudice before the Hon'ble Jharkhand High Court and its decision will have an impact on the rate of charges to be levied subsequently. Also, the Hon'ble Jharkhand High Court had permitted Tata Steel to continue payment of Rs. 1.00 Cr per month pending decision on the writ petition. However, it is not clear, what part of that Rs. 1 Cr is the water charge to be paid by the Petitioner (for Unit 2 & 3) per month to Tata Steel as the Rs. 1 Cr may include charges for water consumed by Tata Steel or for any other purposes in addition to that of the Petitioner. Since the Petitioner has paid the billed amount as per new charges, it means that Tata Steel is recovering completely as per the revised rates while paying the Govt. of Jharkhand at only the rate permitted by Hon'ble High Court.

In such a scenario wherein as matter is sub-judice before the Hon'ble Jharkhand High Court, the Commission is not inclined to allow pass through the arrears as claimed by the Petitioner to the consumers at this point of time. The decision on quantum of arrears will be examined only based on the order of the Hon'ble Jharkhand High Court.

d. Just because the Petitioner has paid the amount and it has been booked in audited accounts, doesn't mean that same has to be passed through. The Commission would like to highlight the relevant portion of para 20 of the Judgment of Hon'ble APTEL passed in Appeal No. 177 of 2009 (Kerala State Electricity Board Vrs. Kerala State Electricity Regulatory Commission):

"20. At the outset, it shall be stated that the State Commission while examining the accounts is not bound by the audited accounts. The accounts may be genuine as per the Auditor's Report. But, it is the State Commission which has to examine the accounts to ascertain the performance of the licensee in relation to the desirability of the expenditure in the interest of the consumers"
(emphasis added)

Commission's Findings

In view of the above, the Commission has decided to allow the water charges for the year FY 2015-16 at Rs. 1.60 Cr for Unit 2 and Rs. 1.62 Cr for Unit 3 as per the review order of Case no. 12 of 2012. The decision on quantum of arrears to be passed through will be examined after final orders of the Hon'ble Jharkhand High Court.

In view of the above, the revised table for O&M expenses for the year FY 2015-16 is given below:

Revised Table 33: Approved O&M expenses for Unit 2 for FY 2015-16 (in Rs Cr)

Particulars	O&M expenses for Unit 2			
	As per MYT Order	Submitted by TPCL	Approved in True-up	Approved Now
Employee Cost	**6.78**	**6.78**	**6.78**	**6.78**
Employee Expenses without Terminal Liabilities	5.94	5.94	5.94	5.94
Terminal Liabilities	0.84	0.84	0.84	0.84
R&M Expenses	**13.12**	**13.12**	**13.12**	**13.12**
A&G Expenses	**11.57**	**31.97**	**11.62**	**13.22**
Ash Disposal Expenses	3.18	5.02	5.02	5.02
Raw Water Expenses	1.6	9.54	0.00	1.60
Other A&G Expenses (including HO	6.6	17.36	6.60	6.60

Particulars	O&M expenses for Unit 2			
	As per MYT Order	Submitted by TPCL	Approved in True-up	Approved Now
Expenses)				
Application Fees & Publication Expenses	**0.19**	**0.06**	**0.06**	**0.06**
Total O&M Expenses	**31.48**	**51.87**	**31.58**	**33.18**

Revised Table 34: Approved O&M expenses for Unit 3 for FY 2015-16 (in Rs Cr)

Particulars	O&M expenses for Unit 3			
	As per MYT Order	Submitted by TPCL	Approved in True-up	Approved Now
Employee Cost	**6.78**	**6.78**	**6.78**	**6.78**
Employee Expenses without Terminal Liabilities	5.94	5.94	5.94	5.94
Terminal Liabilities	0.84	0.84	0.84	0.84
R&M Expenses	**8.17**	**8.17**	**8.17**	**8.17**
A& G Expenses	**10.96**	**31.57**	**10.53**	**12.15**
Ash Disposal Expenses	3.29	4.67	4.67	4.67
Raw Water Expenses	1.62	9.3	0.00	1.62
Other A&G Expenses (including HO Expenses)	5.86	17.54	5.86	5.86
Application Fees & Publication Expenses	**0.19**	**0.06**	**0.06**	**0.06**
Total O&M Expenses	**25.92**	**46.52**	**25.54**	**27.16**

(ii) Disallowance on cost of secondary fuel oil on normative basis

<u>Submission of the Petitioner</u>

a) Learned Counsel for the petitioner submitted that on review of the data submitted by the TPCL, and after referring to the study results of CEA, the Commission held that it was not in public interest to pass on the higher costs at normative levels when the actual consumption has been very less and the Commission has invoked "Power to Relax" to determine actual Secondary Fuel Oil Consumption contrary to the Norms specified by the Commission in JSERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2010. Learned Counsel further submitted that the above finding of the Commission is an error apparent on the face of the record for the following reasons:

(i) The Commission in the impugned Order has approved the cost of secondary Fuel on actual basis. The Commission's approach of disallowance of the secondary fuel oil consumption on normative basis and considering only actual cost which is lower than norms is contrary to the approach followed by the Commission in MYT Order dated 31.05.2012 and subsequent True-up proceedings within the same MYT Control Period (FY 2012-13 to FY 2015-16).

(ii) Learned Counsel also submitted that not allowing 100% savings in Secondary Fuel Oil Consumption to TPCL would be in direct contravention of specific decision and consequent direction to this Commission by the Hon'ble APTEL vide its Judgment dated 10.08.2016 in Appeal No. 195 of 2015, for true-up under the same JSERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2010. In the aforesaid Judgment, the Hon'ble APTEL had decided that 100% saving/gain due to lower LDO consumption has to be retained by TPCL.

(iii) Learned Counsel further submitted that Regulation 8.4 of JSERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2010 specifies values for operational norms for the existing generating stations are to be decided on basis the past operational data of these plants. Taking due consideration of the past operational performance norms, viz., Heat Rate, Normative Plant Availability Factor, Auxiliary Energy Consumption, Secondary Fuel oil Consumption of the Generating Units for each year of the MYT Control Period, the Commission had set the target of 1ml/kwh for each year of the Control Period applicable on Unit 2 & 3 of Jojobera Power Plant and all new generating stations operating in Jharkhand.

(b) Learned Counsel submitted that the Commission while undertaking True-up for FY 2012-13, FY 2013-14 and FY 2014-15, allowed the cost of Secondary Fuel oil on Normative basis as is set in the JSERC (Terms and Conditions for Determination of Generation Tariff) regulations, 2010 and as approved in the Tariff Order dated 31.05.2012.

(c) Learned Counsel further submitted that Secondary Fuel oil is normally fired in the boiler during following operating condition of the Units. TPCL in order to improve upon the Secondary Fuel oil consumption has undertaken special efforts and operational initiatives to reduce the consumption.

(d) Learned Counsel also submitted that Regulations are binding on the State Commission and Normative Parameters ought not to be changed to actual and it is well settled principle of law with regard to normative parameters qua cost of Secondary Fuel. Learned Counsel also submitted that once normative parameters are specified the same ought to be followed and entity should be rewarded for better performance.

(e) Learned Counsel further submitted that the Commission has vested itself with the Power of Relaxation to Relax any provision of a Regulation, if it is found to be in the interest of public. The operative word or exercisable power to be considered is that the power to 'Relax' or 'Relaxation' of the applicable Regulation casting an obligation or duty on a party. With respect, the said power cannot be used to "tighten" the existing Regulation for the obligated party without there being any prayer in this regard. The relaxation only means that the rigours of a particular rule or obligation are slackened in its application to a given case for obligated party. Further, it is settled principle that what cannot be done directly cannot be achieved indirectly.

Learned Counsel while summing up submitted that exercise of 'Power of Relaxation' or 'Power to Relax' for approving LDO/SFO Cost, Fuel Cost in Working Capital and Transit Loss in transportation of coal at lower of actual or normative parameter in the case of the Petitioner shall be in consonance of the following:

(i) National Tariff Policy;

(ii) Settled position of law regarding power to relax;

(iii) Judgments of Hon'ble APTEL stipulating that norms cannot be tightened for generating company;

(iv) Judgment of Hon'ble APTEL dated 10.08.2016 in Appeal No. 195 of 2015 on SFC/LDO consumption in case of Petitioner under GTR 2010;

(v) Judgments of Hon'ble Tribunal that Scope of True-up is limited;

(vi) Settled position of law that what cannot be done directly, cannot be done indirectly.

<u>Submission of the Respondent</u>

Learned Counsel for the Respondent submitted that the Commission on the basis of settled principles of law may decide the parameter with regard to disallowance of cost of secondary fuel on normative basis.

<u>Commission's Findings</u>

The norms of secondary fuel consumption have been prescribed in the Regulation. But so is the power to relax the norms in public interest.

We are mindful of the fact that such power to relax is not be exercised in routine manner, but has to be exercised only in exceptional cases.

However, the Commission does not accept the arguments of the petitioner that here the public interest means the petitioner's interest, and relaxation means expansion or loosening of norms.

Ultimately from tariff determined by the Commission general consumer of the electricity gets affected. So, the Commission has to keep the interest of the large number of consumers in mind as well.

The term 'Relaxation' used in the Regulation refers to relaxation of provisions of the Regulations and not expansion or otherwise of normative figures.

The order of Hon'ble APTEL dated 10.08.2016 in Appeal No. 195 of 2015 is about the sharing of gains, and not about permitting or not permitting the relaxation of norms.

More appropriate Judgement to consider in this case is of Hon'ble APTEL in case No. 147 of 2012 dated 14.11.2013. In the Judgement Hon'ble APTEL has clearly taken a view that in appropriate cases the Commission should exercise their power to relax the norms.

The Commission in its True up order has given detailed reasons and analysis as reproduced below:

> *"5.115 The Commission after scrutinizing the data submitted by the Petitioner found that the actual Specific LDO consumption for the FY 2015-16 for Unit-2 was 0.09 ml/kWh and Unit-3 was 0.16 ml/kWh which is less than the normative values as set by the Commission in Generation Tariff Regulations, 2010.*
>
> *5.116 The Commission also referred to the consumption in the previous years and observed that secondary oil consumption over the year has been lower*

Secondary fuel oil consumption (kL)	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Unit 2	397	262	206	336	78
Unit 3	693	305	419	264	130

> *6.11 The Commission also referred to the report by CEA on "Recommendations on Operation Norms for Thermal Power Stations Tariff Period -2014-19" wherein it has also been observed that "Most stations have very low SFC- Overall SFC is 0.24 ml/kWh for about 75 % of the capacity considered and 0.75 ml/kWh for balance 25 % capacity. Extremely low yearly SFC of 0.08 to 0.10 ml/kWh are seen in many stations. High SFC in select few stations appears to be due to station specific factors and can be lowered through proper identification and analysis of these factors and remedial measures. These stations have achieved low SFC in the past and in specific years). Stations with low SFC have most of their oil consumption incurred in the start-ups and have very little oil consumption for flame support. About 60 % to 80 % of SFC (and even higher) in these cases is attributable to startups."*
>
> *6.12 The JSERC Generation Tariff Regulations, 2010 specifies the following*
>
> > *"17.4 The Commission may in public interest and for reasons to be recorded in writing, relax any of the provision of these Regulations."*

5.117 After review of the data submitted by the Petitioner, and after referring to the study results of CEA and the provision in the regulations, the Commission is of the opinion that it is not in public interest to pass on the higher costs at normative levels when the actual consumption has been very less (approximately one-tenth of the normative consumption)..."

In the circumstances stated herein above, we find no occasion to review the True up order on this count.

(iii) Disallowance of normative transit loss for MCL-coal, tailing by road and Washery coal

Submission of the Petitioner

a) Learned Counsel for the petitioner submitted that the Commission while passing the Impugned order has approved the transit loss of other types of domestic coal on actual incurred basis instead of normative transit loss. Regulation 8.19 of JSERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2010 and also JSERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 provides that for computing energy charges in case of non-pit-head generating stations the cost of coal shall be arrived at after considering normative transit loss of 0.8% on the quantity of coal dispatched by the coal supplier. In case of pit-head generating stations the same will be 0.2% on the quantity of coal dispatched by the coal supplier.

b) Learned Counsel further submitted that the Commission approved the transit loss of other types of domestic coal on actual incurred basis instead of normative transit loss which is error apparent on face of record as the Commission's MYT Order dated 31.05.2012 for the 1st control period was issued following the norms of the JSERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2010. Learned counsel also submitted that in the said MYT order the Commission determined the Transit Loss considering the normative parameters/norms as specified in JSERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2010. The Commission followed the above norms while undertaking true-up for FY 2012-13, FY 2013-14, FY 2014-15 and allowed the normative transit loss irrespective of the actual Transit Loss. Moreover, the higher transit loss of 1% has only been allowed in the True Up proceedings for some of the washed category of coal (Middling) having actual transit loss higher than 0.8% in terms of the order of Hon'ble APTEL dated 14.11.2013 in Appeal No. 147 of 2012. Therefore, Disallowance of the normative transit loss on MCL, Tailing by Road and Washery Coal is contrary to the approach followed by the Commission in the MYT Order dated 31.05.2012 and subsequent True-up proceeding. The Petitioner has now requested to allow normative loss of 0.8% for all categories of coal, viz. MCL, Tailing by Road and Washery Coal except Middling for which 1% Transit loss is sought for 2015-16 as well as for 2016-17 to 2020-21.

Submission of the Respondent

Learned Counsel for the Respondent submitted that the Respondent is not completely aware of the manner in which the Transit loss for MCL Coal, Trailing by road and Washery Coal was allowed on normative basis and the dispute may be determined in accordance with the settled principles of law.

Commission's Findings

a) Regulation 8.19 of JSERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2010 states as below:

> *"For the purpose of computing energy charges, landed cost of coal shall be arrived at after considering normative transit and handling loss of 0.8% on the quantity of coal dispatched by the coal supplier in case of non-pit-head generating stations and 0.2% on the quantity of coal dispatched by the coal supplier in case of pit-head generation stations."*

b) The Normative transit loss of 0.8% in the Regulation has been prescribed considering the facts that different types of coal would have different losses:- some higher than the norms 0.8% whereas others less than 0.8%. However, in aggregate 0.8% would be adequate to meet the losses on account of transit of the coal.

c) Since the Regulation provides normative transit loss of 0.8 %, the State Commission in ordinary circumstances would allow 0.8% of transit loss for the entire coal procured, irrespective of the coal type. However, the petitioner went in appeal before the Hon'ble APTEL vide Appeal no. 147 of 2012 against the Commission's decision to maintain the transit loss at a normative level of 0.8% in its Order dated 31.05.2012 for the MYT Order for FY 2012-13 to FY 2015-16.

d) The Hon'ble APTEL directed the State Commission to calculate the transit losses afresh based on actual transit loss vide its order dated 14.11.2013 in Appeal no. 147 of 2012. The relevant para of the Judgement is quoted below:

> *"31 summary of our Findings:*
>
> *......................*
>
> *c. The facts of the case before us squarely fit in to the facts of Delhi Case in Appeal No. 26 of 2008. Accordingly, the ratio laid down in Appeal No. 26 of 2008 would be applicable to this case. The State Commission is, therefore, directed to reconsider the issue of loss in washed coal transit afesh and issue consequential orders."*

Again, the relevant para 22 of the Judgement of the Hon'ble APTEL in Delhi case Appeal No. 26 of 2008 mentioned above is quoted below:

> *"According to the Appellant, the State Commission has allowed a normative coal transit loss of 0.8% by holding that the same is nationally accepted loss level as prescribed in the Tariff Regulations of the Central Commission. It is noticed that the State Commission has rejected the claim of the Appellant merely on the ground that NTPC had not challenged the coal transit loss for the Dadri and Badarpur Stations which requires the same washing of coal. As pointed out by the Learned Counsel for the Appellant, the ground that the NTPC had been allowed only 0.8% coal transit loss and the same had not been challenged by the NTPC cannot be the valid ground to deny the claim of the Appellant. The important aspect that the State Commission has failed to consider is that the transit loss cannot be the same both for unwashed and washed coal. The weight of the coal at the time of loading is significantly increased due to higher moisture content which evaporates during transit and storage. We notice that the State Commission has not given a reasoned order regarding transit loss. Instead of examining the transit loss in case of the Appellant's power station the State Commission has noted that the use of washed coal is likely to improve the functioning of the plant. This matter, therefore, needs reexamination. Therefore, the State Commission is required to determine the actual coal transit loss in respect of the Appellant's Power Station without comparing the coal transit loss with the NTPC. This point is answered accordingly."*

e) We feel that the true spirit of the order by Hon'ble APTEL would be fulfilled by looking into the actual transit loss subject to prudence check for all types of coals. The petitioner has proposed to allow actual transit loss when it is higher than the normative loss vide APTEL Judgement dated 14.11.2013, whereas in cases where the actual transit loss is less than normative loss, the petitioner's proposal is to allow the normative transit loss of 0.8%.

For example, the petitioner wants the Commission to approve the normative transit loss of 0.8% for MCL coal whereas the actual transit loss is -0.99% (actually gain of 0.99%), and allow higher transit loss in cases where it is more than the normative more than the 0.8%.

We think such arguments of allowing variations from the norms when it favors the generating company, but adhering to norms to allow higher losses when actual losses are low are not in consonance with the true spirit of the Judgement of the Hon'ble APTEL and they are also against the interest of the consumers. As such the Commission finds no reason to amend or review the order on this count.

(iv) Methodology of computing carrying costs

Submission of the Petitioner

Learned Counsel for the Petitioner sought clarification on the methodology of computation of carrying cost stating that in the Impugned order there is no clarity on computation and methodology to be followed for carrying cost on the arrears for 2015-16 and for the period 2016-17 and 2017-18. Learned Counsel further submitted that this Commission has determined the Gap/Surplus for FY 2015-16 up to September 2017 as well as determined ARR for 2016-17 and 2017-18 without providing clarification/views on the methodology proposed by the TPCL, the intervening period for which carrying cost is applicable and to that extent the impugned order is a non-speaking Order. The carrying cost should be allowed on financial principle that whenever recovery of cost is deferred, the financing of the gap should be paid by way of carrying cost till the date of actual payment.

Submission of the Respondent

Learned counsel for the respondent submitted that the methods of computing carrying cost be determined by the Commission.

Commission's Findings

a) The JSERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2010 provides for the following:

> *"6.18 The amount under-recovered or over-recovered, along with simple interest, shall be recovered or refunded by the Generating Company, in six equal monthly instalments starting within three months from the date of the tariff order issued by the Commission after the truing up exercise."*

b) The Commission in their order dated 19.02.2018 has calculated the carrying cost based on the above provision of the Regulations.

B. ISSUES PERTAINING TO MYT ORDERFOR FY 2016-17 TO FY 2020-21

(i) Revision of targets on specific fuel oil consumption for the control period FY 2016-17 to FY 2020-21

Submission of the Petitioner

a) Learned Counsel for the petitioner submitted that Regulation 8.4 of JSERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 provides for allowing secondary fuel oil consumption as 1ml/kWh both for Unit 2 and Unit 3 for period from FY 2016-17 to FY 2020-21 and JSERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 are applicable and binding on all stakeholders including TPCL and the Commission.

b) Learned Counsel further submitted that while passing the Impugned order, the Commission approved the Specific Oil Consumption at 0.5 ml/kWh, on provisional basis subject to final review at the time of True-up, and completely ignoring the principles of MYT framework, which provides regulatory certainty to the Utilities, investors and consumers by promoting transparency, consistency and predictability of regulatory approach, thereby minimizing the regulatory risk. Deviation from specified norms while determining the ARR as set in the JSERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 shall defeat the purpose of the MYT framework.

Commission's Findings

a) The Commission in its order dated 19.02.2018 has mentioned as follows:

> *"6.138 Considering all of the above, the Commission has decided to approve the specific oil consumption (of LDO) at 0.5 ml/kWh for each year of the Control Period i.e. from FY 2016-17 to FY 2020-21 for both Unit 2 and Unit 3.* ***This norm may be re-looked based on Petitioner's actual performance during the Control period and as deemed fit by the Commission after due consideration of the actual performance of the Petitioner.*** *In the subsequent APR and True up Petitions, the Petitioner is directed to also submit details of number of unit-wise startups taken after shutdown. Also details should include monthly quantity of secondary fuel consumed during plant startup and flame support if required."*

(Emphasis added)

b) The Commission had approved the norms for the MYT Control period based on review of the actual consumption in the past i.e., 0.19 mL/ kWh for Unit-2 and 0.26 mL/kWh for Unit-3 for FY 2015-16 and after review of recommendations of CEA as reproduced below in this regard:

> *"9.13 In the above context, it is felt that different approaches or philosophies for normative SFC are necessary for the two categories of stations viz- majority of stations having generally low SFC and select few stations having very high SFC. It is thus felt that norms for SFC may be provided separately for the high consuming stations in terms of station specific norms which could be progressively lowered as steps are taken by the utilities to address station specific issues leading to high oil consumption. For the rest of the stations, the SFC norms should be representative of their actual consumption level and very high SFC may not be allowed for these stations*
>
> *9.14 The present normative provisions allowing SFC of 1 ml/kWh with provisions of 50:50 sharing are not considered appropriate in the prevailing situation as even in the case of very low actual SFC of 0.1 ml/kWh, it allows a normative SFC of about 0.5 to 0.6 ml/kWh which is considered far too liberal and unrealistic."*

c) Considering the above, the Commission has fixed 0.5 ml/kwh for each year of the control period at this stage. However, as mentioned the MYT order itself, the Commission may re-look into the same during APR and True-up of the years to be submitted by the Petitioner subject to the petitioner providing the details of start-ups taken after the shut downs and monthly quantity of secondary fuel consumed during plant start up.

(ii) Partial disallowance of interest of working capital for the control period FY 2017-21

<u>Submission of the Petitioner</u>

a) Learned Counsel for the petitioner submitted that this Commission has worked out the cost of coal and cost of secondary fuel oil as element of working capital based on the quantities required as per the projected Plant Load Factor in place of NAPAF. As per Regulation 7.34 of the JSERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015, the cost of coal and cost of secondary fuel oil should also be computed based on NAPAF only. Since projected PLF is lower than or equal to NAPAF, it leads to recovery of lower working capital requirement and consequently lower interest on working capital.

b) Learned Counsel further submitted that this Commission has followed an approach to work out the working capital requirement which is contrary to the norms specified in the JSERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 and that in previous MYT Order dated 31.05.2012. JSERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 provides for computation of cost of coal and cost of Secondary Fuel Oil corresponding to Generation at NAPAF i.e. 85%

<u>Submission of the Respondent</u>

Learned Counsel for the Respondent submitted that the relevant materials and records are not available with the respondent and as such is limiting itself on the settled principles of law.

<u>Commission's Findings</u>

a) TPCL in its MYT petition had proposed PLF less than the NAPLF (85%) for the Second Control Period from FY 2016-17 to FY 2020-21. The Commission had approved the value of PLF as submitted by TPCL. Considering the value of approved PLF, the Commission has calculated the interest on working capital. However, TPCL approached Commission to review the interest on working capital on the NAPAF. The Commission has recalculated the Interest on Working Capital based on NAPAF of 85% and the table is as given below:

Revised Table 172: Interest on Working Capital for Unit-2 (in Rs Cr) as approved by the Commission

Particulars	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Working Capital as Coal Cost for 2 months	33.74	33.74	33.74	33.65	33.74
Working Capital as LDO Cost for 2 months	0.34	0.34	0.34	0.34	0.34
Working Capital as Receivables for 2 months	50.91	51.98	52.98	54.04	54.27
Working Capital as O&M Expenses for 1 month	3.86	4.25	4.54	4.93	5.04
Working Capital as Maintenance Spares (at 20% of O&M Expenses)	9.27	10.20	10.90	11.83	12.11
Total Working Capital	**98.12**	**100.50**	**102.51**	**104.79**	**105.50**
Bank Rate as on 1st April 2016 (%)	12.80%	12.80%	12.80%	12.80%	12.80%
Interest on Working Capital	**12.56**	**12.86**	**13.12**	**13.41**	**13.50**

Revised Table 173: Interest on working capital for unit-3 (in Rs Cr) as approved by the Commission

Particulars	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Working Capital as Coal Cost for 2 months	33.86	33.86	33.86	33.76	33.86
Working Capital as LDO Cost for 2 months	0.34	0.34	0.34	0.34	0.34
Working Capital as Receivables for 2 months	49.95	50.88	52.04	52.69	53.15
Working Capital as O&M Expenses for 1 month	3.36	3.63	4.02	4.23	4.44
Working Capital as Maintenance Spares (at 20% of O&M Expenses)	8.06	8.70	9.64	10.15	10.67
Total Working Capital	**95.56**	**97.40**	**99.90**	**101.17**	**102.46**
Bank Rate as on 1st April 2016 (%)	12.80%	12.80%	12.80%	12.80%	12.80%
Interest on Working Capital	**12.23**	**12.47**	**12.79**	**12.95**	**13.11**

b) We are of the view that since the interest on working capital is allowed at NAPAF (85%), any incentive on generation shall also be provided only for generation above the NAPLF (85%).

(iii) Non-consideration of transit loss of 1% in the middling coal

Submission of the Petitioner

Learned Counsel for the Petitioner submitted that in the Impugned order, the Commission has allowed the normative Transit Loss of 0.8% against proposal of 1% in washed coal, i.e., middling coal, ignoring the fact that the Transit loss is higher in washed coal. Learned Counsel further submitted that the Commission has ignored its own order and the binding precedent in Appeal 147 of 2012, where a Transit loss of 1 % on washed coal from FY 2011-12 to FY 2015-16 was allowed

Submission of the Respondent

Learned Counsel for the Respondent submitted that as per the JSERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 energy charges shall be determined on the basis of normative losses only, which is 0.8% and not on 1%

Commission's Findings

The Commission has approved the Normative Transit Loss of 0.8% irrespective of the coal type as per Regulation 8.21 of the JSERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015. Normative transit loss under the Regulation accounts for higher loss for some categories of coal such as middling coal and lower transit loss for other types of coals. The Commission may examine the actual transit loss for the year during APR and True-up and will decide on the quantum of transit loss to be passed on.

C O N C L U S I O N

In view of the above, the revised ARR for FY 2015-16 (True-up) and FY 2016-17 to FY 2020-21 (MYT) as approved by the Commission are summarised below:

Revised Table 46: Summary of AFC for FY 2015-16 for Unit 2 (in Rs Cr)

Parameters	Units	Unit 2			
		Approved in MYT order	Submitted by TPCL	Approved in True up	Approved Now
O&M charges	Rs Cr	31.48	51.87	31.58	33.18
Depreciation	Rs Cr	6.34	5.79	5.79	5.79
Interest on Loan	Rs Cr	4.19	3.65	3.65	3.65
Return on Equity (pre-tax)	Rs Cr	28.31	28.24	28.24	28.24
Cost of Secondary Fuel	Rs Cr	5.35	4.66	0.40	0.40
Interest on Working Capital	Rs Cr	11.04	15.98	13.78	13.89
Annual Fixed Charges	**Rs Cr**	**86.72**	**110.19**	**83.44**	**85.15**

Revised Table 47: Summary of AFC for FY 2015-16 for Unit 3 (in Rs Cr)

Parameters	Units	Unit 3			
		Approved in MYT order	Submitted by TPCL	Approved in True up	Approved Now
O&M charges	Rs Cr	25.92	46.52	25.54	27.16
Depreciation	Rs Cr	7.64	7.41	7.41	7.41
Interest on Loan	Rs Cr	3.07	2.97	2.97	2.97
Return on Equity (pre tax)	Rs Cr	26.81	27.06	27.06	27.06
Cost of Secondary Fuel	Rs Cr	5.68	4.62	0.67	0.67
Interest on Working Capital	Rs Cr	11.52	16.92	12.70	12.81
Annual Fixed Charges	Rs Cr	**80.64**	**105.49**	**76.34**	**78.07**

Revised Table 57: Cost recoverable by the Petitioner for Unit 2 for FY 2015-16 (in Rs. Cr)

Parameters	UoM	Total Cost for Unit-2			
		Approved in MYT order	Submitted by TPCL	Approved in True up	Approved No
Annual Fixed Charges	Rs Cr	86.59	110.19	83.44	85.15
Fuel Cost	Rs Cr	151.74	213.58	211.43	211.43
Total Cost	Rs Cr	238.33	323.77	294.87	296.58
Incentive on availability	Rs Cr	-	24.61	18.64	19.02
Add: Tax on the Gain on LDO Consumption retained by TPCL	Rs Cr	-	1.15	1.15	1.15
Add: tax on Gain on Aux. power consumption	Rs Cr	-	0.55	0.55	0.55
Add: tax on Gain on Heat Rate consumption	Rs Cr	-	0.43	0.43	0.43
Total Cost including incentive & sharing of gains on LDO consumption	**Rs Cr**	**238.33**	**350.52**	**315.63**	**317.72**

Revised Table 58: Cost recoverable by the Petitioner for Unit 3 for FY 2015-16 (in Rs. Cr)

Parameters	UoM	Total Cost for Unit 3			
		Approved in MYT order	Submitted by TPCL	Approved in True up	Approved Now
Annual Fixed Charges	Rs Cr	79.64	105.48	76.34	78.07
Fuel Cost	Rs Cr	152.22	200.11	198.01	198.01
Total Cost	Rs Cr	231.86	305.59	274.35	276.08
Incentive on availability	Rs Cr		16.62	12.03	12.30
Add: Tax on the Gain on LDO Consumption retained by TPCL	Rs Cr		1.05	1.05	1.05
Add: Tax on Gain on aux. power consumption	Rs Cr		0.45	0.45	0.45
Add: Tax on Gain on Heat rate	Rs Cr		0.42	0.42	0.42
Total Cost including incentive & sharing of gains on LDO consumption	**Rs Cr**	**231.86**	**324.13**	**288.28**	**290.29**

Revised Table 59: Gap/Surplus for FY 2015-16 for Unit-2 (in Rs Cr)

Particulars	Approved in MYT order	Submitted by TPCL	Approved in True up	Approved Now
Total Cost including incentive & sharing of gains on LDO consumption	-	350.52	315.63	317.72
Revenue Recovered during the year	-	316.04	316.04	316.04
Gap/(Surplus) for the year	-	34.48	(0.41)	1.68
Carrying Cost on gap/(Surplus)	-	9.12	(0.12)	0.48
Net Gap to be recovered/adjusted	**-**	**43.61**	**(0.53)**	**2.16**

Revised Table 60: Gap/Surplus for FY 2015-16 for Unit-3 (in Rs Cr)

Particulars	Approved in MYT order	Submitted by TPCL	Approved in True up	Approved Now
Total Cost including incentive & sharing of gains on LDO	-	324.14	288.28	290.29
Revenue Recovered during the year	-	288.54	288.54	288.54
Gap/(Surplus) for the year	-	35.60	(0.26)	1.75
Carrying Cost on gap/(Surplus)	-	9.43	(0.07)	0.50
Net Gap to be recovered/adjusted	**-**	**45.03**	**(0.33)**	**2.25**

Revised Table 178: AFC for Unit 2 (in Rs Cr) as approved by the Commission

Particulars	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Depreciation	6.27	6.95	8.18	8.94	9.10
Interest on Loan	4.18	4.48	4.89	5.00	4.58
O&M expenses	46.35	51.00	54.52	59.17	60.53
Return on Equity (Pretax)	28.80	29.27	29.89	30.41	30.61
Interest on Working Capital	12.56	12.86	13.12	13.41	13.50
Total Annual Fixed Charges	**98.15**	**104.57**	**110.61**	**116.93**	**118.33**

Revised Table 179: AFC for Unit 3 (in Rs Cr) as approved by the Commission

Particulars	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Depreciation	7.76	8.62	9.71	10.40	10.56
Interest on Loan	3.67	4.26	4.58	4.64	4.27
O&M expenses	40.29	43.51	48.21	50.74	53.33
Return on Equity (Pretax)	27.74	28.40	28.97	29.42	29.63
Interest on Working Capital	12.23	12.47	12.79	12.95	13.11
Total Annual Fixed Charges	**91.69**	**97.26**	**104.24**	**108.15**	**110.90**

Revised Table182: Annual Revenue requirement for unit-2 (Rs Cr) as approved by the Commission

Particulars	UoM	FY 2016-17	FY 2017-18	FY 2018-19	FY 2020-21	FY 2020-21
Gross Generation	MU	852.49	886.58	835.28	890.70	830.97
Auxiliary Consumption	%	10%	10%	10%	10%	10%
Ex-Bus Generation	MU	767.24	797.92	751.76	801.63	747.88
Station Heat Rate	kcal/kWh	2567	2567	2567	2567	2567
Normative Sp LDO Consumption	ml/kWh	0.5	0.5	0.5	0.5	0.5
FixedCharges						
Depreciation	Rs Cr	6.27	6.95	8.18	8.94	9.10
Interest on Loan	Rs Cr	4.18	4.48	4.89	5.00	4.58
O&M expenses	Rs Cr	46.35	51.00	54.52	59.17	60.53
Return on Equity (Pretax)	Rs Cr	28.80	29.27	29.89	30.41	30.61
Interest on Working Capital	Rs Cr	12.56	12.86	13.12	13.41	13.50
Total Annual Fixed Charges – (1)	Rs Cr	**98.15**	**104.57**	**110.61**	**116.93**	**118.33**
Rate of Energy Charges	Rs/kWh	2.578	2.578	2.578	2.578	2.578
Total Energy Charges – (2)	Rs Cr	**197.76**	**205.67**	**193.77**	**206.62**	**192.77**
Annual Revenue Requirement – (1) + (2)	**Rs Cr**	**295.92**	**310.24**	**304.38**	**323.56**	**311.10**

Revised Table 183: Annual Revenue requirement for unit-3 (Rs Cr) as approved by the Commission

Particulars	UoM	FY 2016-17	FY 2017-18	FY 2018-19	FY 2020-21	FY 2020-21
Gross Generation	MU	860.93	815.52	893.52	832.40	893.52
Auxiliary Consumption	%	10.00%	10.00%	10.00%	10.00%	10.00%
Ex-Bus Generation	MU	774.84	733.97	804.17	749.16	804.17
Station Heat Rate	kcal/kWh	2577	2577	2577	2577	2577
Normative Sp LDO Consumption	ml/kWh	0.5	0.5	0.5	0.5	0.5
Fixed Charges						
Depreciation	Rs Cr	7.76	8.62	9.71	10.40	10.56
Interest on Loan	Rs Cr	3.67	4.26	4.58	4.64	4.27
O&M expenses	Rs Cr	40.29	43.51	48.21	50.74	53.33
Return on Equity (Pretax)	Rs Cr	27.74	28.40	28.97	29.42	29.63
Interest on Working Capital	Rs Cr	12.23	12.47	12.79	12.95	13.11
Total Annual Fixed Charges – (1)	Rs Cr	**91.69**	**97.26**	**104.24**	**108.15**	**110.90**
Rate of Energy Charges	Rs/kWh	2.587	2.587	2.587	2.587	2.587
Total Energy Charges – (2)	Rs Cr	**200.42**	**189.85**	**208.00**	**193.77**	**208.00**
Annual Revenue Requirement – (1) + (2)	**Rs Cr**	**292.11**	**287.10**	**312.25**	**301.93**	**318.91**

The review petition is disposed off accordingly.

Sd/-
(R.N. Singh)
Member (Engg)

Sd/-
(Dr. Arbind Prasad)
Chairperson