

**BEFORE HON'BLE HARYANA ELECTRICITY REGULATORY
COMMISSION, AT PANCHKULA**

FILING NO. OF 2025

CASE NO. OF 2025

IN THE MATTER OF: Review Petition under Section 94 (1) (f) of Electricity Act, 2003 ("Act") read with Regulation 57, 66 and 68 of Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 ("CBR 2019") seeking review of the Order dated 13.03.2025 in PRO-64/2024 passed by this Hon'ble Commission

AND

IN THE MATTER OF:

Haryana Power Generation Corporation Limited
C-7, Urja Bhawan, Sector-6,
Panchkula,
Haryana- 134108

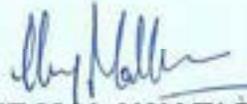
...REVIEW PETITIONER

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Date: 24-04-2025

Place: Panchkula, Haryana

SYNOPSIS

1. The present Review Petition has been filed by Haryana Power Generation Corporation Limited ("HPGCL/Review Petitioner") seeking review and modification of the Order dated 13.03.2025 read with the Corrigendum dated 21.04.2025 ("Impugned Order") passed by the Hon'ble Commission in the Petition No. 64 of 2024 ("Petition") and any other consequential order, as may be deemed fit by this Hon'ble Commission.
2. The Petition was filed by the Review Petitioner seeking approval of the True-up for the FY 2023-24, Business Plan for FY 2025-29, Capex Plan for FY 2025-29, Mid-Year Performance Review for the FY 2024-25 and Determination of Generation Tariff for FY 2025-26.
3. The Impugned Order has been passed by contravening an established position of law requiring strict adherence to the principles / methodologies envisaged in the relevant regulations while carrying out the process of true-up by the appropriate commission. This Hon'ble Commission has passed the Impugned Order and trued-up the expenses of the Review Petitioner by erroneously interpreting and applying the provisions of the MYT Regulations 2019 and arbitrarily altering the principles / methodologies of truing up which are divergent to the letter and spirit of the MYT Regulations 2019. Accordingly, the actions of this Hon'ble Commission lies in teeth of the decision of the Hon'ble Supreme Court in **BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission** [Civil Appeal No. 4324 of 2015].
4. The present Review Petition is being filed by the Review Petitioner *inter alia* on the following aspects:

which is contrary to Section 61 of the Electricity Act, Regulation 13 and Regulation 30 of MYT Regulations, 2019:

This Hon'ble Commission has repeatedly resorted to erroneous application of the "True-Up" principles by adopting the "Approved Cost" vs. "Actual Cost" approach while ignoring "Recovered Cost vs. Actual Cost".

This Hon'ble Commission erred in considering the true-up on the basis of approved versus actual as against the recovered amount versus actual for computing revenue gap or surplus. The intention of the revenue gap or surplus is to match the expenses with the recovery by the Review Petitioner so that there is no excess or shortfall in recovery. By comparing the approved and actual, the cost which had never been recovered has been directed to pass on by the Review Petitioner which would have to be borne by the Review Petitioner.

Further, the Review Petitioner submitted its financials by computing its recovery on the basis of actual availability instead of normative availability, thereby already absorbing the financial impact from the unrecovered tariff owing to fall of availability below the normative levels. However, the said aspect has not been taken into account by this Hon'ble Commission since it observes the possibility of allowing recovery of expenses associated to partial availability derailing the entire regulatory regime. Accordingly, there is an error apparent on the face of record since this Hon'ble Commission has not adequately perused the financial proposal submitted by the Review Petitioner.

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B. True-up of Operation and Maintenance expenses for the FY 2022-23

I. Erroneous True-up of Employee Costs:

This Hon'ble Commission has incorrectly trued up the Employee Cost without allowing 'terminal liability' benefit to the Review

Petitioner on actuals. Instead, the same has been incorrectly adjusted proportionate to the availability of the generating units instead of allowing the entire actual expense, thereby being in contravention of Regulation 8.3.8 (b) of the MYT Regulations, 2019. Further, the true-up has been conducted on the basis of "approved vs. actual" without appreciating that the "recovered" value is the sum approved against actual availability.

II. **Failure to allow additional Repair & Maintenance (R&M) expenses owing to overhauling activities:**

This Hon'ble Commission has taken a conflicting view with respect to the true-up of R&M expenses wherein it acknowledges the excess expenses incurred by the Review Petitioner towards R&M expenses but failing to provide adequate methodology for recovering the same through future capitalization. This Hon'ble Commission has failed to provide sufficient relief to the Review Petitioner towards the additional expenses incurred towards R&M of its generating units and achieving the mandated PLF as per the directions of this Hon'ble Commission itself.



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Erroneous True-Up of Depreciation:

This Hon'ble Commission has proceeded to conduct true-up of depreciation for the FY 2023-24 upon "Approved" vs. "Actual" basis without assessing the actual recovery made by the Review Petitioner. This Hon'ble Commission ought to have appreciated that the depreciation has been computed on the straight-line basis, thereby requiring recovery on the basis of tariff allowed against the plant availability factor. In the absence of appropriate recovery methodology, the Review Petitioner has been unable to recover the depreciation that is allowed, while having to bear the financial burden of the shortfall in terms of unrecovered depreciation of the FY 2023-24. Accordingly, the incorrect implementation of trueing up methodology and being in contravention of the aforesaid provisions of the MYT Regulations,

2019 and the Electricity Act constitutes the same as an error apparent on the face of record, thereby warranting the indulgence of this Hon'ble Commission in reviewing the Impugned Order.

D. **Incorrect True-up of Return on Equity:**

This Hon'ble Commission, while carrying out the true-up exercise for Return on Equity (ROE) of the Review Petitioner for the FY 2023-24 has erroneously relied upon the "Approved" vs. "Actual" cost principle instead of the "Recovered" vs. "Actual" cost principle. This Hon'ble Commission has not appreciated the fact that the RoE expenses that is eligible for true-up shall be the actual expenses against actual availability and not the expense previously approved by this Hon'ble Commission against NAPAF. This would essentially mean that this Hon'ble Commission has proceeded on the assumption that the generating units have achieved NAPAF consistently throughout the year.


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E.

Incorrect True-Up of Interest and Finance Charges (IFC):

This Hon'ble Commission has trued-up the I&FC in an inconsistent manner. While this Hon'ble Commission has allowed year-on-year savings by virtue of Regulation 12 read with Regulation 21.1. (v) of the MYT Regulations 2019, on the other hand, the Review Petitioner has not been allowed to retain the benefit of one-time pass through of NAV even when the loan has been pre-paid by the Review Petitioner. Such discordant action of this Hon'ble Commission is incorrect, especially in light of the directions of the Hon'ble Supreme Court. Accordingly, being an error apparent on the face of record, this Hon'ble Commission ought to review and appropriately modify the Impugned Order to rectify the aforesaid issue.

F. Erroneous True-Up of Interest on Working Capital (IWC):

This Hon'ble Commission has trued up the IWC in an erroneous manner and while completely ignoring the provisions of the 2nd amendment to the MYT Regulations 2019, clearly specifying that the true-up shall be on actuals.

This Hon'ble Commission has not adequately appreciated the statutory obligation upon the Review Petitioner to maintain the Ash Fund and the penalties associated with any contravention of such provisions. Further, the Review Petitioner is also required to maintain the Depreciation Fund. However, this Hon'ble Commission has erroneously altered the methodology for truing up of such expenses, being divergent from the existing norms. In the present case, this Hon'ble Commission has erroneously disallowed the benefit of interest component of the ash fund and depreciation fund which is a clear contravention of the regulations and applicable provisions specifying that any sums earmarked for such funds, including the interest earned from the same, shall necessarily remain a part of such fund and cannot be relocated. However, the directions of this Hon'ble Commission is akin to the redirection of such interest component and the same is contrary to law and therefore an error apparent on the face of record.


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G. Incorrect disallowance of Capital Investment Plan of PTPS

Unit - 6:

This Hon'ble Commission has erred in disallowing the capital investment plan proposal with respect to PTPS – 6 submitted by the Review Petitioner with the incorrect view that the said generating unit was not a vintage plant and accordingly should be allowed only after the submission of RLA / RLE studies.

However, no consideration was given to the fact that the said generating unit required necessary upgradation / refurbishment / replacement to remain on par and to meet the expectations as specified by the Government of Haryana. Accordingly necessary expenses in lieu of the same is unavoidable since in the absence of the same, the Review Petitioner would be constrained to shut down

and box up the generating unit due to frequent breakdowns. Accordingly, the investment plan proposal submitted by the Review Petitioner took into account such critical facts but the same was incorrectly and arbitrarily rejected, thereby constituting an error apparent on the face of record and warranting review of the Impugned Order.

In addition to the above, it is highlighted that on previous occasions as well as in the Impugned Order, this Hon'ble Commission has decided on various aspects of true-up and tariff determination by holding that the same has been decided on previous occasions. However, the same is in contravention of the position of law as laid down by the Hon'ble APTEL in *Delhi Transco v. DERC & Ors.* [Appeal No. 133 of 2007] which specifies that each tariff order and its determination / true-up process is a fresh and distinct matter having its distinct and fresh cause of action. Accordingly it is humbly requested that this Review Petition be heard and decided on its merits and as a fresh matter, without drawing any linkage to any principles / methodologies that may have been utilized by this Hon'ble Commission in any tariff parameter on previous occasions.

Hence the present Review Petition.



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LIST OF DATES

DATES	PARTICULARS
09.12.2003	The Review Petitioner entered into a Power Purchase Agreement ("PPA") with Haryana Vidyut Prasaran Nigam Ltd.
	The term of the PPA was until 31.03.2009 with provisions of extension.
03.07.2013	The term of the PPA dated 09.12.2003 was extended by mutual agreement for a period of 10 years i.e., until 31.03.2023 with provision for further extension.
02.08.2013	The above said extension of the PPA was duly informed to This Hon'ble Commission.
31.10.2019	This Hon'ble Commission notified Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling, Distribution and Retail Supply of Electricity under Multi Year Tariff Framework) Regulations, 2019 (" MYT Regulations, 2019 ") governing the control period 2021-22 to 2024-25.
31.01.2022	This Hon'ble Commission notified Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling, Distribution and Retail Supply of Electricity under Multi Year Tariff Framework) Regulations, 2019 2 nd Amendment Regulations, 2022 (" 2nd Amendment ").
21.11.2024	The Review Petitioner filed the Petition No. 64 of 2024 seeking approval of True-up for the FY 2023-24, Business Plan for FY 2025-29, Capex Plan for FY 2025-29, Mid-Year Performance Review for the FY 2024-25 and Determination of Generation Tariff for the FY 2025-26.


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13.03.2025 This Hon'ble Commission passed the Impugned Order.

02.04.2025 The Review Petitioner sent a letter bearing Memo No. 178/HPGCL/REG0522(2024) highlighting various inadvertent typographical errors in the Impugned Order that required rectification.

21.04.2025 This Hon'ble Commission issued a Corrigendum to the Impugned Order rectifying certain inadvertent errors therein.

___.04.2025 Hence the present Review Petition.



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**BEFORE HON'BLE HARYANA ELECTRICITY REGULATORY
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AND

IN THE MATTER OF:

Haryana Power Generation Corporation Limited
C-7, Urja Bhawan, Sector-6,
Panchkula,
Haryana- 134108

...REVIEW PETITIONER

**REVIEW PETITION UNDER SECTION 94 (F) OF THE ELECTRICITY ACT
READ WITH REGULATION 57 OF THE CBR, 2019**

MOST RESPECTFULLY SHOWETH:

I. INTRODUCTION

1. The present Review Petition has been filed by Haryana Power Generation Corporation Limited ("HPGCL/Review Petitioner") seeking review and modification of the Order dated 13.03.2025 read with the Corrigendum dated 21.04.2025 ("Impugned Order") passed by the Hon'ble Commission in the Petition No. 64 of 2024 ("Petition") and any other consequential order, as may be deemed fit by this Hon'ble Commission. A copy of the Impugned Order is annexed herewith as

Annexure – 1.


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2. The Petition was filed by the Review Petitioner seeking approval of True-up for the FY 2023-24, Business Plan for FY 2025-29, Capex Plan for FY 2025-29, Mid-Year Performance Review for the FY 2024-25 and Determination of Generation Tariff for the FY 2025-26.
3. Vide the Impugned Order, this Hon'ble Commission has disallowed various claims of the Review Petitioner. Such disallowances are contrary to law and *inter alia* constitute an error apparent on the face of record, as highlighted in the subsequent paragraphs and therefore, the present Petition deserves to be allowed.
4. This Hon'ble Commission has passed the Impugned Order and trued-up the expenses of the Review Petitioner for the FY 2023-24 in an inconsistent manner and arbitrarily altering the methodology / interpretation of several provisions of the regulations to disallow the claims of the Review Petitioner. Accordingly, the Impugned Order lies in teeth of the categorical findings of the Hon'ble Supreme Court in ***BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission*** [Civil Appeal No. 4324 of 2015] ("**BSES Judgment**"). The relevant portions of the judgment are reproduced hereinbelow:


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"52. 'Truing up' has been held by APTEL in SLDC v. GERC to mean the adjustment of actual amounts incurred by the Licensee against the estimated/projected amounts determined under the ARR. Concept of 'truing up' has been dealt with in much detail by the APTEL in its judgment in NDPL v. DERC wherein it was held as under:

"60. Before parting with the judgment we are constrained to remark that the Commission has not properly understood the concept of truing up. While considering the Tariff Petition of the utility the Commission has to reasonably anticipate the Revenue required by a particular utility and such assessment should be based on practical considerations. ... The truing up

exercise is meant (sic) to fill the gap between the actual expenses at the end of the year and anticipated expenses in the beginning of the year. When the utility gives its own statement of anticipated expenditure, the Commission has to accept the same except where the Commission has reasons to differ with the statement of the utility and records reasons thereof or where the Commission is able to suggest some method of reducing the anticipated expenditure. This process of restricting the claim of the utility by not allowing the reasonably anticipated expenditure and offering to do the needful in the truing up exercise is not prudence."

53. *This view has been consistently followed by the APTEL in its subsequent judgments and we are in complete agreement with the above view of the APTEL. In our opinion, 'truing up' stage is not an opportunity for the DERC to rethink de novo on the basic principles, premises and issues involved in the initial projections of the revenue requirement of the licensee. 'Truing up' exercise cannot be done to retrospectively change the methodology/principles of tariff determination and reopening the original tariff determination order thereby setting the tariff determination process to a naught at 'trueup' stage.*

(...)

55. *Revision or redetermination of the tariff already determined by DERC on the pretext of prudence check and truing up would amount to amendment of the tariff order, which can be done only as per the provisions of subSection (6) of Section 64 of the 2003 Act within the period for which the Tariff Order was applicable.* *In our view, DERC cannot amend the tariff order for the period 01.04.2008 to 31.03.2010 in the guise of 'trueup' after the relevant financial year is over and the same is replaced by a subsequent tariff Order. This would amount to a retrospective revision of tariff when the relevant period for such tariff order is already over. Therefore, we hold that it is not permissible to amend the tariff order made under Section 64 of the 2003 Act during the 'truing up' exercise."*


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5. The Hon'ble Supreme Court, while affirming the findings of the Hon'ble Appellate Tribunal for Electricity, has held that the Appropriate Commission is required to adhere to the principles / methodologies envisaged in the relevant tariff order / regulation for true-up of expenses and cannot change the same to alter the tariff with a retrospective effect. The Hon'ble Supreme Court has emphasized the importance of maintaining consistency in the manner in which the true-up exercise is carried out. However, as explained in the subsequent paragraphs, this Hon'ble Commission has failed to display consistency in its true-up process and has incorrectly applied the provisions of the regulations, thereby affecting the true-up of critical tariff parameters and ultimately causing undue financial prejudice to the Review Petitioner.
6. Further, this Hon'ble Commission has passed the Impugned Order and determined several critical tariff parameters by adopting incorrect and erroneous methodologies on the sole basis that such methodologies have been utilized and finalized by this Hon'ble Commission on previous occasions and the same stand settled. However, such a finding is in clear contravention of the provision of law laid down by the Hon'ble Appellate Tribunal for Electricity ("APTEL") in *Delhi Transco Ltd. v. DERC & Ors.* [Appeal No. 133 of 2007] wherein it was clarified that each tariff order for a particular year is distinct and separate, thereby constituting a fresh and distinct cause of action. Accordingly, this Hon'ble Commission may consider the present Review Petition as a fresh matter and adjudicate the same independently on its merits instead of making any linkage to findings of this Hon'ble Commission in


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similar situations for any previous order. The relevant portion of the order is reproduced hereinbelow:

"17. Although the appellant did not challenge the earlier tariff orders it did oppose the proposition that was adopted by the Commission namely that the appellant should be denied the right to recover its revenue requirement to the extent of the past receivables. The appellant has been asking the Commission to transfer the 80% of the past receivables to it. In fact the accounts position of the appellant reflects the factual position namely that the past receivables have not been received by it and these accounts have not been held to be incorrect or flawed by the Commission. It cannot be said that the appellant has accepted the Commission's method in this regard for such an unduly long time that following the principles in the judgments mentioned above the appellant can be non-suited on the ground that it is challenging a settled position of fact or law. The view taken by the Commission that past receivables, not received by the appellant, be deemed to have been received by the appellant borders absurdity. Since each tariff order is distinct and separate the appellant would be fully justified in approaching this Tribunal to challenge the impugned order vis a vis the year 2006-07."

7. In view of above, present Review Petition has been filed by the Review Petitioner seeking review of Impugned Order and directions of this Hon'ble Commission in interest of justice and equity.

II. INTRODUCTION OF PARTIES

8. The Review Petitioners is a Company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of generation and sale of electricity. The Review Petitioner generates and supplies electricity to Uttar Haryana Bijli Vitran Nigam Limited ("UHBVNL") and Dakshin Haryana Bijli Vitran Nigam Limited


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("DHBVNL") (as per the mandate of the Haryana Government notification dated 11.04.2008), the distribution licensees of the State of Haryana which are maintaining the distribution and retail supply of electricity to the consumers at large in the state of Haryana.

9. The generating stations owned and operated by the Review Petitioner are Panipat Thermal Power Station ("PTPS"), Deenbandhu Chottu Ram Station ("DCRTPS"), Rajiv Gandhi Thermal Power Station ("RGTPS") and Western Yamuna Canal Hydro Project ("WYC").
10. Subsequent to the reform of power sector in Haryana, the erstwhile Haryana State Electricity Board has been reorganized whereby the generation undertakings of the erstwhile Board has been vested in the Review Petitioner, transmission undertaking to Haryana Vidyut Prasaran Nigam Limited ("HVPNL") and distribution undertakings with UHBVNL and DHBVNL. The Haryana Power Purchase Centre ("HPPC") is currently the nodal agency for power procurement on behalf of UHBVNL and DHBVNL.
11. Subsequent to the electricity reforms in Haryana, the Review Petitioner entered into a Power Purchase Agreement dated 09.12.2003 with HVPNL, which was the then procurer of electricity. In the said agreement, the Power Stations / Generating Units of the Review Petitioner (both operating and under construction) were noted in Appendix I read with Schedule 3 were reorganized. HVPNL as the buyer had agreed to purchase from the Review Petitioner, the generating capacity and electric energy generated from its units as per the government of Haryana notification dated 11.04.2008. A copy of


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the Power Purchase Agreement dated 09.12.2003 has been annexed herewith and marked as Annexure – 2.

12. The term of the PPA was until 31.03.2009 with provisions for extension as provided under Article 16.1 Subsequently, the PPA was transferred from HVPNL to HPPC.
13. The term of the PPA was extended from time to time. On 03.07.2013, the term of the PPA was extended by mutual agreement for a further period of 10 years, i.e., until 31.03.2023 (with provision for extension further). This was duly informed to this Hon'ble Commission 02.08.2013. The said PPA was further extended to a lifecycle of the units on 23.01.2023. A copy of the letter dated 02.08.2013 has been annexed hereto and marked as Annexure – 3.
14. This Hon'ble Commission has notified, from time to time, the appropriate tariff regulations under Section 61 of the Electricity Act, 2003 ("**Electricity Act**"), providing the terms and conditions for determination of tariff for sale of electricity by a generating company to the distribution licensees. The tariff regulations include the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling, Distribution and Retail Supply under Multiyear Tariff Framework) Regulations, 2019 ("**MYT Regulations 2019**"), which governs the control period FY 2020-21 to FY 2024-25. A copy of the MYT Regulations 2019 has been annexed hereto and marked as Annexure – 4.


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15. This Hon'ble Commission has further passed an order dated 31.01.2022 whereby it has promulgated the 2nd Amendment to the MYT Regulations, 2019. A copy of the 2nd Amendment to the MYT Regulations, 2019 has been annexed hereto and marked as Annexure – 5.
16. On 21.11.2024, the Review Petitioner filed the petition being Petition No. 64 of 2024 ("Main Petition") seeking approval of True-up for the FY 2023-24, Business Plan for FY 2025-29, Capex Plan for FY 2025-29, Mid-Year Performance Review for the FY 2024-25 and Determination of Generation Tariff for the FY 2025-26. A copy of the Main Petition being Petition No. 64 of 2024 has been annexed hereto and marked as Annexure – 6.
17. Thereafter, this Hon'ble Commission was pleased to pass the Impugned Order in the Main Petition. In the Impugned Order, this Hon'ble Commission has disallowed certain claims of the Review Petitioner as set out herein below.
18. Subsequent to the passing of the Impugned Order, the Review Petitioner sent a letter bearing Memo No. 178/HPGCL/REG-522(2024) dated 02.04.2025 highlighting various inadvertent typographical errors that had crept into the Impugned Order which were required to be rectified by this Hon'ble Commission. A copy of the letter dated 02.04.2025 sent by the Review Petitioner to this Hon'ble Commission has been annexed hereto and marked as Annexure – 7.


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19. Considering the same, this Hon'ble Commission issued a Corrigendum to the Impugned Order clarifying and rectifying various inadvertent errors in the Impugned Order. Accordingly, the Impugned Order shall be read together with the Corrigendum dated 21.04.2025.
20. It may be noted that the Appellant has challenged the same issue also before the Hon'ble APTEL vide other appeals being Appeal No. 171 of 2024, which pertains to True-up for the FY 2022-23, Appeal No. 316 of 2023 pertaining to True-Up for the FY- 2021-22, Appeal No. 163 of 2022, which pertains to True-Up for the FY 2020-21 and Appeal No. 150 of 2021 which pertains to True-Up for the FY 2019-20.

III. FACTS

The facts relevant for filing of the present Review Petition are stated as following:

Re: This Hon'ble Commission has erroneously relied upon the principle of "Approved Cost" vs. "Actual Cost" for truing up, instead of "Recovered Cost" vs. "Actual Cost", thereby violating provisions of Section 61 of the Electricity Act:

21. This Hon'ble Commission vide the Impugned Order has carried out the true-up exercise under for the Review Petitioner by applying the principle of "Approved" vs. "Actual" cost, instead of "Recovered" vs. "Actual" cost methodology, thereby going against the principles as laid down under Section 61 of the Electricity Act and Regulation 30 of the MYT Regulations, 2019. The following has been observed in the Impugned Order.


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"At the onset, it is observed that HPGCL has claimed true-up of the 'recovered' expenses including depreciation vis-à-vis actual expenses as per the audited accounts, citing Regulation 13 of the HERC MYT Regulations, 2019. HPGCL has submitted that the unrecovered amount may be allowed to be recovered as per Regulation 13.4 of the MYT Regulations 2019 at the end of the control period of present control period of MYT Regulations 2019.

In this regard, the Commission observes that the issue has already been discussed in the previous ARR order(s) dated 18.02.2021 and 25.01.2023. The operative part of the said order(s) is reproduced hereinbelow:

"The Commission has carefully examined the Regulations cited by the Petitioner in support of its claim. The regulation 13.4 provides that "over or under recoveries of trued-up amount in previous year(s) of the control period shall be allowed to be adjusted in the ensuing year of the control period by appropriate resetting of tariff. The unrecovered amount in the one control period shall be adjusted in the subsequent control period." The Commission observes that this clause in the MYT regulations is meant for DISCOMs only, where at time the ARR remains unrecovered through tariff. In that event, the unrecovered amount is allowed to be adjusted in the ensuing year by appropriate resetting of tariff. The generating companies are allowed to recover their full annual fixed cost under regulation 30 of HERC MYT Regulations, 2019, based on their plant availability. The generating plant shall recover full capacity charges at the normative annual plant availability factor specified by the Commission. Recovery of capacity charges below the level of availability shall be on pro-rata basis. No capacity charges shall be payable at zero availability. Thus, in case availability of the plant is below the normative plant availability, it will not be able to recover full fixed cost and some portion will remains unrecovered. This has been provided in order to provide equity on both the sides. While DISCOMs pay fixed costs for the power which remains available to them up to the level of norms and the same time generator is required to be geared to generate in order to recover fixed cost. The generator is not allowed to claim the unrecovered fixed cost due to their non-availability, in the true-up. DISCOMs are required to pay the fixed cost, only and to the extent of the generator remains available for them.

The Commission further observes that the similar issue was also raised by HPGCL in its true-up petition for the FY 2019-2020, albeit on the different grounds, i.e., non-recovery of expenses due to "force majeure" conditions caused by COVID-19 pandemic and resultantly delay in capital overhauling of RGTPP-1.


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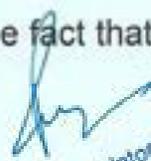
The Commission re-iterates its decision taken in its order dated 18.02.2021 (HERC/PRO-76 of 2020) that the present true-up exercise is being carried out with respect to the fixed cost already approved vis-à-vis actual cost incurred. The basis, details and the amount to be trued up under each head are discussed in the paragraphs that follow"

(para 13 of the order dated 25.01.2023)

In view of the above, while considering the true-up petition of HPGCL for FY 2023-24, the actual expenditure as per the audited accounts of FY 2023-24, vis-à-vis the expenses approved by the Commission vide its Order dated 25.01.2023 for the FY 2023-24 has been reckoned with. In case the unrecovered expenses / depreciation due to non-availability / partial availability of its units, are allowed to be recovered at the end of the control period or allowed to carry forward to next control period, it will derail the entire regulatory regime. Accordingly, the Commission has allowed or disallowed, as the case may be, recovery of true-up amount in accordance with the provisions of the MYT Regulations, 2019. It is not out of place to mention that in the past HPGCL was allowed advance against depreciation (AAD) on account of higher repayment liabilities vis-à-vis the normal allowable depreciation. The balance AAD as on 31.03.2024 is Rs. 347.05 crore, which needs to be appropriately adjusted after providing unit-wise details of the same.

The aforesaid order (s) issued by this Commission in the past are self-explanatory. Hence, no further deliberation on this issue is called for."

22. This Hon'ble Commission has not adequately appreciated the intent and spirit of the MYT Regulations, 2019 vis-à-vis the true-up principles as envisaged under Regulations 13 and 30 therein, read along with the provisions of Section 61 of the Electricity Act. This Hon'ble Commission has passed the Impugned Order in a straight method manner without considering the submissions of the Review Petitioner. Most importantly, this Hon'ble Commission has not appreciated the fact that the incorrect


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implementation of true-up principles would ultimately have a detrimental effect on the recovery of costs under critical heads such as depreciation, operation & maintenance (O&M) and return on equity, and therefore constitute a sufficient cause to exercise the review jurisdiction for the adjudication of the issues at hand for comprehensive dispensation of justice and for providing effective resolution to the disputes.

23. Further, the Review Petitioner submitted its financials by computing its recovery on the basis of actual availability instead of normative availability, thereby already absorbing the financial impact from the unrecovered tariff owing to fall of availability below the normative levels. However, the said aspect has not been taken into account by this Hon'ble Commission since it observes the possibility of allowing recovery of expenses associated to partial availability derailing the entire regulatory regime. Accordingly, there is an error apparent on the face of record since this Hon'ble Commission has not adequately perused the financial proposal submitted by the Review Petitioner.

Re: True-up of Operation and Maintenance (O&M) expenses for the FY 2023-24:

I. Incorrect true-up of Employee Costs:

24. This Hon'ble Commission has trued-up the employee expenses of the Review Petitioner by erroneously applying the principle of "Approved" vs. "Actual" cost, instead of "Recovered" vs. "Actual" cost and further erred in accurately providing for the 'terminal liability' benefit to the Review Petitioner. This Hon'ble Commission in the Impugned Order has observed the following:


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"The Commission observes that HPGCL has claimed true-up of employees cost amounting to Rs. 160.43 Crore. The Commission, on perusal of the claims, observes that the employee cost approved, in the order dated 25.01.2023 for the FY 2023-24 was Rs. 651.38 crore. As against this, employees cost claimed by HPGCL is Rs. 761.46 Crore, i.e., Rs. 110.08 crore over and above the expenses approved in the order dated 25.01.2023 (Rs. 761.46 Crore minus Rs. 651.38 Crore).

The Commission further observe that out of total terminal liability (rs. 420.25 crore) claimed by HPGCL in the FY 2023-24, an amount of Rs.368.88 crore is shown as "Other Comprehensive expense", instead of "employee cost" and a total amount of Rs. 2185.53 crore has been accumulated till 31.03.2024 under the head 'remeasurement of net defined benefit asset / liability (net of tax).' In this regard, HPGCL has submitted that the other comprehensive expense is, in fact, employee cost only but is presented as other comprehensive expense due to requirements of Indian Accounting Standards – 19. Therefore, this part of employee cost is reduced from overall employee cost and is presented separately in P&L statement as other comprehensive expense. HPGCL further submitted that out of total terminal liability of Rs. 420.25 crore claimed in FY 2023-24, an amount of Rs. 307.16 crore remained unpaid as on 31.03.2024. However, the same was paid between 01.04.2024 to 30.08.2024.

The Commission, on perusal of the claims, observes that the true-up of Rs. 110.08 crore was admissible on account excess (actual) employee cost incurred by HPGCL i.e. Rs. 761.43 Crore over and above the expenses approved in the order dated 25.01.2023 i.e. Rs. 651.38 Crore (Rs. 761-46 Crore minus Rs. 651.38 Crore). However, the admissibility of the same is to be further reduced, considering Plant Availability Factor of HPGCL generating units, in line with the MYT Regulations in vogue wherein fixed cost including employees cost is recoverable on a pro-rata basis in case the NAPAF is below the norms.

Accordingly, Rs. 94.57 Crore has been considered for true-up of employees cost as per the details tabulated below: -

Rs. In Crore	PTPS-6	PTPS-7	PTPS-8	DCR TPS 1	DCR TPS 2	RGTPS 1	RGTPS 2	WYC	TOTAL
Approved (A)	84.63	77.56	77.56	82.03	82.03	111.13	111.13	25.29	651.38
Actual (B)	87.11	115.76	112.81	87.34	87.34	123.33	123.33	24.44	761.43
True-up C=B+A	2.48	38.20	35.25	5.31	5.31	12.20	12.20	-0.85	110.08
Plant Availability Factor	72.01%	84.93%	68.73%	91.63%	85.58%	66.05%	45.76%	-	
True up adjusted to Plant Availability factor	2.10	38.17	28.50	5.31	5.31	9.48	6.57	-.85	95.47


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25. While conducting the true-up process, this Hon'ble Commission has not adequately appreciated the fact that the 'terminal liability' benefit ought to be allowed to the Review Petitioner as per actuals. Instead, the same has been erroneously adjusted proportionate to the availability of the Units instead of allowing the entire actual expense, thereby lying in contravention of Regulation 8.3 (8) (b) of the MYT Regulations, 2019.

26. This Hon'ble Commission has further applied the true-up principle of "Approved" vs. "Actual" without taking into account the fact that the "recovered" value is the sum approved against actual availability. Accordingly, the same has led to an erroneous calculation of the employee expenses to be true-up, thereby constituting an error apparent on the face of record and warranting review by this Hon'ble Commission.

II. Failure to allow additional Repair & Maintenance (R&M) expenses owing to overhauling activities:

27. This Hon'ble Commission has taken a conflicting view with respect to the true-up of R&M expenses wherein it acknowledges the excess expenses incurred by the Review Petitioner towards R&M expenses but failing to provide adequate methodology for recovering the same through future capitalization. This Hon'ble Commission has observed the following in the Impugned Order:

"True-up of Repairs and Maintenance

The Commission observes that R&M expenses approved by the Commission for the FY 2023-24 was Rs 200.141 Crore. However, the actual R&M expense for the year is Rs. 416.27 Cr (excluding


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solar business of Rs 0.92 Cr and SLDC charges of Rs. 6.02 Cr and inclusive of coal handling expenses of Rs. 69.38 crore).

However, HPGCL has claimed true-up of repairs and maintenance expenses (R&M) amounting to Rs. 130.26 Crore, on account of increase in water charges on account of Change in law (Rs 36.80 Cr which is 50% of the actual expense of Rs 73.60 Cr) and excess expenditure made by HPGCL on account of the capital overhauling of HPGCL Units (Rs. 93.46 Cr).

The detailed reasons for increase in the aforementioned expenses have already been reproduced earlier in this order.

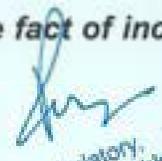
In this regard, the Commission has taken note of its order dated 25.01.2023, wherein the following was observed, while approving the R&M expenses for the FY 2023-24: -

"The additional expenses sought by HPGCL, over and above the norms specified in the MYT Regulations, 2019 (2nd Amendment) Regulations, 2022, on account of coal handling expenses has not been allowed on account of discussions in the earlier paras in this order. Further, impact of additional water charges on account of HWRA notification shall be considered by the Commission, during true-up of the FY 2023-24."

The Commission has taken note of the submission of HPGCL that coal handling expenses of Rs. 69.38 crore shall be claimed after adjudication on the issue by Hon'ble APTEL. Further, additional water charges on account of HWRA notification claimed by HPGCL (Rs. 36.80 crore) is allowed in view of the order of this Commission dated 25.01.2023.

Regarding, claim on account of excessive expenditure incurred on

overhauling of HPGCL Units (Rs 93.46 Cr), the Commission observes that HPGCL has referred regulation 9.9 of HERC MYT Regulations, 2019 in its support, which pertains to Capital Investment Plan and not effecting in any way the Repairs & Maintenance expenses approved by the Commission, which is inclusive of overhauling expenses. HPGCL has submitted that R&M expenses has increased on account of the direction of the Commission to place works of more than Rs 50 lakh under capex. The Commission observes that submissions of HPGCL is out of context as it has not substantiated the fact of increase


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in R&M expenses on account of miscellaneous expenses less than 50 lakhs; rather HPGCL has averred that increase in R&M expenses is on account of capital overhauling of HPGCL Units (Rs 53.94 Cr for RGTPP, Rs 38.71 Cr for PTPS and Rs 0.81 Cr for DCRTPP). HPGCL was given an opportunity to justify the overhauling expenditure of Rs. 93.46 crore, claimed by it as part of true-up, over and above the R&M expenses approved by the Commission. However, HPGCL, in its reply submitted vide memo no. 144/HPGCL/Reg-522 (2024) dated 26.12.2024, reiterated the contents of its petition and provided the following additional information: -

"...

The expense of increase in R&M on account of Capital Overhauling of Units has been claimed as per the instant regulation 9.9 only. The said regulation allows to carry the urgent repairs and the same may be claimed under Capex after completion of the same.

The details of the expense made on account of Capital Overhauling may be perused at Annexure-P-13.

*Detail of overhauling in respect of 2*600 MW, RGTPP, KHEDAR, HISAR*

<i>74.126</i>	<i>Total</i>
<i>Services</i>	<i>11,86,81,165.18</i>
<i>Material</i>	<i>41,07,36,087.76</i>
<i>Grand Total</i>	<i>53,94,17,252.94</i>

(...)

"The similar information was submitted by HPGCL in response to the interim order of the Commission dated 16.01.2025. HPGCL further submitted that in the past margins were there, due to less scheduling, to adjust the cost under the allowed heads. However, after getting the better schedule for Generations, the Plants are required to be upkeep to meet the demand of the State, which leads to have higher R& M, which in turn leaves no margins available under R&M head, thus, the claim has been made as per Regulation 9.9 of the MYT Regulation.

From the above, it is apparent that enough information to enable the Commission to exercise its prudent checks was not provided. The Commission is duty bound to regulate the generation, transmission and distribution keeping in view the

interest of consumers. The Commission would have to allow such expenses which are justifiable and can disallow such expenditures which were not justified.

The Commission is constrained to note the submissions made by HPGCL while claiming true-up of the FY 2019-20, recorded in the order of the Commission dated 18.02.2021 (Petition No. 76 of 2020), wherein it was submitted that lower R&M expenses is attributed to the capital overhauling of units of RGTPP Hisar and DCRTTP Yamunanagar; apparently due to the fact that expenditure on capital overhauling was capitalized for amortization in the balance useful life of the plant. The relevant extract of the ibid order is reproduced hereunder:-

"The Commission observes that actual R&M expenses of all the units have remained lower than the approved amount, except for RGTPS 1 and DCRTPS-2. HPGCL in its reply dated 08.01.2021 has explained that the same is due to capital overhauling of units at RGTPP Hisar & DCRTTP, Yamunanagar, undertaken in the FY 2019-20. The Commission observes that overall O&M expenses actually incurred by HPGCL has also remained within the approved amount." (page 73 of the order dated 18.02.2021)

However, in the present petition, HPGCL has claimed higher R&M on account of capital overhauling.

HPGCL has proposed capital overhauling expenditure for the Fy 2026-27 and FY 2027-28, as part of CAPEX. However, no justification was provided for claiming the same as part of R&M expenses in the FY 2023-24, over and above the approved norms. Thus, HPGCL is claiming capital overhauling expenditure as part of CAPEX and R&M, as per its whims and fancies. In case a generator is allowed pass through of expenditure of capital nature as revenue expenditure, then there will not be any sanctity of approval of capital investment plan and vice-versa. Similarly, allowance of uncontrolled R&M expenses, will render the mechanism of determination of norms of repair and maintenance expenses in MYT Regulations, completely otiose.

The Commission observes that HPGCL has incurred R&M expenses amounting to Rs. 416.27 crore (excluding solar business of Rs 0.92 Cr. and SLDC charges of Rs. 6.02 Cr and

inclusive of coal handling expenses of Rs. 69.38 crore, water charges of Rs. 73.60 crore and capital overhauling expenses of Rs. 93.46 crore) during the FY 2023-24, as against the approved limit of Rs 200.141 Crore.

In view of the above, the true-up of R&M expenses for the FY 2023-24 is approved at Rs. Rs 36.80 Cr. towards the additional claim of raw water charges on account of change in law (HWRA notification)."

28. This Hon'ble Commission has trued-up the R&M expenses pertaining to the Review Petitioner for the FY 2023-24 without providing necessary relief for systematic capitalization of excess R&M cost incurred due to overhauling, despite such fact being duly acknowledged by this Hon'ble Commission and recorded in the Impugned Order. The findings of this Hon'ble Commission is conflicting and erroneous of the face of record, considering the basic fact that while this Hon'ble Commission has disallowed the recovery of R&M expenses incurred in lieu of overhauling under the head of 'R&M' expenses, but proceeded to allow the same under Capital Investment Plan.
29. This Hon'ble Commission has further erred in not taking into account the critical fact that the Review Petitioner is constrained to incur higher expenses towards R&M as a natural corollary of the increased electricity demand from its generating units and increase in their PLF pursuant to the directions of this Hon'ble Commission. Accordingly, such increase in expenses cannot be disallowed by this Hon'ble Commission which would ultimately lead to unrecovered expenses and financial burden being borne by the Review Petitioner.


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30. This Hon'ble Commission has accordingly erred in disallowing the aforesaid quantum of additional R&M expenses incurred by the Review Petitioner for the purpose of true-up of expenses. This Hon'ble Commission has not discharged its obligations to implement the provisions of its regulations in a manner to mitigate any untoward financial hardships to the parties. Accordingly, the same is an error apparent on the face of record, thereby requiring this Hon'ble Commission to review and appropriately modify the Impugned Order.

Re: Erroneous reduction of Depreciation cost during True-up:

31. This Hon'ble Commission has tried-up the Depreciation expenses pertaining to the Review Petitioner for the FY 2023-24 by adopting the erroneous principle for "Approved" vs. "Actual" cost. It has been observed as follows:

"15.2 True-up of Depreciation

The Commission has carefully examined the submissions of HPGCL that the actual depreciation amount in the FY 2023-24 was Rs. 219.36 Crores (exclusive of solar business) as against the approved depreciation amount of Rs. 217.86 Crore. It has been further submitted that the depreciation on account of capitalization of spares and decommissioning cost stands at Rs. 12.58 Cr. Hence, the net allowable depreciation for the FY 2023-24, exclusive of Solar business and depreciation on spares and Decommissioning Cost is Rs. 206.78 Cr (219.36-12.58).

In view of the above, the actual allowable depreciation for the FY 2023-24, works out to Rs. 206.78 Crore as against the approved depreciation of Rs. 217.86 Crore. Consequently, Rs. (Minus) 11.08 Crore has been considered for true-up of depreciation.


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32. The aforesaid true-up exercise has yet again been conducted by implementing the principle of "Approved" vs. "Actual", instead of "Recovered" vs. "Actual" costs, thereby lying in contravention of Regulations 13 and 30 of the MYT Regulations, 2019 read with Section 61 of the Electricity Act.
33. This Hon'ble Commission ought to have appreciated that the depreciation has been computed on the straight-line basis, thereby requiring recovery on the basis of tariff allowed against the plant availability factor. In the absence of appropriate recovery methodology, the Review Petitioner has been unable to recover the depreciation that is allowed, while having to bear the financial burden of the shortfall in terms of unrecovered depreciation of the FY 2023-24. Accordingly, the incorrect implementation of trueing up methodology and being in contravention of the aforesaid provisions of the MYT Regulations, 2019 and the Electricity Act constitutes the same as an error apparent on the face of record, thereby warranting the indulgence of this Hon'ble Commission in reviewing the Impugned Order.

Re: Incorrect true-up of Return on Equity (ROE):

34. This Hon'ble Commission, while carrying out the true-up exercise for Return on Equity (ROE) of the Review Petitioner for the FY 2023-24 has erroneously relied upon the "Approved" vs. "Actual" cost principle instead of the "Recovered" vs. "Actual" cost principle, thereby violating the basic provisions of the MYT Regulations, 2019 and the Electricity Act. This Hon'ble Commission has observed the following:


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"15.4 True-up of Return on Equity (ROE)

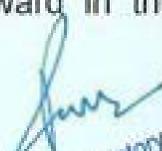
HPGCL has submitted the detail of opening equity, equity addition and required return on equity considered, unit-wise, for the FY 2023-24, as under:

Plants	Opening	Additions	Closing	RoE
PTPS – 6	154.882	0.20	157.079	18.32
PTPS – 7	218.089	0.24	218.326	25.46
PTPS – 8	218.309	0.24	218.550	25.49
DCRTPP – 1	251.680	0.05	251.728	29.37
DCRTPP – 2	251.630	0.05	251.728	29.37
RGTPP – 1	496.468	0.15	496.621	57.95
RGTPP – 2	494.593	16.00	510.591	58.65
Hydel	18.355	-	18.355	2.33
Total	2,106.007	16.927	2122.934	246.94

The Commission, vide its order dated 25.01.2023, has approved the RoE at Rs. 246.66 crore. Accordingly, Rs. (minus) 0.08 Crore has been considered for true-up of RoE as per the details tabulated below: -

Rs. In crore	PTPS - 6	PTPS - 7	PTPS - 8	DCR TPS 1	DCR TPS 2	RGTP S 1	RGTP S 2	WY C	TOTAL
Approved (A)	18.36	25.56	25.57	29.42	29.41	58.06	57.86	2.41	246.66
Actual worked out (B)	18.32	25.46	25.49	29.37	29.37	57.95	58.65	2.33	246.94
True-up C = B-A	-0.04	-0.09	-0.08	-0.04	-0.04	-0.11	0.79	-0.09	-0.29
Plant Availability Factor	72.01 %	84.93 %	68.73 %	91.63 %	85.58 %	66.05%	45.76%	-	
True up adjusted to Plant Availability Factor	-0.04	-0.09	-0.08	-0.04	-0.04	-0.11	0.43	-0.09	-0.08

35. This Hon'ble Commission has proceeded to carry out the true-up exercise on the basis of "Approved" vs. "Actual" cost despite the Review Petitioner has raised a claim which is the difference of the RoE considering the addition of equity infusion on a proportionate basis. The claim was restricted to the increase in part of RoE on the basis of recalculating the impact of capitalization carried forward in the FY


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2023-24 based solely on the actual availability achieved by the generating units of the Review Petitioner.

36. Despite the above, this Hon'ble Commission failed to accurately determine the exact RoE expense which shall be eligible for true-up by failing to consider the actual expenses recovered by the Review Petitioner against its actual availability, which would essentially form the "Approved" cost as against the particular availability achieved by its generating units. Such an erroneous true-up computation has, in turn, derailed the appropriate recovery mechanism for the Review Petitioner, thereby qualifying as an error apparent on the face of record of the Impugned Order and thus warranting review and appropriate modification by this Hon'ble Commission.

Re: True-up of Interest and Finance Charges (IFC):

37. This Hon'ble Commission has erred in failing to show consistency in the treatment of IFC for the purpose of carrying out true-up. This Hon'ble Commission has held as follows:

"15.3 Interest & Finance Charges

The Commission has examined the submissions of HPGCL that the actual interest and finance charges of HPGCL was Rs. 18.75 Crore (net of Solar Business) as per the audited accounts for the FY 2023-24, as against the approved interest and finance charges on term loan of Rs 49.02 Crore. Interest on term loan was allowed in the order dated 25.01.2023, as per the existing loan portfolio of HPGCL i.e. post restructuring, subject to true-up. HPGCL has further submitted that it has paid compensation amounting to Rs. 7.30 Cr. to the land owners of RGTPS, Hisar in compliance to the order of Hon'ble Supreme Court and Rs. 0.46 Cr. to the land owners of PTPS, Panipat in compliance of Hon'ble Punjab & Haryana High Court. The entire compensation is in the nature of capital expenditure of HPGCL and has been entirely funded by the State Govt. by way of equity infusion. However, as per past practice of this Commission, the normative interest expense


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estimated at Rs 0.23 Cr, has been added to the final true-up amount of the FY 2023-24.

The Commission observes that the petitioner i.e. HPGCL has again sought to retain 50% of the savings and to pass on 50% of the savings on 'interest and finance charges' to the beneficiaries. It needs to be noted that this issue has been discussed at length and decided by the Commission in the previous generation tariff orders (HPGCL) dated 18.02.2021, 25.01.2023 and 25.01.2023. The detailed discussion and the view considered of the Commission as recorded in the order dated 18.02.2021 is reproduced hereunder: -

"The Commission observes that HPGCL has already been allowed benefit of saving in interest amounting to Rs. 59.84 Crore due to re-structuring in its Order dated 07.03.2019, on the basis of facts and figures placed on record by HPGCL itself. The interest post restructuring projected by HPGCL in its Petition for the FY 2019-20 was Rs. 141.49 Crore, which now on actual basis has been shown as Rs. 102.31 Crore, mainly due to prepayment and general decline in the lending rates in the prevalent market scenario. In such a scenario, even if, HPGCL would have retained the loans from REC/PFC, the applicable rate of interest would have been lower. HPGCL could have negotiated the rate of interest with REC/PFC on the basis of their credit rating and State Sector borrower and get the rate of interest reduced. The reply of HPGCL in this context that these loans were governed by specific terms & conditions and interest rate was not floating, is not found convincing as these loans generally carry reset option of 3 years. The general rate of interest (before negotiation) applicable on REC loan as on 04.04.2018 was 10.90% p.a. & PFC loan as on 15.06.2018, it was 11.40% p.a., applicable for State Sector borrower with A++ category.

Further, the Commission observes the following provisions of Regulation 12 of HERC MYT Regulations, 2012, relating to incentive and penalty framework: -

"12. INCENTIVE AND PENALTY FRAMEWORK

12.1 Various elements of the ARR of the generating company and the licensee will be subject to incentive and penalty framework as per the terms specified in this regulation. The overall aim is to incentivize better performance and penalize poor performance, with the base level as per the norms / benchmarks specified by the Commission.

12.2 The elements of ARR of generating company and licensees to which incentive and penalty framework shall apply are as follows:

a) Common for generating company and licensees

i. Operation & maintenance expenses-Applicable when the actual expenses fall below or exceed the level specified by the Commission.

ii. Interest on new long-term loans- Applicable when interest


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rate falls below or exceeds the level specified by the Commission.

iii. Restructuring of capital cost - Applicable when there is a benefit from restructuring of capital cost.

iv. Interest on working capital- Applicable when interest rate falls below or exceeds the level specified by the Commission

vi. Restructuring of loan portfolio- Applicable when there is a net benefit from restructuring of loan portfolio."

The Regulation 12.2 has specified that interest on term loan is subject to incentive and penalty framework on account of changes in the rate of interest, restructuring of capital cost and loan portfolio. While the restructuring of capital cost relates to restructuring of debt & equity, prepayment of debts from introduction of fresh equity/utilization of internal accrual etc. Restructuring of loan portfolio refers to the change in the existing loans w.r.t. the rate of interest/monthly installments/terms & conditions of existing loans etc. In a nutshell, the Regulations provides that all the factors relating to changes in rate of interest, swapping of higher interest-bearing loan with low interest-bearing loans and prepayment of loan from internal accruals, are covered by Incentive and Penalty frameworks specified in Regulation clause 12.2.

HPGCL, in its Petition for the FY 2019-20, has submitted that interest cost after restructuring is Rs. 141.49 Crore, which is after saving of Rs. 119.67 Crore due to such restructuring. Accordingly, HPGCL claimed 50% of such interest saving amounting to Rs. 59.84 Crore (50% of Rs.119.67 Crore). The Commission in its Order dated 07.03.2019 (HERC/PRO-59 of 2018) had accepted the submissions of HPGCL and approved the interest cost of Rs. 185.22 Crore, after disallowing the loan to be met from Dry Fly Ash Fund i.e. Rs. 141.49 Crore + Rs. 59.84 Crore – Rs. 16.11 Crore. Thus, benefit of interest saving due to restructuring was passed on to HPGCL, in the Order dated 07.03.2019.

Now, while undertaking true-up exercise, actual interest cost has to be compared with the interest cost approved in the Order dated 07.03.2019 and 50% of the difference may be allowed to be kept by HPGCL in line with Regulation clause 12.2 of HERC MYT Regulations, 2012."

In this regard it is re-iterated that, the decisions of the Commission are considered decisions governed by the principle of 'Res Judicata', unless the same is warranted by change in law or decision of authorities of competent jurisdiction.


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Accordingly, true up of interest & finance charges (-) 14.90 Crore is tabulated below: -

Particular	HERC Approved interest & Finance Charges	Actual interest & Finance Charges	Difference	50% of the difference at (A) allowed to be retained by HPGCL	True-up
1	2	3	4=3-2	5=4*50%	6=4-5
Int. & Fin. Charges (A)	49.02	18.75	30.27	15.13	15.13
Int. On Normative Debt (B)	0	0.23	0.23	-	0.23
Total True up of Int. & Fin. Charges (A-B)	49.02	18.98	30.50		14.90

38. There has been an inconsistency in the manner in which this Hon'ble Commission has treated the IFC vis-à-vis true-up. While this Hon'ble Commission has allowed year-on-year savings by virtue of Regulation 12 read with Regulation 21.1. (v) of the MYT Regulations 2019, on the other hand, the Review Petitioner has not been allowed to retain the benefit of one-time pass through of NAV even when the loan has been pre-paid by the Review Petitioner. Such discordant action of this Hon'ble Commission is incorrect, especially in light of the directions of the Hon'ble Supreme Court. Accordingly, being an error apparent on the face of record, this Hon'ble Commission ought to review and appropriately modify the Impugned Order to rectify the aforesaid issue.

Re: True-Up of Interest on Working Capital (IWC):

39. This Hon'ble Commission has not accurately implemented the provisions of Regulation 22 of the MYT Regulations 2019 while trueing-up the IWC for the FY 2023-24. Further, there has been an incorrect


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treatment of the 'Ash Fund' and 'Depreciation Fund'. This Hon'ble Commission has observed as follows:

"15.5 Interest on Working Capital (IWC)

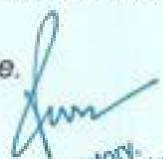
HPGCL has submitted that the Hon'ble Commission, in its Order dated 25.01.2023, while determining generation tariff for the FY 2023-24 had allowed interest on Working Capital amounting to Rs. 155.951 Crore, considering average coal and oil prices, as proposed by it. However, there has been variation in prices of coal and oil during the FY 2023-24. Therefore, while computing the 'truing-up' of Working Capital for the FY 2023-24, actual rate of coal and oil prevailing in the FY 2023-24 has been considered. HPGCL has submitted that due to variation in Fuel prices, the interest on normative working capital requirement for FY 2023-24, as per HERC approved norms works out to Rs 156.221 Cr as against the approved interest on working capital of Rs 155.951 Cr. Further, HPGCL has sought the Interest on Working Capital @ 10% as against the approved rate of 9.80% (8.3%+1.5%). The actual interest on working capital incurred by HPGCL for the FY 2023-24 was Rs. 129.69 Crore. The Commission has considered the above submissions and observes that SBI one-year MCLR rate as on 01.04.2023 was 8.50%. Further, Regulation 22.2 of HERC MYT Regulations, 2019 provides as under:-

"22.2 Rate of Interest

Rate of interest on working capital shall be equal to the MCLR of the relevant financial year plus a maximum of 150 basis points. However, while claiming any spread, the generator and the licensees shall submit loan sanction letter from the banks/ lending institutions, indicating the applicable rate of interest.

For the purpose of truing up, the actual weighted average Rate of Interest will be considered on the normative working capital by the Commission, subject to the ceiling margin as indicated above." (Emphasis supplied)

*The Commission observes that HPGCL has not submitted loan sanction letters as provided in the regulations, indicating the applicable rate of interest. However, as per the financial statements submitted by HPGCL, the working capital loans as on 31.03.2024 and 31.03.2023, are Rs. 1779.62 crore and Rs. 1518.62 crore, respectively. The average of the same comes to Rs. 1649.12 crore. The actual interest on working capital incurred by HPGCL, for the FY 2023-24 was Rs. 129.69 crore. Accordingly, the average rate of interest comes out to 7.86% (Rs. 129.69 crore/Rs. 1649.12 crore*100). The Commission has already approved higher rate of interest at 9.80%. Therefore, the claim of HPGCL for a higher rate of interest is not tenable.*


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The Commission further observes that current (working capital) borrowings of HPGCL as on 31.03.2024 is Rs. 1779.62 crore, on which interest on working capital is being claimed. Whereas, Rs. 900.61 crore is lying in fixed deposits with banks and shown in financial statements as Dry Fly Ash Fund Investment and Depreciation Reserve Fund Investment (Rs. 659.71 crore and Rs. 240.90 crore, respectively). Dry Fly Ash Fund investment has been created on 31.03.2021 and depreciation reserve fund investment on 31.03.2022. Generally, interest rate on working capital loans is higher than interest rate on deposits. Therefore, such adjustments, just to claim higher interest on working capital, particularly by a public utility owned by the State Government, whose cost is borne by electricity consumers of the State, should be avoided. HPGCL has offered interest on deposits (kept as depreciation reserve fund investment) amounting to Rs. 19.04 crore for income tax. However, interest on deposits (kept as Dry Flash Fund investment) amounting to Rs. 80.32 crore, has not been offered for income tax, on the pretext that the same form part of the dry fly ash fund only, as per notification no. 2804/(E) dated 03.11.2009 issued by Ministry of Environment and Forest (MoEF). The relevant part of the ibid notification is reproduced hereunder: -

"(6) The amount collected from sale of fly ash and fly ash based products by coal and/or lignite based thermal power station or their subsidiary or sister concern unit, as applicable should be kept in a separate account head and shall be utilized only for development of infrastructure or facilities, promotion and facilitation activities for use of fly ash until 100% fly ash utilization level is achieved; thereafter as long as 100% fly ash utilization levels are maintained, the thermal power station would be free to utilize the amount collected for other development programmes also and in case, there is a reduction in the fly ash utilization levels in the subsequent year(s), the use of financial return from fly ash shall get restricted to development of infrastructure or facilities and promotion or facilitation activities for fly ash utilization until 100 percent fly ash utilization level is again achieved and maintained."

The Commission has examined the notification issued by MoEF and observed that sale proceeds of fly ash has to be utilized only for the development/activities incidental to the utilization of fly ash. The proceeds are required to be kept in a separate account head for utilization for the specific purpose. Ideally, the same should be reduced from the cost of coal, as it is the bye-product of consumption of coal and the funds so generated needs to be utilized for the specific purpose. The treatment of an

item of income or expenditure can differ under the Income Tax Act from the regulatory regime. Generally, the generating companies should not have any non-tariff income. The non-operating income of generating company can be on account of interest earned, sale of scrap, ash etc. The same should be reduced from the coal cost/O&M expenses. HPGCL has kept the amount realized from sale of fly ash in a separate reserve since the date of notification in 2009; however, the Dry Fly Ash Fund account has been created in 2021, by transferring the equivalent amount from bank which led to the increase in cash credit loans. Nevertheless, following the past practice, the Commission is not inclined to treat the sale proceeds of fly ash as non-tariff income or as a reduction in coal cost.

*Having held as above, the Commission is of the considered view that by virtue of the *ibid* notification of MoEF, by no stretch of imagination the interest earned on unutilized funds can form part of the said fund. In the *ibid* notification, a separate account head was desired to be created and not a separate fund. It is on this principle that fund account was not*

opened by HPGCL till 2021. Further, the Dry Fly Ash reserve/fund is not being utilized and the balance has swelled up to Rs. 659.71 crore as on 31.03.2024.

Similarly, depreciation fund reserve (Rs. 240.90 crore) has been created by transfer from retained earnings. An equivalent amount has been transferred from bank in the fixed deposits as 'depreciation reserve fund' which led to the increase in cash credit loans. The account head under which the funds of a Company are parked does not change its nature. In case, the same is allowed, tomorrow a generating company will create a fund account for future expansion projects by transferring funds from its working capital and claim higher interest on working capital, while keeping deposits lying in the funds out of purview of regulatory regime.

Accordingly, the interest amounting to Rs. 99.36 crore (Rs. 19.04 crore + Rs. 80.32 crore), discussed above, can either form part of non-tariff income or reduced from interest on working capital true-up which is allowed to the extent of actual, as per Regulation 22 of the HERC (MYT) Regulations, 2019, 2nd Amendment Regulations, 2022.

The extract of the relevant regulation is reproduced hereunder: -


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"22. Interest on Working Capital:

Provided that Interest on Working Capital for generators shall be allowed on the basis average PLF / CUF in the preceding 3 years.

Provided further that True up of the interest on working capital shall be limited to the actual interest on working capital"

In view of the above, the Commission allows true-up of the interest on working capital to the actual level i.e. 30.33 crore (i.e. Rs. 129.69 Crore minus Rs. 99.36 crore) as against the approved amount of Rs. 155.95 Crore. Consequently, Rs. (minus) 125.62 Crore has been considered for true-up of interest on working capital.

Having held as above, the Commission observes that it would not be appropriate to reopen the true-up decided for the FY 2020-21, FY 2021-22 and FY 2022-23, as the same has attained finality."

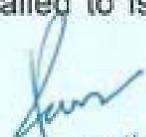
40. This Hon'ble Commission has failed to take into account the provisions of the Regulation 22 as amended by the 2nd Amendment passed by this Hon'ble Commission on 31.01.2022 which specifically provides for the restriction of IWC up to actuals. Considering the same, this Hon'ble Commission ought to have determined the total cost for true-up on the basis of actual IWC against the availability achieved by the Review Petitioner, being the 'recovered' IWC as per Regulation 30 of the MYT Regulations 2019.
41. It is also observed that this Hon'ble Commission has, on previous occasions, altered the methodology for determining the true-up cost of IWC by deviating from the norms specified in the regulations. To that effect, it is highlighted that as per the position of law laid down by the Hon'ble Supreme Court, this Hon'ble Commission is mandatorily required to adhere to the provisions specified in the regulations promulgated by itself and not adopt any methodology which is alien to such provisions. The duty of the Review Petitioner to maintain the Ash


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Fund emanates from the Notification dated 03.11.2009 bearing no. 2804/(E) issued by the Ministry of Environment and Forests ("MoEF") read with the relevant provisions of the Environment Protection Act, 1986. A copy of the Notification dated 03.11.2009 of the MoEF has been annexed hereto and marked as Annexure - 8.

42. Further, the nature and treatment of the Ash Fund to be maintained by the Review Petitioner has also been enumerated in the Journal of Government Audit and Accounts (Issue 3) dated 03.08.2015 bearing subject "*Issues in utilization of ash by Thermal Power Plants in the country*". The said journal categorically highlights the importance of maintaining a separate fund for "*utilization towards infrastructure development, promotion and facilitation activities for use of fly ash until 100% utilization was achieved...*". A copy of the Journal of Government Audit and Accounts (Issue 3) dated 03.08.2015 has been annexed hereto and marked as Annexure – 9.

43. Additionally, the Impugned Order at pages 78 and 80 thereto incorrectly records the total interest amount in relation to the Ash Fund as INR 80.32 Crores. However, as evidenced from Note no. 20 of the balance sheet under "other equity" (*Annexure – 6, Page __ of this Review Petition*) and Note no. 43 (1) of the balance sheet (*Annexure – 6, Page __ of this Review Petition*), the actual amount of interest is INR 47.69 Crores. Such an inadvertent typographical error was also brought to the notice of this Hon'ble Commission vide the letter dated 02.04.2025 sent by the Review Petitioner seeking rectification of the same. However, this Hon'ble Commission vide issuing the Corrigendum dated 21.04.2025 to the Impugned Order failed to issue


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rectification of the aforesaid data. Accordingly, it has caused an additional financial burden on the Review Petitioner and the same requires immediate rectification.

44. Further, this Hon'ble Commission has erroneously disallowed the interest earned from the Dry Ash fund and the Depreciation fund maintained by the Review Petitioner. While doing so, this Hon'ble Commission has deviated from the standard operating practice of other State Electricity Regulatory Commissions whereby any amounts arising from such funds, including the interest component earned, shall remain a part of that fund and cannot be subject to any adjustments / deductions for the purpose of true-up. This Hon'ble Commission has taken a divergent view from the settled norms without providing sufficient reasons. Accordingly, there is an error apparent on the face of record of the Impugned Order and the same requires review and appropriate rectification by this Hon'ble Commission.

Re: Incorrect disallowance of Capital Investment Plan of PTPS Unit – 6:

45. This Hon'ble Commission has erred in disallowing the capital investment plan proposal with respect to PTPS – 6 submitted by the Review Petitioner with the incorrect view that the said generating unit was not a vintage plant and accordingly should be allowed only after the submission of RLA / RLE studies. This Hon'ble Commission observed as follows:

"17. Capital Investment Plan (CIP)

HPGCL has submitted that the Commission in its order dated 20.02.2024 (HERC/P. No. 67 of 2023), had approved CAPEX aggregating to Rs. 39 Cr and Rs. 80.132 Cr, for FY 2023-24 and FY


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2024-25, respectively. However, the Commission in its ibid order had not approved Up-gradation of PTPS Unit-6 HMI System of pro-control amounting to Rs. 21.60 crore. The relevant extract of the Commission's order dated 20.02.2024 is reproduced hereinunder: -

"The Commission has examined the submissions of the petitioner i.e. HPGCL. The Commission observes that about 27% of the capex proposed

for the FY 2025-26 is for installation (or on upgradation) of Maximum Dynamic Network Architecture (MaxDNA) at its 210 MW PTPS unit-6. As its nomenclature itself suggests it is a network of application where diverse hardware and software solutions co-operate to allow the power plant to reach its greatest potential. The Commission observes that the cost proposed is 'tentative'. It is also noted that PTPS (Unit-6) is of the same vintage as the already de-commissioned (PTPS-5) despite the fact that there is a difference of about a decade their CoD. The viability/dispatchability of PTPS-6 would depend on the proposed RLA and RE report. Hence, at this stage, it may not be prudent to incur the proposed tentative cost of Rs. 21.60 crore that too without establishing the benefit stream. The Commission is constrained to observe that the submission of HPGCL (Memo no. 168/HPGCL/Reg-522 (2023) dated 26.12.2023) that "The necessary purchase order and work order for the upgradation work has already been awarded to M/s. BHEL with the approval of HPPC of HPGCL", may not be sufficient. However, as the system is normally designed on a modular basis and allows scalability, HPGCL may undertake such capex limited to ensuring safe operation of PTPS Unit-6 and for meeting the objectives of CEA (Flexible Operation of coal based thermal generation units) Regulations, 2023 as amended from time to time. The details may be separately submitted to the Commission for approval along with RLA and LE reports. HPGCL is directed to submit the details of the scheme, bidding process followed, EOI, request for proposal, negotiation if any with the bidder & purchase order to the Commission for considering the same for true up of FY 2024-25 and ARR for FY 2025-26. Accordingly, at this this stage the Commission considers and approves the revised capital expenditure for FY 2024-25 to FY 2025-26, at Rs. 39 crore and Rs. 58.532 crore, respectively. It is added that the Commission is not, at this stage, adjusting the marginal impact on depreciation, interest on loan, RoE etc. for the proposed Capex on MaxDNA."

Accordingly, the Commission had approved the revised capital expenditure for FY 2024-25 to FY 2025-26, at Rs. 39 crore and Rs. 58.532 crore, respectively. As against this, HPGCL has actually carried out only two works amounting to Rs. 3.2 Cr and one work amounting to Rs. 2.47 Crore, during the FY 2023-24 and FY 2024-25 (1st half), respectively. In revised Capital Expenditure for FY 2024-25, all left over works for FY 2023-24 have also been included. It is noted that in FY 2023-24 and first half of FY 2024-25, HPGCL, has not shown any satisfactory progress in utilization of approved CAPEX. The commission observes there is lack of proper planning on the part of the generator since only two works in FY 2023-24 and one work in FY 2024-25 up to Sept, 2024 have been completed. Further, in response to the information sought by the Commission regarding the reasons for making a provision in CAPEX for time barred unclaimed bill (Rs. 9.43 crore) of Reliance Infra since FY 2016-17, in respect of RGTPP, Hisar plant, which was commissioned on 01.03.2011, HPGCL has submitted that the vendor has opted for arbitration instead of claiming the bills. The


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arbitration award has been challenged by both the parties in the court. Thus, after the outcome of the adjudication of the legal process the said claim needs to be made by HPGCL. Thus, HPGCL has intimated the said liability under capex, as the same is part of original capital cost and needs to be spread under tariff for the balance duration of plant life cycle. In case, it has been necessitated that the said claim need to be dropped from Capex plan, then the same is liable to be made after the adjudication of the dispute in one go.

In view of the above, the Commission considers and approves the revised capital expenditure for FY 2024-25 at Rs. 82.43 crore and proposed Capex plan for control period FY 2025-26 to FY 2029-30.

It is added that the Commission is not, at this stage, adjusting the marginal impact on depreciation, interest on loan, RoE etc. for the unapproved Capex for the FY 2024-25.

HPGCL is directed to keep the Commission informed regarding the scheme wise / year wise physical and financial progress of the Capex approved by the Commission including any work wise deviations from the same. Further, the tariff for upcoming RGTPS Unit – 3 shall be determined by the Commission, upon its CoD, on a separate petition filed by HPGCL. However, HPGCL may keep the Commission informed of the physical and financial progress made in respect of the same also on half yearly basis.

HPGCL is further directed to submit the details of the schemes, bidding process followed, EOI, request for proposal, negotiation if any, with the bidder & purchase order to the Commission for considering the same at the time of true-up of FY 2024-25, FY 2025-26 and ARR for FY 2026-27."

46. The CIP proposal submitted by the Review Petitioner took into account the fact that the Review Petitioner was mandated to continue operating its PTPS – 6 generating unit and keep the same available, pursuant to the directions of the Government of Haryana, such fact duly being recorded in the order dated 20.02.2024 in Petition No 67 of 2023.
47. This Hon'ble Commission has further failed to appreciate the fact that the PTPS – 6 generating station has to remains on bar and requires necessary upgradation of Human Machine interface by way of the replacement, as certified by the original equipment manufacturer of the


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unit. Further, the average utilization of the unit significantly exceeds its actual capabilities and for the Review Petitioner to meet the demand from its beneficiaries and to comply with the directions of the Government of Haryana, necessary refurbishment / replacement for the parts of the PTPS – 6 is necessary. It is noteworthy that in the absence of appropriate upgradation, the PTPS – 6 unit would malfunction, ultimately forcing the Review Petitioner to box it up. Such an event would eventually have a higher financial impact on the end consumers of the electricity. Therefore, this Hon'ble Commission ought to review the Impugned Order to remove such an error apparent on the face of record.

48. Being aggrieved, present Review Petition has been filed by the Review Petitioner, seeking review of the Impugned Order.

LEGAL GROUNDS IN SUPPORT OF THE PETITION

49. Review Petitioner vide the present petition invokes the jurisdiction of this Hon'ble Commission, *inter alia*, on the following grounds, which are independent to each other and the Review Petitioner reserves its right to plead further or other grounds as and when the need arises with the leave of this Hon'ble Commission:

- A. For that Hon'ble Commission has review power under Section 94 (1) (f) of the Electricity Act which is analogues to the power of a Civil Court under Order 47 Rule 1 of the Civil Procedure Code, 1908 ("CPC, 1908").


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- B. For that Section 94 (1) (f) of the Electricity Act provides following for the review and modification of the order:

Re: Section 94 (f) of the Electricity Act:

"...

Section 94. (Powers of Appropriate Commission): --- (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

...

(f) reviewing its decisions, directions and orders;

..."

From the above provision, it is clear that this Hon'ble Commission is vested with the powers to review its decisions as per Section 94(1)(f) of the Electricity Act. Further, as per Section 94(1) for the purpose of review, the Hon'ble Commission has to be guided by the principles of the Civil Procedure Code, 1908.

- C. Further reference be made to Section 92(1) of the Electricity Act, 2003, which is set out herein below:

*"Section 92. (Proceedings of Appropriate Commission): --
- (1) The Appropriate Commission shall meet at the head office or any other place at such time as the Chairperson may direct, and **shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify.**"*

(Underline Supplied)


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From the above provision, it is clear that this Hon'ble Commission is entitled to regulate its own procedure by specifying regulations for purpose of review and other issues.

- D. Accordingly, this Hon'ble Commission has enacted the CBR, 2019, wherein Regulation 57 provides as follows with respect to the review:

"Review of the decisions, directions, and orders

57 (1) All relevant provisions relating to review of the decisions, directions and orders as provided in the Code of Civil Procedure 1908, as amended from time to time, shall apply mutatis mutandi for review of the decisions, directions and order of the Commission.

Provided that the Commission may on the application of any party or person concerned, filed within a period of 45 days of the receipt of such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission may deem fit

(2) No application for review shall be considered unless an undertaking has been given by the applicant that he has not preferred appeal against the decision, direction, or order, sought to be reviewed, in any Court of Law.

(3) No application for review shall be admitted/ considered unless an undertaking has been given by the applicant that in case he files an appeal of the decision, direction or order of which review is pending adjudication, he shall immediately inform the Commission regarding the fact of filing the appeal."

From a reading of Regulation 57, it is categorically provided that for the purpose of review, this Hon'ble Commission shall have same powers as available under CPC, 1908.

Hence, as per a combined reading of Section 94(1) (f) of the Electricity Act, and Regulation 57 of CBR, 2019, for the purpose of review, the provisions of CPC attain primacy. In this context,


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reference be made to Order 47 of CPC, which is reproduced hereinbelow:

"ORDER XLVII- REVIEW

1. *Application for review of judgment— (1) Any person considering himself aggrieved—*

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed,

or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

(Underline Supplied)

E. From a close reading of Order 47 Rule 1 of CPC, 1908, the principles under which a review is maintainable, are as follows:

- a) discovery of new and important matter or evidence;
- b) on account of some mistake committed by the Court;
- c) error apparent on the face of the record; and
- d) for any other sufficient reason.


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Hence, a review can be filed by any aggrieved party on one of the above grounds.

F. It is now relevant to refer to the following pronouncements of the Hon'ble Supreme Court, whereby the scope and intent of review is encapsulated:

- I. **Rajender Singh v. Lt. Governor, Andaman and Nicobar Islands and Ors.**, reported in (2005) 13 SCC 289 (please refer to Para 15 and 16);
- II. **Board of Control for Cricket in India and Anr. v. Netaji Cricket Club & Ors.**, reported in 2005 (4) SCC 741 (please refer to Para 89);
- III. **S. Nagraj and Ors. V. State of Karnataka and Anr.**, reported in 1993 (Supp.4) SCC 595 (please refer to Para 18 and 19);
- IV. **O.N. Mohindroo v. Distt. Judge, Delhi**, reported in (1971) 3 SCC 5, (please refer to Para 37).

G. The principles which can be categorically culled out from the above judgments are as follows:

- i. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way;


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- ii. All processes of the Court are intended to secure justice and one such process is the power of review, and that whenever there is a manifest wrong done, it is never too late to undo the said wrong;
- iii. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error;
- iv. The philosophy behind exercise of power of review is the anxiety to avoid injustice;
- v. Rectification of an order, through review, stems from the fundamental principle that justice is above all; and
- vi. Courts should not be precluded from recalling or reviewing their own orders, if it is satisfied that it is necessary to do so for sake of justice.

In view of above, present Review Petition may be allowed by this Hon'ble Commission. Further, the Impugned Order may be reviewed and modified by this Hon'ble Commission considering the objective and the nature of the issues highlighted by the Review Petitioner.


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- (l) Incorrect True-up of various tariff parameters by applying principle of "Approved" vs. "Actual" cost instead of "Recovered" vs. "Actual" cost:
- H. For that this Hon'ble Commission has repeatedly resorted to erroneous application of the True-up principles by adopting the "Approved cost" vs. "Actual cost" approach while ignoring the "Recovered cost" vs. "Actual cost". The said erroneous stance has also been applied for truing up for the previous financial years, the same being relied upon for truing-up for FY 2023-24 without adequately perusing and appreciating the actual financial data submitted by the Review Petitioner.
- I. For that Regulation 30 of the MYT Regulations 2019 specifies that the recovery of capacity charges shall be linked to the actual availability of the generating unit. The relevant portion is reproduced herein below:

"30. RECOVERY OF ANNUAL FIXED CHARGES (CAPACITY) CHARGES FOR THERMAL POWER PROJECTS

- (a) *The fixed cost of a thermal generating station shall be computed on annual basis, based on norms specified under these Regulations. Payment to capacity charge by the beneficiaries shall be on monthly basis in proportion to allocated / contracted capacity. The total capacity charges payable for a generating plant shall be shared by its beneficiaries as per their respective percentage share / allocation in the capacity of the generating plant;*
- (b) **A generating plant shall recover full capacity charge at the normative annual plant availability factor specified by the Commission. Recovery of capacity charge below the level of target availability shall be on pro-rata basis. No capacity charge shall be payable at zero**


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availability. Total recovered fixed charges for a Unit up to the end of a month shall not be more than the admissible approved fixed charges for that Unit as worked out corresponding to the cumulative PLF (after including deemed generation) up to the end of that month. For example, at the end of 3rd month, if the deemed PLF is 80% and the normative PLF is 85%, the admissible approved fixed charges would be $AFC/4$ ($0.80/0.85$) where AFC are the approved annual fixed charges. In case cumulative PLF at the end of 3rd month is more than the normative PLF, the admissible approved fixed charges will be $AFC/4$.*

[emphasis supplied]

- J. For that the normative annual plant availability factor (NAPAF) for the thermal generating units of the Review Petitioner is rated at 85% as per Regulation 28 (1) of the MYT Regulations 2019. Accordingly, if the NAPAF of a generating unit falls below the level specified in Regulation 28 (1), the ability of the Review Petitioner to recover capacity charges also reduces on a pro-rata basis. The following table demonstrates the eligibility of the Review Petitioner to recover capacity charges on different levels of actual availability.

Plant (Thermal)	Target availability (A)	Approved cost (in Rs) (B)	Availability achieved (C)	Recovered tariff as per Regulation 30 MYT (in Rs) (D)= Bx(C/A)
	85%	100	85%	100
	85%	100	76.5%	90
	85%	100	68%	80
	85%	100	59.5%	70
	85%	100	51%	60
	85%	100	42.5%	50
	85%	100	34%	40
	85%	100	25.5%	30
	85%	100	17%	20
	85%	100	8.5%	10
	85%	100	0	0


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- K. For that the Review Petitioner has accordingly borne the financial impact of not being able to recover full capacity charges for the generating units that have achieved availability below the NAPAF, as specified under Regulation 30 of the MYT Regulations 2019. Therefore, in such a scenario, the "Approved" cost as per the prevailing availability achieved shall be the cost "Recovered" by the Review Petitioner against the actual availability in terms of Regulation 30 of the MYT Regulations. However, this Hon'ble Commission has proceeded on the assumption that the Review Petitioner has recovered the entire capacity charges based on NAPAF and not the actual availability achieved by the individual generating units. In doing so, this Hon'ble Commission has essentially failed to adequately take into account the provisions of Regulation 30 of its own regulations which is contrary to law and constitutes sufficient cause for exercise of review jurisdiction of this Hon'ble Commission.
- L. For that this Hon'ble Commission has relied upon its previous tariff orders whereby it has carried out the true-up exercise on the basis of the "Approved" cost and contrasting the same with the "Actual" cost. More importantly, this Hon'ble Commission has continued on the erroneous interpretation that the certain provisions of Regulation 13. The said interpretation is financially prejudicial to the Review Petitioner since the distribution companies would be unjustly enriched from the sum being forced to the pay by the Review Petitioner out of its own pocket which it had never recovered.


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- M. For that by contrasting the actual cost with the cost approved in the previous tariff order, this Hon'ble Commission is directing for an erroneous recovery of expenses, which is the clear violation of Section 62 of the Electricity Act. Where the amount recovered by the Review Petitioner is lower than the approved cost, it would lead to over-recovery by the distribution companies and unnecessary financial burden on the Review Petitioner since such additional amount would have to be paid out of pocket by the Review Petitioner.
- N. For that this Hon'ble Commission has failed to adequately appreciate the data and documentary evidence on record and the submissions of the Review Petitioner during the proceedings of the Main Petition, thereby proceeding on an erroneous basis. Further, this Hon'ble Commission has neither provided adequate explanation for adopting the "Approved vs. Actual" principle nor justified the basis of its interpretation of its regulations while applying the same for the Review Petitioner. Instead, it has merely placed reliance on the "*regulations in vogue*" without providing a detailed justification of the manner in which the specific provision is being interpreted to arrive at a particular conclusion. The same is in contravention of settled position of law.
- O. For that this Hon'ble Commission has proceeded to true-up the expenses in a vague and oblique manner without specifying the exact provisions of the MYT Regulations 2019 empowering it to undertake such action. However, as evident from a bare perusal of the Impugned Order, this Hon'ble Commission has incorrectly


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applied the provisions of the MYT Regulations 2019 by stating that the same was in accordance with the 'regulations in vogue'. Such an action is impermissible and lies in teeth of the functions of a regulator and therefore ought to have specified the exact provisions which empower this Hon'ble Commission take such action.

- P. For that this Hon'ble Commission is bound by the provisions of the regulations framed by itself. As highlighted above, Regulation 30 of the MYT Regulations 2019 provides for the true-up of tariff parameters on the basis of the cost recovered on the basis of actual availability. Therefore, the true up exercise ought to be carried out on the basis of "Recovered vs. Actual" to account for any margins available under the tariff parameters.
- Q. For that it is a settled position of law that a regulation promulgated by this Hon'ble Commission under Section 181 of the Electricity Act is a subordinate legislation and the same ought to be strictly followed by this Hon'ble Commission as long as the spirit and letter of such subordinate legislation is in conformity with the parent legislation, i.e., the Electricity Act. The Hon'ble Supreme Court in *PTC India Limited v. CERC*, reported as (2010) 4 SCC 603 has laid down the following:


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"54. As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide-ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up

under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that the Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licences, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in inter-State trading of electricity, if considered necessary, etc. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178."

- R. For that this Hon'ble Commission has deviated from the specific provisions of the MYT Regulations 2019, specifically Regulation 30 thereof, which clearly provides for the recovery of capacity charges on the basis of actual availability. The said provision clearly does not envisage a scenario where the Review Petitioner is forced to incur the same financial loss twice, once on account of capacity charges unrecovered due to loss of availability, and thereafter during true-up by comparing the actual cost with the cost approved by this Hon'ble Commission on the basis of NAPAF and not actual availability. It further appears that this Hon'ble Commission has *suo motu* invoked its inherent powers under Regulation 81 of the MYT Regulations 2019. However, such invocation has been *de hors* sufficient reasoning provided by this Hon'ble Commission. Accordingly, the same is in contravention of the settled position of law that the inherent powers of this Hon'ble


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Commission may be exercised in exceptional circumstances and only when this Hon'ble Commission provides sufficient justification in lieu of the same.

- S. For that the erroneous interpretation and misapplication of the provisions of the MYT Regulations 2019 has caused significant financial prejudice to the Review Petitioner since it has a cascading effect on the true-up of several critical tariff parameters. A brief overview of the total impact under various tariff parameters has been demonstrated herein below:

	HPGCL (Proposed) (in Cr)	HERC(Allowed) (in Cr)	Impact on HPGCL (in Crs)
Employee Cost	160.43	94.57	65.86
R&M	130.26	36.80	93.46
Interest & Finance Charges	9.02	-14.90	23.92
Depreciation	0.00	-11	11
RoE	0.23	-0.08	0.31
Interest on working Capital	0.22	-125.62	125.84
Non-Tariff income	-	-8.58	8.58
Total True Up	300.16	-28.89	328.97

- T. For that every tariff order is a separate and distinct order, constituting a separate and distinct cause of action. The said position of law has been upheld by the Hon'ble APTEL in *Delhi Transco Ltd. v. DERC & Ors.* [Appeal No. 133 of 2007]:

"17. Although the appellant did not challenge the earlier tariff orders it did oppose the proposition that was adopted by the Commission namely that the appellant should be denied the right to recover its revenue requirement to the extent of the past receivables. The appellant has been asking the Commission to transfer the 80% of the past receivables to it. In fact the accounts position of the appellant reflects the factual position namely that the past receivables have not


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been received by it and these accounts have not been held to be incorrect or flawed by the Commission. It cannot be said that the appellant has accepted the Commission's method in this regard for such an unduly long time that following the principles in the judgments mentioned above the appellant can be non-suited on the ground that it is challenging a settled position of fact or law. The view taken by the Commission that past receivables, not received by the appellant, be deemed to have been received by the appellant borders absurdity. Since each tariff order is distinct and separate the appellant would be fully justified in approaching this Tribunal to challenge the impugned order vis a vis the year 2006-07."

U. For that the Impugned Order contains an error apparent on the face of record in the manner demonstrated above. Further, in incorrect implementation of truing up principles in case of the Review Petitioner is 'sufficient cause' for this Hon'ble Commission to review and revisit the Impugned Order and make necessary rectification vis-à-vis carrying out truing up exercise on the basis of "Recovered vs. Actual" cost principle for the reasons stated in the preceding paragraphs.

(II) **Discrepancies in Truing Up of O&M expenses:**

Re: Incorrect computation of Employee Cost for True-Up:

V. For that this Hon'ble Commission has contravened the provisions of the MYT Regulations 2019 by failing to allow terminal liability component of the Employee Cost to be recovered as per actuals and implementing the incorrect principle for true-up of such costs.


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W. For that the Review Petitioner has correctly computed the employee salary component of the Employee Cost as per the actual availability achieved by the generating units, whereas the Terminal Liability has been claimed as per actuals. The same is in conformity with Regulation 8.3.8 (b) of the MYT Regulations 2019 which classifies Terminal Liability being as 'uncontrollable' factor. The relevant portion is reproduced hereinbelow:

"8.3.8 Controllable and Uncontrollable items of ARR

(...)

(b) *The items in the ARR shall be treated as 'controllable' or 'uncontrollable' as follows: -*

(...)

Terminal Liabilities with regard to employees on account of changes in pay scale or dearness allowance due to inflation

Uncontrollable

X. For that this Hon'ble Commission has erroneously adjusted the Terminal Liability incurred by the Review Petitioner proportionately based on the availability achieved by the generating units. However, such a treatment cannot be allowed on factors which are flagged as 'uncontrollable' by this Hon'ble Commission as enumerated under Regulation 8.3.8 (b) of the MYT Regulations 2019. Further, the same is also in contravention of the provisions of Regulation 30 of the MYT Regulations 2019.


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- Y. For that this Hon'ble Commission has erroneously proceeded to true-up the Employee Cost based on the "Approved vs. Actual" principle instead of the "Recovered vs. Actual" principle. As highlighted above, the same is in clear contravention of the provisions of Regulation 30 of the MYT Regulations 2019. The Review Petitioner has claimed Employee Cost of INR 160.43 Crores based on the costs as per actual availability achieved and separating the Terminal Liabilities which has been claimed on actuals. However, by combining the two and further computing them in contrast with the "approved" cost and not the "recovered" cost has led to an inaccurate and erroneous computation for true-up and in contravention of the provisions of the MYT Regulations 2019.
- Z. For that this Hon'ble Commission ought to have appreciated the fact that the "approved" cost for the purpose of computing true-up amount has to be the sum "recovered" by the Review Petitioner in terms of the actual availability of its generating units. As Regulation 30 (b) specifies, the Review Petitioner is entitled to recover capacity charges as per the availability actually achieved by the generating units. Accordingly, the cost which has been "approved" by this Hon'ble Commission is considering the NAPAF of the generating units. For illustrative purposes, consider the "approved" Employee Cost against 85% availability (NAPAF) is INR 100. As per Regulation 30 (b), the Review Petitioner shall recover INR 100 if it achieves the NAPAF. If availability is lower than NAPAF, for e.g., 68%, then the total amount that the Review Petitioner is entitled to recover is INR 80 ($100 \times 68/85$).



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Accordingly, it is submitted that at 68% availability, INR 80 shall be the "approved" cost for the purpose of truing up of costs. Therefore, this Hon'ble Commission ought to have considered the cost that was "recovered" by the Review Petitioner at the particular achieved availability and contrasted the same against the actual costs. Instead, the comparison has been done against the cost that was "approved" in the previous tariff order, thereby making the incorrect assumption that the generating units have achieved NAPAF.

AA. For that the Impugned Order suffers from an error apparent on the face of record in the manner specified above. Further, this serves as sufficient reason for seeking indulgence of this Hon'ble Commission to make appropriate rectifications in the Impugned Order and grant the reliefs being sought for by the Review Petitioner.

Re: Erroneous disallowance of additional R&M expenses due to overhauling:

BB. For that this Hon'ble Commission has erred in disallowing the additional R&M expenses incurred by the Review Petitioner for undertaking overhauling activities by disqualifying such expenses under the parameter of R&M expenses. However, this Hon'ble Commission has proceeded to allow the said expenses to be included in the CIP for the future. Accordingly, there has been a divergent view taken by this Hon'ble Commission vis-à-vis the treatment of additional R&M expenses owing to overhauling activities.


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CC. For that this Hon'ble Commission blown hot and cold with respect to the treatment of overhauling expenses under the R&M category. On the one hand, this Hon'ble Commission has duly acknowledged and taken note of the activities undertaken by the Review Petitioner for overhauling of the generating station. The said activities were made necessary to address the higher mandatory plant load factor (PLF) determined by this Hon'ble Commission and the increased load demand from the beneficiaries. Such activities have *inter alia* seen an increase in the R&M expenses being incurred by the Review Petitioner for added activities and operation of the generating station. Despite such acknowledgment, this Hon'ble Commission has erroneously denied any relief vis-à-vis truing up and pass through of the same in the form of tariff.

DD. For that this Hon'ble Commission has been furnished with appropriate and relevant documentary evidence to substantiate the actual costs that were incurred by the Review Petitioner in excess of the norms. Further, necessary submissions and clarifications were also provided to this Hon'ble Commission upon demand. Accordingly, this Hon'ble Commission has received appropriate assistance from the Review Petitioner and has further been sufficiently apprised of the actual figures entailed in the subject matter and the corresponding evidentiary documents. In light of the same, this Hon'ble Commission has every reason to make sufficient adjustments and relax the norms of the MYT Regulations 2019 to allow pass through of such additional costs.


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- EE. For that this Hon'ble Commission is sufficiently empowered to call for requisite documents and clarifications it deems fit to satisfy itself of the veracity of the claims raised by the Review Petitioner. It is not the case that the Review Petitioner has faulted in its document submissions and has failed to provide valuable documents or withheld any such documents from this Hon'ble Commission. This Hon'ble Commission was well within its powers to call for any additional documents if it was of the opinion that the claims raised by the Review Petitioner are not adequately substantiated. It may be highlighted that the Impugned Order duly records the list of documentary evidence furnished and relied upon by the Review Petitioner. Despite the same, appropriate reliefs have not been granted by this Hon'ble Commission.
- FF. For that this Hon'ble Commission ought to be consistent with its approach to the truing up exercise by appreciating the basic aspect of the same. The Hon'ble Supreme Court in *BSES Judgment* has specifically highlighted the importance of maintaining consistency in applying the principles / methodology of truing-up and has observed that the Appropriate Commission is barred from retrospectively changing the norms which would render the original tariff order void. Accordingly, this Hon'ble Commission has acted in teeth of the aforesaid judgment.
- GG. For that this Hon'ble Commission is sufficiently empowered to allow the norms of the regulations to be relaxed to promote the interests of a party in who's favour the balance of convenience falls. Further, there is sufficient evidence and justification on


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record to establish the veracity of the claims of the Review Petitioner, being genuine claims against expenses incurred towards overhauling activities being carried out on the generating stations.

HH. For that this Hon'ble Commission is empowered to exercise its inherent powers to relax the provision of the MYT Regulations 2019. Reference is invited to Regulations 79 and 81 of the MYT Regulations 2019.

"79. POWER TO RELAX

The Commission may in public interest and for reasons to be recorded in writing, relax any of the provisions of these Regulations.

(...)

81. SAVING OF INHERENT POWERS OF THE COMMISSION

81.1 Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent powers of the Commission to make such orders as may be necessary for ends of justice or to protect consumers' interest or to prevent the abuse of the process of the Commission.

81.2 Nothing contained in these Regulations shall limit or otherwise affect the inherent powers of the Commission from adopting a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of the matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient to depart from the procedure specified in these Regulations.

81.3 Nothing in these Regulations shall, expressly or by implication, bar the Commission to deal with any matter or exercise any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit."


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- II. For that the claims of the Review Petitioner in the present case are genuine and unavoidable, arising from the activities being undertaken to overhaul the generating station and preparing it to handle the demand load of its beneficiaries and to achieve the increased PLF. Further, the Review Petitioner has provided sufficient documentary evidence to justify the veracity of such costs and to adequately establish that the Review Petitioner has actually incurred such costs. This Hon'ble Commission may call for any further documents to be submitted and the Review Petitioner shall endeavour to promptly furnish the same. More importantly, it is highlighted that tariff is the only avenue for recovery of costs for the Review Petitioner. Accordingly, any excess and genuine costs not being considered for truing up shall remain out of pocket for the Review Petitioner and shall ultimately have a detrimental impact on its financial and operational capabilities. Any discrepancies in the generating capacity of the Review Petitioner would ultimately have an effect on the rights of the consumers to receive supply of uninterrupted electricity, thereby harming public interest and qualifying as suitable reason for this Hon'ble Commission to exercise its inherent powers.
- JJ. For that it is a settled position of law that the appropriate commission has the authority to exercise its inherent powers and relax the norms of a regulation to prevent the miscarriage of justice and to protect the interests of the public at large. The Hon'ble Supreme Court in *Union of India v. Paras Laminates (P) Ltd.*, reported as (1990) 4 SCC 453 has observed as follows:


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"8. There is no doubt that the Tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised. The powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in Maxwell on Interpretation of Statutes (11th edn.) "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution"."

[emphasis supplied]

KK. For that this Hon'ble Commission is vested with the power to relax the provisions of the MYT Regulations 2019 and exercise its inherent power to remove any difficulty in implementing the provisions so as to ensure the safety and security of interests of the parties and the public at large. In the present case, the Review Petitioner has raised a genuine claim for the excess R&M expenses that were incurred due to overhauling. Further, the said fact has been duly appreciated and acknowledged in the Impugned Order. Accordingly, this is a fit case for the exercise of inherent power to relax the provisions of the MYT Regulations


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2019 to allow suitable recovery mechanism to the Review Petitioner.

LL. For that the disallowance of additional R&M expenses by exercising the powers under Regulation 79 and 81 of the MYT Regulations 2019 is an error apparent on the face of record and a sufficient cause for this Hon'ble Commission to review and modify the Impugned Order appropriately.

(III) Incorrect True-up of Depreciation for FY 2023-24:

MM. For that this Hon'ble Commission has proceeded to true-up the Depreciation for FY 2023-24 by adopting the "Approved vs. Actual" principle instead of the "Recovered vs. Actual" principle. In doing so, this Hon'ble Commission has repeated the error of contravening the provisions of Regulation 30 of the MYT Regulations 2019 which clearly restricts the ability to recover costs based on the actual availability achieved by the generating units.

NN. For that this Hon'ble Commission ought to have appreciated the fact that the Review Petitioner has computed the Depreciation value based on the straight-line method, being the industry standard / applicable regulations. Accordingly, the value so computed is required to be allowed based on the actual tariff that has been "recovered" by the Review Petitioner against the actual cost. For the FY 2023-24, the Review Petitioner has recovered INR 178.71 Crores, whereas the cost approved by this Hon'ble Commission was INR 217.86 Crores. Therefore, it is evident that the Review Petitioner has already absorbed the financial loss


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owing to the Depreciation value being unrecovered due to unachieved availability in terms of the NAPAF. As such, the true-up of Depreciation ought to be carried out by comparing the actual cost against the cost that has been recovered by the Review Petitioner, instead of the cost that has been approved by this Hon'ble Commission basis the NAPAF.

OO. For that at a lower availability, the 'recovered' cost is essentially the 'approved' cost since the cost that has been approved shall be reduced pro-rata to adjust for the loss of availability. Accordingly, no further adjustments can be made upon the said expenses, which would essentially amount to double-recovery from the Review Petitioner, thereby severely prejudicing its financial interests and being in contravention of the MYT Regulations 2019.

PP. For that this Hon'ble Commission has appreciated and accepted the aforesaid truing up methodology proposed by the Review Petitioner and accordingly implemented the same for truing up the Administrative and General (A&G) expenses. However, no such indulgence has been provided to true-up the Depreciation cost. Such divergent views and altering the manner of interpreting the Regulations is incorrect and untenable as per settled law. Accordingly, such treatment of Depreciation cost is an error apparent on the face of record and warrants review and modification by this Hon'ble Commission.


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QQ. For that the true-up exercise has been conducted in a conflicting, divergent and haphazard manner as several critical tariff parameters have been trued-up by implementing the principles /

methodology in an incorrect manner and different from what has been provided in the MYT Regulations 2019. It appears that this Hon'ble Commission has cherry-picked the manner in which the provisions of the MYT Regulations 2019 in an arbitrary manner and the rules of the game have been changed only at the peril and prejudice of the Review Petitioner and ensure financial loss.

(IV) Erroneous computation of Return on Equity for FY 2023-24:

RR. For that this Hon'ble Commission has erred in computing the ROE component for the FY 2023-24 by adopting the "approved vs. actual" cost principle, which is contrary to the provisions of Regulation 30 of the MYT Regulations 2019.

SS. For that this Hon'ble Commission has not adequately appreciated the manner in which the Review Petitioner has computed the RoE component. Essentially, the Review Petitioner has furnished its claim as a difference in the RoE taking into account a proportionate adjustment of the additional equity infusions into the Review Petitioner. This Hon'ble Commission vide order dated 25.01.2023 approved the RoE cost at INR 246.66 Crores, whereas the revised RoE after yearly equity infusion stands at INR 246.94 Crores. Further, the Review Petitioner has actually recovered INR 199.11 against the actual availability achieved by the generating units. Considering the same, the actual recovery based on the availability achieved is INR 199.34 Crores $[(199.11 / 246.66) * 246.94]$. Accordingly, the differential of INR 0.23 Crores (i.e. INR 199.34 Crores – INR 199.11 Crores) ought to be allowed by this Hon'ble Commission.

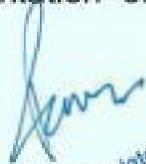

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TT. For that the Review Petitioner has claimed the increase in RoE taking into account the impact of recalculating the impact of capitalization carried in the FY 2023-24 while restricting itself to the actual availability achieved, in compliance with the provisions of Regulation 30 of the MYT Regulations 2019. However, this Hon'ble Commission has continued to proceed on its erroneous interpretation of the Regulations by implementing the principle of "approved vs. actual" cost without appreciating that the Review Petitioner has already taken the brunt of the unrecovered sum owing to availability being lower than NAPAF.

UU. For that the aforesaid is an error apparent on the face of record and constitutes as sufficient reason for this Hon'ble Commission to review and suitably modify the Impugned Order.

(V) Incorrect true-up of Interest & Finance Charges for the FY 2023-24:

VV. For that this Hon'ble Commission has been inconsistent with its treatment of I&FC component of tariff for true-up. On previous occasions, the Review Petitioner has not been allowed to enjoy the benefits of one-time pass through of NAV in cases where the loan has been prepaid by the Review Petitioner. However, on the contrary, this Hon'ble Commission has allowed year-on-year savings in terms of Regulations 12 and 21.1(v) of the MYT Regulations 2019. The two decisions of this Hon'ble Commission are conflicting and divergent, especially vis-à-vis the interpretation and implementation of the provisions of the MYT Regulations 2019.


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WW. For that this Hon'ble Commission is under the statutory obligation to maintain due consistency in its interpretation and while giving operation to the MYT Regulations 2019. If this Hon'ble Commission has already allowed for pass through of year-on-year savings in terms of the MYT Regulations 2019, there is no reason for the benefits accruing from pass through of NAV to be shared with the Review Petitioner. More importantly, this Hon'ble Commission has not provided sufficient reasons to justify such diversion from its practice and proceedings. It is reiterated that any such diversion by this Hon'ble Commission ought to be suitably justified and the reasons behind the same ought to be recorded in writing. In the present case, no such explanation has been provided in the Impugned Order.

XX. For that the Hon'ble Supreme Court in *BSES Judgment* has already laid down the position of law that this Hon'ble Commission ought to maintain consistency in the manner in which it is implementing the provisions of its regulations. There cannot be any lack of consistency without any sufficient cause.

YY. For that the aforesaid is an error apparent on the face of record and therefore warrants suitable review and modification by this Hon'ble Commission.



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(VI) Incorrect true-up of Interest on Working Capital and erroneous disallowance of interest accrued on 'Ash Fund' and 'Depreciation Fund' for the FY 2023-24:

ZZ. For that this Hon'ble Commission, while relying upon Regulation 22 of the MYT Regulations 2019, has proceeded to true-up the IWC for the FY 2023-24 by implementing the "approved vs. actual" principle instead of the "recovered vs. actual" principle. Further, it has erroneously disallowed the Review Petitioner from enjoying the benefit of interest accrued from the Ash Fund and the Depreciation Fund. For ease of reference, the Regulation 22 of the MYT Regulations 2019 provides as follows:

"22.1 Components of working capital:

For the purpose of computing working capital the components mentioned in the table below shall be considered:

- a) Cost of coal for 1 month corresponding to the normative availability (same for pit head);*
- b) Cost of secondary fuel oil for 1 month corresponding to the normative availability;*
- c) Normative O&M expenses for 1 (one) month;*
- d) Maintenance spares @ 10% of the O&M expenses;*
- e) Receivables equivalent to fixed and variables charges for 1(one) month for sale of electricity calculated corresponding to normative availability.*


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Generating company

I. Coal-based Thermal Generating Plants:

II. Open-cycle / Combined Cycle Gas Turbine Thermal Generating Plants:

a) Fuel cost for 1 (one) month corresponding to the normative annual plant availability factor, duly considering mode of operation of the generating plant on gas fuel and liquid fuel;

b) Liquid fuel stock for ½ month corresponding to the normative annual plant availability factor, and in case of use of more than one liquid fuel, cost of main liquid fuel;

c) Maintenance spares @ 15% of normative operation and maintenance expenses;

d) Normative operation and maintenance expenses for one month.

e) Receivables equivalent to capacity charges and energy charges for 1 (one) months for sale of electricity calculated on normative plant availability factor, duly considering mode of operation of the generating plant on gas fuel and liquid fuel; and

III. Hydro power plants:

a) Normative operation and maintenance expenses for 1 (one) month

b) Maintenance spares @ 7.5% of normative operation and maintenance expenses;

c) Receivables equivalent to fixed cost for 2 (two) months

.....

Provided that for the purpose of Truing-up for any year, the working capital requirement shall be re-computed on the basis of the values of components of working capital approved by the Commission in the Truing-up before sharing of gains and losses;


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22.2 Rate of Interest

Rate of interest on working capital shall be equal to the MCLR of the relevant financial year plus a maximum of 150 basis points. However, while claiming any spread, the generator and the licensees shall submit loan sanction letter from the banks/ lending institutions, indicating the applicable rate of interest.

For the purpose of trueing up, the actual weighted average Rate of Interest will be considered on the normative working capital by the Commission, subject to the ceiling margin as indicated above."

AAA. For that this Hon'ble Commission has failed to appreciate the provisions of the Regulation 22 after the same was duly amended vide the 2nd Amendment to the MYT Regulations 2019 vide order dated 31.01.2022 passed by this Hon'ble Commission itself. The amended provision read as follows:

"22. Interest on Working Capital:

Provided that Interest on Working Capital for generators shall be allowed on the basis average PLF / CUF in the preceding 3 years.

Provided further that True up of the interest on working capital shall be limited to the actual interest on working capital.

BBB. For that the Regulation 22 of the MYT Regulations, 2019, as duly amended by the 2nd Amendment, clearly provides for the treatment of IWC on the basis of the actual cost against the availability achieved by the generating station, in terms of Regulation 30 of the MYT Regulations 2019. Therefore, in the manner described above, this Hon'ble Commission ought to carry out the true-up exercise by taking into account the "recovered" cost against the actual availability achieved and comparing the same with the "actual" cost. However, by contrasting the "actual" cost with the cost "approved"


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by this Hon'ble Commission in the previous tariff order, the true-up exercise has been derailed and has been conducted in contravention with the provisions of the MYT Regulations 2019.

CCC. For that this Hon'ble Commission has been inconsistent in its approach and methodology of truing up the different tariff parameters pertaining to the Review Petitioner. It is not open to this Hon'ble Commission to alter and modify the provisions of the MYT Regulations 2019 in a self-serving manner and deny the Review Petitioner the rightful benefits accruing as per the regulations. This Hon'ble Commission ought to have sufficiently appreciated the provisions of Regulation 22 (*as amended vide the 2nd Amendment*) and Regulation 30 of the MYT Regulations 2019 which clearly lay down that the IWC to be trued up shall be based on the cost that has actually been incurred against the availability achieved by the particular generating station. The "approved" cost for this purpose shall be the cost that has actually been recovered by the Review Petitioner at lower availability, being a pro-rata reduction against the approved cost at NAPAF. The divergent view taken by this Hon'ble Commission is in contravention of the position of law laid down by the Hon'ble Supreme Court in *BSES v. Judgment* since it has failed to maintain a consistent approach in the truing up exercise.


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DDD. For that further, this Hon'ble Commission has also erred in carrying out the true-up process by relying upon the ITR filings of the Review Petitioner, being in clear contravention of the provisions of the MYT Regulations 2019. It is submitted that Regulation 13.1 of the MYT

Regulations 2019 specifies that the true-up exercise is required to be carried out on the basis of the audited accounts of the particular year in question. More importantly, nothing in the MYT Regulations 2019 empowers this Hon'ble Commission to rely upon the ITR filings of the Review Petitioner for the purpose of true-up. Accordingly, this Hon'ble Commission is not empowered to go beyond the audited accounts of the Review Petitioner which has been duly audited by the Comptroller and Auditor General (CAG) – Haryana for carrying out true-up of expenses. Further, as highlighted above, this Hon'ble Commission has also erroneously trued up the IWC by completely ignoring the provisions of the 2nd Amendment to Regulation 22 which specifically provides for true-up of IWC on actuals. Accordingly, this Hon'ble Commission has deviated from the express provisions of the MYT Regulations 2019 without any sufficient justification and has failed to maintain consistency in applying the principles / methodology of truing up, being in clear contravention of the position of law affirmed by the Hon'ble Supreme Court in *BSES Judgment*.

EEE. For that this Hon'ble Commission has, on previous occasions, carried out the true-up of IWC on an incorrect principle of "Approved vs. Actual" cost without appreciating the aforesaid position. Reference is invited to the ARR orders of this Hon'ble Commission dated 24.04.2020 in Petition No. 58 of 2019 pertaining to FY 2018-19, Order dated 18.02.2021 in Petition No. 76 of 2020 pertaining to FY 2019-20, Order dated 20.02.2022 in Petition No. 44 of 2021 pertaining to FY 2020-21 and Order dated 25.01.2023 in Petition


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No. 64 of 2022 pertaining to FY 2021-22. It is submitted that on such previous occasions, this Hon'ble Commission has consistently altered the methodology / principles for carrying out true-up of IWC, causing significant financial prejudice to the Review Petitioner. The relevant portions of the aforesaid orders are reproduced herein below:

(i) **Order dated 24.04.2020 in Petition No. 58 of 2019:**

"HPGCL submitted that the Commission in its Order dated 31.10.2018 regarding generation tariff for FY 2018-19 had allowed average coal and oil prices at prevailing market prices, as proposed by it. However, there has been variation in prices of coal and oil during the FY 2018-19. Therefore, while computing the true-up of working capital FY 2018-19, actual rate of coal and oil prevailing in FY 2018-19 has been considered.

Due to variation in the Fuel prices the normative working capital requirement for FY 2018-19, as per the approved norms of the HERC, has increased to Rs. 1985.61 Cr against the approved working capital requirement of Rs. 1883.05 cr. and consequently interest on working capital has also increased to Rs. 197.57 Cr against the approved interest on working capital of Rs. 187.37 Cr. Accordingly, HPGCL has sought true up of Rs. 10.20 Crore (Rs. 197.57 Crore minus Rs. 187.37 Crore).

The Commission has considered the above submissions and observes that the actual interest on working capital including timely payment rebate allowed to DISCOMs, as per the audited accounts is Rs. 101.89 Crore, as against the approved figure of Rs. 187.37 Crore. Thus, there is substantial difference in between the interest on working capital allowed by the Commission and actual interest on working capital incurred by HPGCL. The Commission further observes that several generating units of HPGCL remained backed down for considerable time, hence, HPGCL's revenue decreased from the normative level of Rs. 8071.40 Crore to Rs. 5462.60 Crore. Further, the actual generation was also lower in the FY 2018-19 at 9983 MU as against the normative level of 18807 MU.

The Commission observes that there is substantial reduction in PLF of all the generating units which is primarily attributable to backing down by the Discoms, is the main reason of lower working capital requirement.


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Further, as per letter no. letter no. 26/11/2019-Coord dated 22.01.2020 received from Deputy Secretary, Government of India, Ministry of Power, enclosing minutes of conference of the Power Ministers of States and UTs held on 10th-11th October, 2019 at Tent City, Narmada, Gujarat, it was decided that "the Central Commission may issue necessary regulations for reduction in tariff in case of advance payment to the generator. Appropriate Commission shall ensure that the generation/transmission tariff is duly adjusted due to the reduction in the working capital requirement."

The Commission observes the provisions of Regulation 81 of HERC MYT Regulations, 2012, regarding inherent powers of the Commission to make Orders for ends of justice or to protect consumer's interest, which are reproduced hereunder: -

"81. SAVING OF INHERENT POWERS OF THE COMMISSION

81.1 Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to protect consumers' interest or to prevent the abuse of the process of the Commission.

81.2 Nothing contained in these Regulations shall limit or otherwise affect the inherent powers of the Commission from adopting a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of the matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient to depart from the procedure specified in these Regulations.

81.3 Nothing in these Regulations shall, expressly or by implication, bar the Commission to deal with any matter or exercise any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit."

The Commission observes the DISCOMs have made payment to the generators in advance before the due date and deducted prepayment rebate from HPGCL, amounting to Rs. 74.90 Crore, during the FY 2018-19 which forms part of actual interest on working capital of HPGCL for the FY 2018-19 (Rs. 101.89 Crore). Excluding such rebate of Rs. 74.90 Crore, actual interest on working capital of HPGCL for the FY 2018-19 remains at Rs. 26.99


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Cr. (Rs. 101.89 Cr. minus Rs. 74.90 Cr.), as against the approved interest on working capital of Rs. 187.37 Cr.

The Commission, in exercise of the power conferred upon it by Regulation 81 of HERC MYT Regulations, 2012 as amended from time to time, pass on the early payment rebate of Rs. 74.90 Cr. to DISCOMs, in order to implement the decision taken in the conference of the Power Ministers of States and UTs held on 10th-11th October, 2019 and HPGCL is allowed to claim true-up of actual interest on working capital amounting to Rs. 26.99 Cr. only.

The Commission further observes that actual interest on working capital is Rs. 26.99 Cr. only, as against the approved interest on working capital of Rs. 187.37 Cr. This is primarily due to lower generation due to backing down of HPGCL power plants, thereby needing less working capital. Accordingly, the Commission true-up the interest on working capital to the actual level of Rs. 26.99 Cr. and allows the balance Rs. 160.38 Cr. (Rs. 187.37 Cr. – Rs. 26.99 Cr. = 160.38 Cr.) to be pass through to DISCOMs.”

(ii) **Order dated 18.02.2021 in Petition No. 76 of 2020:**

“HPGCL submitted that the Commission in its Order dated 07.03.2019 regarding generation tariff for FY 2019-20 had allowed average coal and oil prices at prevailing market prices, as proposed by it. However, there has been variation in prices of coal and oil during the FY 2019-20. Therefore, while computing the true-up of working capital FY 2019-20, actual rate of coal and oil prevailing in FY 2019-20 has been considered.

Due to variation in the Fuel prices the normative working capital requirement for FY 2019-20, as per the approved norms of the HERC, has increased to Rs. 1869.97 Cr against the approved working capital requirement of Rs. 1767.29 cr. and consequently interest on working capital has also increased to Rs. 183.25 Cr (@ 9.8%) against the approved interest on working capital of Rs. 175.85 Cr. (@ 9.95%). Accordingly, HPGCL has sought true up of Rs. 25.68 Cr. (Rs. 183.25 Cr. minus Rs. 175.85 Cr. plus unrecovered amount of Rs. 18.28 Cr.).

The Commission has considered the above submissions and observes that the actual interest on working capital including timely payment rebate allowed to DISCOMs, as per the audited accounts is Rs. 68.90 Cr., as against the approved figure of Rs. 175.85 Cr. Thus, there is substantial difference in between the interest


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on working capital allowed by the Commission and actual interest on working capital incurred by HPGCL. The Commission further observes that several generating units of HPGCL remained backed down for considerable time, hence, HPGCL's revenue decreased from the normative level of Rs. 7601.77 Crore to Rs. 4206.60 Crore. Further, the actual generation was also lower in the FY 2019-20 at 7330 MU as against the normative level of 17335 MU.

The Commission observes that there is substantial reduction in PLF of all the generating units which is primarily attributable to backing down by the Discoms, is the main reason of lower working capital requirement.

Further, as per letter no. letter no. 26/11/2019-Coord dated 22.01.2020 received from Deputy Secretary, Government of India, Ministry of Power, enclosing minutes of conference of the Power Ministers of States and UTs held on 10th-11th October, 2019 at Tent City, Narmada, Gujarat, it was decided that "the Central Commission may issue necessary regulations for reduction in tariff in case of advance payment to the generator. Appropriate Commission shall ensure that the generation/transmission tariff is duly adjusted due to the reduction in the working capital requirement."

The Commission observes the provisions of Regulation 81 of HERC MYT Regulations, 2012, regarding inherent powers of the Commission to make Orders for ends of justice or to protect consumer's interest, which are reproduced hereunder: -

***81. SAVING OF INHERENT POWERS OF THE COMMISSION**

81.1 Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to protect consumers' interest or to prevent the abuse of the process of the Commission.

81.2 Nothing contained in these Regulations shall limit or otherwise affect the inherent powers of the Commission from adopting a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of the matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient to depart from the procedure specified in these Regulations.

81.3 Nothing in these Regulations shall, expressly or by implication, bar the Commission to deal with any matter or


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exercise any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit."

The Commission observes the DISCOMs have made payment to the generators in advance before the due date and deducted prepayment rebate from HPGCL, amounting to Rs. 55.60 Crore, during the FY 2019-20 which forms part of actual interest on working capital of HPGCL for the FY 2019-20 (Rs. 68.90 Crore). Excluding such rebate of Rs. 55.60 Crore, actual interest on working capital of HPGCL for the FY 2019-20 remains at Rs. 13.30 Crore (Rs. 68.90 Crore minus Rs. 55.60 Crore), as against the approved interest on working capital of Rs. 175.85 Cr.

The Commission, in exercise of the power conferred upon it by Regulation 81 of HERC MYT Regulations, 2012 as amended from time to time, pass on the early payment rebate of Rs. 55.60 Crore to DISCOMs, in order to implement the decision taken in the conference of the Power Ministers of States and UTs held on 10th-11th October, 2019 and HPGCL is allowed to claim true-up of actual interest on working capital amounting to Rs. 13.30 Crore only.

The Commission further observes that actual interest on working capital is Rs. 13.30 Crore only, as against the approved interest on working capital of Rs. 175.85 Cr. This is primarily due to lower generation due to backing down of HPGCL power plants, thereby needing less working capital. Accordingly, the Commission true-up the interest on working capital to the actual level of Rs. 13.30 Crore and allows the balance Rs. 162.55 Crore (Rs. 175.85 Crore – Rs. 13.30 Crore) to be pass through to the DISCOMs."

(iii) **Order dated 20.02.2022 in Petition No. 44 of 2021:**

"HPGCL has submitted that the Commission in its Order dated 24.04.2020 regarding generation tariff for FY 2020-21 had allowed average coal and oil prices at prevailing market prices, as proposed by it. However, there has been variation in prices of coal and oil during the FY 2020-21. Therefore, while computing the true-up of working capital FY 2020-21, actual rate of coal and oil prevailing in FY 2020-21 has been considered.

Due to variation in Fuel prices, the interest on normative working capital requirement for FY 2020-21, as per the approved norms of the HERC, has decreased to Rs 106.03 Cr against the approved interest on working capital of Rs 109.668Cr. HERC has approved the Interest on Working Capital @ 8.65% (7.40%+1.25%). However, due to change in interest rate, the allowable IWC as per Regulation 22.2 of MYT 2019 has been reduced to 8.60% which is


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liable to be pass through under the True-up. HPGCL has requested to allow the difference of Rs 17.75 Cr. as true-up of interest on working capital for FY 2020-21, as tabulated below:-

Particular	Approved	Normative	Actual	Recovered	True-up
	IWC	IWC	IWC	IWC	Rs. Cr.
	(Rs. Cr.)	(Rs. Cr.)	(C)	(D)	E=C-D
	@ 8.65%	@ 8.60%			
	(A)	(B)			
Interest on working capital	109.668	106.03	115.45	97.70	17.75

The Commission has considered the above submissions and observes that the actual interest on working capital amounting to Rs. 115.45 Crore claimed by HPGCL, includes an amount of Rs. 80.43 Crore notional interest with corresponding credit to the "Provision for IWC and Additional Auxiliary Consumption" appearing under Note 27 of the audited financial statements. It also includes an amount of Rs. 0.21 Crore as the rebate allowed for timely payments by DISCOMs.

As per letter no. letter no. 26/11/2019-Coord dated 22.01.2020 received from Deputy Secretary, Government of India, Ministry of Power, enclosing minutes of conference of the Power Ministers of States and UTs held on 10th-11th October, 2019 at Tent City, Narmada, Gujarat, it was decided that "the Central Commission may issue necessary regulations for reduction in tariff in case of advance payment to the generator.

Appropriate Commission shall ensure that the generation/transmission tariff is duly adjusted due to the reduction in the working capital requirement."

The Commission observes the provisions of Regulation 81 of HERC MYT Regulations, 2019, regarding inherent powers of the Commission to make Orders for ends of justice or to protect consumer's interest, which are reproduced hereunder: -

"81. SAVING OF INHERENT POWERS OF THE COMMISSION

81.1 Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to protect consumers' interest or to prevent the abuse of the process of the Commission.

81.2 Nothing contained in these Regulations shall limit or otherwise affect the inherent powers of the Commission from adopting a procedure, which is at variance with any of the


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provisions of these Regulations, if the Commission, in view of the special circumstances of the matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient to depart from the procedure specified in these Regulations.

81.3 Nothing in these Regulations shall, expressly or by implication, bar the Commission to deal with any matter or exercise any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit."

The Commission, in exercise of the power conferred upon it by Regulation 81 of HERC MYT Regulations, 2019 as amended from time to time, pass on the early payment rebate of Rs. 0.21 Crore to DISCOMs, in order to implement the decision taken in the conference of the Power Ministers of States and UTs held on 10th-11th October, 2019.

Further, HPGCL ought not to claim 'notional' interest on working capital without actually incurring the same. Accordingly, an amount of Rs. 80.43 Crore claimed by HPGCL as part of interest on working capital is disallowed.

The actual interest on working capital after reducing these two claims, is Rs. 34.81 Crore (Rs. 115.45 Crore minus Rs. 80.43 Crore minus Rs. 0.21 Crore), as against the approved amount of Rs. 109.668 Crore.

Thus, there is substantial difference in between the interest on working capital allowed by the Commission and actual interest on working capital incurred by HPGCL. The Commission further observes that several generating units of HPGCL remained backed down for considerable time, hence, HPGCL's revenue decreased from the normative level of Rs. 6084.54 Crore to Rs. 2947 Crore. Further, the actual generation was also lower in the FY 2020-21 at 5709 MU (34% of the approved generation) as against the normative level of 16728 MU.

The Commission observes that substantial reduction in PLF of all the generating units which is primarily attributable to backing down by the Discoms, is the main reason of lower working capital requirement.

Accordingly, the Commission admits true-up of the interest on working capital to the actual level of Rs. 34.81 Crore and allows the balance Rs. 74.85 Crore (Rs. 109.66 Crore – Rs. 34.81 Crore) to be passed on to the DISCOMs".


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(iv) Order dated 25.01.2023 in Petition No. 64 of 2022:

"HPGCL has submitted that the Commission, in its Order dated 18.02.2021, regarding generation tariff for the FY 2021-22 had allowed interest on Working Capital amounting to Rs. 92.51 Crore, considering average coal and oil prices, as proposed by it. However, there has been variation in prices of coal and oil during the FY 2021-22. Therefore, while computing the 'true-up' of Working Capital for the FY 2021-22, actual rate of coal and oil prevailing in the FY 2021-22 has been considered.

Due to variation in Fuel prices, the interest on normative working capital requirement for FY 2021-22, as per the approved norms of the HERC, has increased to Rs 94.52 Cr against the approved interest on working capital of Rs 92.51 Cr. HERC has approved the Interest on Working Capital @ 8.25%

(7%+1.25%). Thus, due to change in fuel cost and same rate of interest, the allowable IWC as per Regulation 22.2 of MYT 2019 has increased. However, HPGCL has not proposed any true-up, on account of non-availability of RGTPP2 & DCRTPP1.

The Commission has considered the above submissions and observes that the actual interest on working capital amounting to Rs. 98.59 Crore claimed by HPGCL, includes an amount of Rs. 54.51 Crore notional interest with corresponding credit to the "Provision for IWC and Additional Auxiliary Consumption" appearing under Note 27 of the audited financial statements.

In this regard, the Commission has observed that the issue has already been discussed and decided by this Commission in the previous ARR orders dated 18.02.2021 and 22.02.2022. The detailed discussion and view of the Commission recorded in the order dated 22.02.2022 is reproduced hereunder: -

"Further, HPGCL ought not to claim 'notional' interest on working capital without actually incurring the same. Accordingly, an amount of Rs. 80.43 Crore claimed by HPGCL as part of interest on working capital is disallowed."

In this regard, HPGCL should claim actual interest cost incurred and may not agitate the same issue by taking different grounds, repetitively, as the decisions of the Commission are considered decisions, unless the same is warranted by change in law or decision of higher judicial authorities of competent jurisdiction.


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Further, HERC MYT Regulations (2nd amendment), 2019, provides as under: -

"22. Interest on Working Capital:

*.....
Provided further that True up of the interest on working capital shall be limited to the actual interest on working capital."*

In view of the above, the actual interest on working capital after reducing notional claims, is Rs. 44.08 Crore (Rs. 98.59 Crore minus Rs. 54.51 Crore), as against the approved amount of Rs. 92.51 Crore.

Thus, there is substantial difference between the interest on Working Capital allowed by the Commission and actual interest on working capital incurred by HPGCL. The Commission further observes that several generating units of HPGCL remained backed down/shut down for a considerable period of time, hence, HPGCL's revenue decreased from the normative level of Rs. 6670 Crore to

Rs. 3970 Crore. Further, the actual generation was also lower in the FY 2021-22 at 8297 MU (i.e. 55% of the approved generation) as against the normative level of 14914 MU.

The Commission observes that substantial reduction in PLF of all the generating units which is primarily attributable to backing down by the Discoms, is the main reason of lower Working Capital requirement.

Accordingly, the Commission admits true-up of the interest on working capital to the actual level i.e. Rs. 44.08 Crore and allows the balance Rs. 44.43 Crore (Rs. 92.51 Crore – Rs. 44.08 Crore) to be passed on to the beneficiaries i.e. DISCOMs."

(v) Order dated 20.02.2024 in Petition No. 67 of 2023:

"HPGCL has submitted that the Hon'ble Commission, in its Order dated 22.02.2022, while determining generation tariff for the FY 2022-23 had allowed interest on Working Capital amounting to Rs. 103.729 Crore, considering average coal and oil prices, as proposed by it. However, there has been variation in prices of coal and oil during the FY 2022-23. Therefore, while computing the 'truing-up' of Working Capital for the FY 2022-23, actual rate of coal and oil prevailing in the FY 2022-23 has been considered.

HPGCL has submitted that due to variation in Fuel prices, the interest on normative working capital requirement for FY 2022-23, as per HERC approved norms works out to Rs 128.70 Cr as


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against the approved interest on working capital of Rs 103.729 Cr. Further, HPGCL has sought the Interest on Working Capital @ 8.60% as against the approved rate of 8.50% (7%+1.5%). The actual interest on working capital incurred by HPGCL for the FY 2022-23 was Rs. 133.93 Crore.

The Commission has considered the above submissions and observes that SBI one-year MCLR rate as on 01.04.2022 was 7% and changed to 7.10% w.e.f. 15.04.2022. Accordingly, the rate applicable for the FY 2022-23, shall be as applicable on 01.04.2022 i.e. 7%. Hence, in line with the regulation i.e. MCLR + 150 basis points i.e. 8.5% shall prevail.

The Commission has considered the submissions of HPGCL that there was unprecedented rise in the demand for power in the FY 2022-23. In compliance to the directions of the Ministry of Power (MoP), HPGCL has to incur additional coal cost on import of coal and RCR coal. The Commission observes that actual PLF of PTPS 6, 7 & 8, during the FY 2022-23 was 72.44%, 84.37% and 76.67%, respectively. Whereas, the Commission, in its order dated 22.02.2022, had allowed interest on working capital on the basis of PLF of 55% with cost of coal @ Rs. 4448/MT to Rs. 4797/MT. Due to impact of imported coal and RCR coal, the average cost of coal for the FY 2022-23 worked out to @ Rs. 5978/MT to Rs. 6195/MT. The Commission observes that even considering the PLF at the actual level will give normative interest on working capital at Rs. 110.63 crore. Further, given the unprecedented year, the impact of increase in coal cost, ought to be considered.

Accordingly, the Commission allows true-up of the interest on working capital to the actual level i.e. Rs. 133.93 Crore as against the approved amount of Rs. 103.729 Crore. Consequently, Rs. 30.20 Crore has been considered for true-up of interest on working capital."

FFF. For that a bare perusal of the aforesaid orders makes it clear that this Hon'ble Commission has consistently changed the rules of interpretation and the principles implemented for truing up the IWC of the Review Petitioner for a particular financial year. Further, there has been no sufficient reasoning recorded to justify the decision of this Hon'ble Commission to deviate from the norms and to have different interpretations of the provisions in each


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succeeding year. Such action of this Hon'ble Commission is clearly in contravention of the directions of the Hon'ble Supreme Court in *BSES Judgment* as specified above.

GGG. For that the lack of consistency in approach of this Hon'ble Commission in truing-up of IWC also lies in teeth of the provisions of the National Tariff Policy, 2016 ("NTP 2016") which clearly highlights the importance of consistency in regulatory approach and conduct as a key objective of the electricity laws. The relevant provisions are reproduced hereinbelow:

"1.4. Balancing the requirement of attracting adequate investments to the sector and that of ensuring reasonability of user charges for the consumers is the critical challenge for the regulatory process. Accelerated development of the power sector and its ability to attract necessary investments calls for, inter alia, consistent regulatory approach across the country. Consistency in approach becomes all the more necessary considering the large number of States and the diversities involved.

(...)

4.0 OBJECTIVES OF THE POLICY:

The objectives of this tariff policy are to:

- (a) Ensure availability of electricity to consumers at reasonable and competitive rates;*
- (b) Ensure financial viability of the sector and attract investments;*
- (c) Promote transparency, consistency and predictability in regulatory approaches across jurisdictions and minimise perceptions of regulatory risks;*
- (d) Promote competition, efficiency in operations and improvement in quality of supply."*


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HHH. For that this Hon'ble Commission has also erred in seeking to rely upon the ITR filings of the Review Petitioner for determining the IWC and to compute the deductions to be made in relation to the Review Petitioner. However, the same is not permitted in the MYT Regulations 2019 since it specifies that the IWC truing up shall be conducted only on the basis of audited accounts of the Review Petitioner. This Hon'ble Commission is not empowered to rely upon any additional information without the same being allowed in the regulations. Further, any deviation from the regulations have to be sufficiently justified, however no such explanations / justifications have been provided by this Hon'ble Commission. Accordingly, it is evident that the Review Petitioner ought to be allowed the IWC as per the audited accounts, which are in compliance with the provisions of Regulations 13.1 read with Regulation 22 of the MYT Regulations 2019, as amended from time to time.

III. For that this Hon'ble Commission has erred in disallowing the interest accrued to the Review Petitioner by virtue of the Ash Fund and the Depreciation Fund. It is a matter of fact that the Ash Fund is to be maintained by the Review Petitioner pursuant to statutory mandate. It is reiterated that by virtue of Notification dated 03.11.2009 bearing no. 2804/(E) issued by the MoEF read with Sections 2, 3 and 5 of the Environment Protection Act, 1986, the Review Petitioner is mandatorily required to create and maintain an Ash Fund and utilize the same towards expenditure incurred on development of infrastructure, promotion and facilitation of activities pertaining to handling of fly ash specifically. Further, the


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aforesaid statutory provisions prescribe suitable penalty of imprisonment of up to 5 years for non-compliance with the provisions contained therein. Accordingly, any sums found in the Ash Fund, including the interest earned on the same, must mandatorily remain a part of the Ash Fund itself and no untoward adjustment can be made by this Hon'ble Commission in the contrary.

JJJ. For that this Hon'ble Commission has further proceeded to completely misinterpret the contents of the MoEF notification dated 03.11.2009 to contend that the same does not envisage the inclusion of interest earned in the Ash Fund. However, it is submitted that the spirit and objective of the MoEF notification is to ensure that all sums pertaining to the Ash Fund shall remain a part of such fund, including the interest earned from the same. Further, such amounts are to be utilized for a very specific set of activities, i.e., concerning the handling of fly ash. Accordingly, the disallowance of interest component on the Ash Fund by making appropriate adjustments under other tariff heads, being akin to transferring the interest away from the Ash Fund, is in clear contravention of the aforesaid statutory provisions. Further, the subject matter of Ash Fund is regulated by a separate legal provision pertaining to the environmental laws over which the regulatory authority is different and most humbly submitted that this Hon'ble Commission does not have jurisdiction on the usage and treatment of the same.


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KKK. For that the importance and need for maintaining the Ash Fund by the Review Petitioner has also been duly recorded and recognized in the Journal of Government Audit and Accounts (Issue 3) dated 03.08.2015, specifically highlighting that such fund shall be utilized for infrastructure development, promotion and facilitation activities for use of fly ash.

LLL. For that this Hon'ble Commission ought not to have conducted such a *suo motu* adjustment of the interest component from the Ash Fund. Notably, the treatment of amounts lying in the Ash Fund as per the Review Petitioner is in consonance with the standard practice followed by other similarly placed generating companies, such as NTPC. Further, this Hon'ble Commission has adopted such a divergent view even considering that no other state electricity regulatory commissions / central electricity regulatory commission has not set forth any precedent in support of the same. It is reiterated that such actions being in derogation of the norms ought to be sufficiently justified by this Hon'ble Commission.

MMM. For that this Hon'ble Commission has also incorrectly recorded the actual amount of interest that has accrued from the Ash Fund, thereby causing even further financial prejudice and peril to the Review Petitioner. It is reiterated that the actual interest quantum is INR 47.69 Crores, as evidenced from the entries in the balance sheet of the Review Petitioner as furnished vide the Petition. However, this Hon'ble Commission has incorrectly considered the same to be INR 80.32 Crores and has considered such amount


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for true-up of the IWC expenses. More importantly, this Hon'ble Commission failed to issue necessary rectification of such typographical error vide the Corrigendum dated 21.04.2025 issued to the Impugned Order despite the same being duly pointed out by the Review Petitioner vide its letter dated 02.04.2025. Accordingly, notwithstanding the erroneous manner in which such true-up has been carried out, the aforesaid typographical error has caused an additional burden of ~INR 33 Crores which is completely unwarranted and untenable.

NNN. For that the aforesaid constitutes an error apparent on the face of record in the Impugned Order considering the inconsistency in application of principles / methodology of true-up and being in teeth of the *BSES Judgment*, thereby qualifying as a sufficient cause for this Hon'ble Commission to review and adequately modify the Impugned Order.

(VII) Incorrect disallowance of the Capital Investment Plan for PTPS Unit – 6:

OOO. For that this Hon'ble Commission has erred in disallowing the CIP proposal submitted by the Review Petitioner pertaining to PTPS – 6 on the observation that the same is a vintage plant and can only be allowed after submission of RLA / RLE studies. However, the same does not take into account the actual status of the PTPS – 6 unit.


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PPP. For that this Hon'ble Commission ought to have appreciated the fact that the useful life of IT equipment, as specified in Appendix – II of the MYT Regulations 2019, is 6 (six) years. Further, this Hon'ble Commission has also noted the fact that vide its order dated 20.02.2024, the useful life of PTPS – 6 was extended by the official order of the Government of Haryana pursuant to the recommendation of the Central Electricity Authority ("CEA"). Accordingly, there cannot be any doubt that the PTPS – 6 unit is currently functional and is required to abide by the directions of the Government of Haryana to serve its extended useful life. As a natural corollary, the Human Machine Interface (HMI) parts of said generating unit are prime for an upgradation to allow the said unit to achieve the rated PLF and NAPAF. The aforesaid fact has also been corroborated by the OEM of the PTPS – 6. Therefore, it is incorrect for this Hon'ble Commission to acknowledge the above but fail to provide necessary reliefs in lieu of the same.

QQQ. For that this Hon'ble Commission ought to have considered that for FY 2024-25, the plant availability factor for PTPS – 6 is at ~77%, whereas the PLF is ~62.63%. However, the utilization of the said PTPS – 6 far exceeds the aforementioned ratings, thereby meaning that the generating unit is being overworked and accordingly require appropriate upgradation to handle the demand. In the absence of such upgradation, the Review Petitioner shall be constrained to shut down and box up the PTPS – 6 on account of repeated breakdown and failure to achieve the rated PLF and NAPAF. Such a scenario would lead to a major


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shortfall in total output for the Review Petitioner and ultimately have a prejudicial impact on the interests of the end consumers of electricity. Alternatively, in such a scenario, the electricity that would have to be wheeled from outside the state to compensate the PTPS – 6 would have a higher financial implication on the beneficiaries, being ~INR 10 Crore per month in excess, which would ultimately have to be borne by the end consumers and therefore goes against the objective of the Electricity Act.

RRR. This Hon'ble Commission has not appreciated the fact that the CIP proposal submitted by the Review Petitioner saw the implementation to be deferred for the future, along with overhauling activities to be conducted with the consent of the beneficiaries. This Hon'ble Commission therefore ought to have taken into consideration the holistic impact of its decision and ought to appreciate the detrimental effects of the same on the end consumers of electricity. The forced shut down of PTPS – 6 due to disallowance of overhauling and upgradation activities shall ultimately have a cascading financial impact on the beneficiaries and the end consumers of electricity owing to the need for purchasing more expensive power to compensate the supply lost due to the shut down of the PTPS – 6 unit. Accordingly, this Hon'ble Commission ought to review the Impugned Order and modify it suitably to rid the same of the aforesaid error apparent on the face of record.


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50. In view of the above facts and circumstances, the Review Petitioner is seeking review and modification of the Impugned Order. Further, it is submitted that currently no Appeal is pending against the Impugned Order dated 13.03.2025 passed in Petition No. 64 of 2024 and Review Petitioner, undertake to inform at the earliest, if any Appeal is filed during pendency of the present Review Petition.
51. The Review Petitioner reserves its right to supplement, add to and alter its submissions as may be necessary for the purposes of adjudication of present petition.
52. The present Review Petition is bonafide and is in accordance with law, and the same may be allowed.

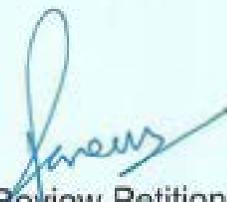
PRAYER

The Review Petitioner in view of the aforesaid facts and circumstances most humbly prays that this Hon'ble Commission may be pleased to:

- a) Review/modify the order dated 13.03.2025 passed by this Hon'ble Commission in Petition No. 64 of 2024 in light of the submissions made in the present Review Petition and accordingly grant the reliefs as prayed for herein; and


CE/Regulatory
HPGCL, Panchkula

- b) pass any other such order as this Hon'ble Commission may deem fit in the facts and circumstances of the present case.


Review Petitioner
CE/Regulatory,
HPGCL, Panchkula
Through



TABREZ MALAWAT / SYED HAMZA / SOURAJIT SARKAR /
RUPALI JAIN
ADVOCATES FOR THE REVIEW PETITIONER
THE GUILD,
ADVOCATES & ASSOCIATE COUNSEL,
C-586, LGF, DEFENCE COLONY, NEW DELHI – 110024
Tel: (+91) 011-40454829
E-MAIL: tabrez.malawat@theguild.co.in

Date:

Place: Panchkula, Haryana

Form



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Haryana Government



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Deponent

Name : Parveen arora

H.No/Floor : 772/ff

Sector/Ward : 16

Landmark : Panchkula

City/Village : Panchkula

District : Panchkula

State : Haryana

Phone : 94*****92



Purpose : AFFIDAVIT VERIFYING THE REVIEW PETITION to be submitted at Concern

The authenticity of this document can be verified by scanning this QR Code Through smart phone or on the website <https://panchkulastamp.gov.in/>

BEFORE HON'BLE HARYANA ELECTRICITY REGULATORY
COMMISSION, AT PANCHKULA



FILING NO. OF 2025

CASE NO. OF 2025

IN THE MATTER OF: Review Petition under Section 94 (1) (f) of Electricity Act, 2003 ("Act") read with Regulation 57 of Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 ("CBR 2019") seeking review of the Order dated 13.03.2025 in Petition No. 64/2024 passed by this Hon'ble Commission

AND

IN THE MATTER OF:

Haryana Power Generation Corporation Limited
C-7, Urja Bhawan, Sector-6,
Panchkula,
Haryana- 134109

...REVIEW PETITIONER

AFFIDAVIT VERIFYING THE REVIEW PETITION

I, Parveen Arora, S/o Shri Y. K. Arora, aged about 55 years, residing at House No. 772, First Floor, Sector 16, Panchkula, do solemnly affirm and say as follows:

23 APR 2025



1. I am working as Chief Engineer, Regulatory in Haryana Power Generation Corporation Limited, the Review Petitioner company in the above matter and am duly authorized by the said Review Petitioner to make this Affidavit.
2. There is no case pending in any court of law with regard to the matter referred to the Commission.
3. The statements made in paragraphs 1 -52 of the Review Petition herein shown to me are true to my knowledge and are based on information received by me from official record and I believe them to be true.

Suneer 23/04/25
 DEPONENT

CE/Regulatory,
 HPGCL, Panchkula

Place: Panchkula

Date: 23.04.2025

VERIFICATION

I, the deponent above-named, do hereby verify on this day the 23rd day of April, 2025 at Panchkula and state that the contents of the above affidavit to be true to the best of my knowledge, no part of it is false and nothing material has been concealed there from.

Place : Panchkula

Dated : 23.04.2025



Suneer 23/04/25
 DEPONENT

CE/Regulatory,
 HPGCL, Panchkula

ATTESTED

[Signature]
 M. S. SANGWAN
 NOTARY PUBLIC
 Panchkula, Haryana

23 APR 2025

