BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Case No. HERC/RA No. 02 of 2025
Date of Hearing : 23.07.2025
Date of Order : 17.09.2025

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 ("HERC 2019 Regulations") seeking review of the Order dated 13.03.2025 in Case No. HERC/Petition -64/2024 passed by this Hon'ble Commission.

Petitioner
Haryana Power Generation Corporation Limited (HPGCL)

Respondent
Nil

Present on behalf of the Petitioner
1. Mr. Tabrez Malawat, Advocate
2. Mr. Sourajit Sarkar, Advocate
3. Mr. Narender Sharma, Director/HPGCL
4. Mr. Vijay Jindal, CE/Regulatory HPGCL
5. Mr. Ravi Juneja, AEE/HPGCL

Quorum
Shri Nand Lal Sharma Chairman
Shri Mukesh Garg Member

ORDER

Brief Background of the case

1. The present review petition has been filed by Haryana Power Generation Corporation Limited (HPGCL), seeking the review /modification of Order dated 13.03.2025 read with the Corrigendum dated 21.04.2025 passed by this Hon'ble Commission in Case No. HERC/Petition -64 of 2024.

2. **Review applicant's submissions:-**

HPGCL has submitted as under:-

2.1 That the present Review Petition filed 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 ("HERC 2019 Regulations") seeking review of the Order dated 13.03.2025 in Case No. HERC/Petition-64/2024 passed by this Hon'ble Commission.

2.2 That on 21.11.2024, the Review Petitioner filed the 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.

2.3 That the Hon'ble Commission has disallowed various claims of the Review Petitioner.

2.4 That 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. 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.

2.5 That the Appellant has challenged the same issues before the Hon'ble APTEL also, vide other appeals bearing 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.

2.6 This the 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:

"*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 'true-up' 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 sub section (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 'true-up' 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."

2.7 That 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 truing-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 truing-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.

2.8 That 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 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.***"

3. That 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:

3.1 That the 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.

"*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 ensuring 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.

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-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."

HPGCL has submitted that it had filed 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:

Incorrect true-up of Employee Costs:

3.2 That the 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:-

"*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

HPGCL has submitted that while conducting the truing-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. The 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 trued-up, thereby constituting an error apparent on the face of record and warranting review by this Hon'ble Commission.

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

HPGCL has submitted that 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 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 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

74.126	*Total*
Services	*11,86,81,165.18*
Material	*41,07,36,087.76*
Grand Total	***53,94,17,252.94***

(…)

"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 DCRTPP 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

& DCRTPP, 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)."

HPGCL has submitted that the 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.

HPGCL has further submitted that Hon'ble Commission has 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.

HPGCL has submitted that the 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.

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

HPGCL has submitted that the Hon'ble Commission has trued-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."

HPGCL has submitted that 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. The 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 truing 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.

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

HPGCL has submitted that the 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:

*"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	RGTPS 1	RGTPS 2	WYC	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

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

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

HPGCL has submitted that the 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 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 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. 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**

The Petitioner has submitted that 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.

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

HGPCL has submitted that the Hon'ble Commission has not accurately implemented the provisions of Regulation 22 of the MYT Regulations 2019 while truing-up the IWC for the FY 2023-24. Further, there has been an incorrect 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.*

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: -

"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."

HPGCL has submitted that 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.

HPGCL has further submitted 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. 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 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. 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…*'.

HPGCL has further pointed out that the Impugned Order at pages 78 and 80, 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, of*

this Review Petition) and Note no. 43 (1) of the balance sheet (*Annexure – 6, 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 rectification of the aforesaid data. Accordingly, it has caused an additional financial burden on the Review Petitioner and the same requires immediate rectification.

HPGCL has additionally submitted that 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.

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

HPGCL has submitted that the 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 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 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 the 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."

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.

HPGCL has submitted that the 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 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.

3.9 That the following prayers have been made: -

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

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

Proceedings in the Case

4. In order to take the process forward, the Commission issued a Public Notice in two Newspapers having wide circulation in Haryana i.e. The Dainik Tribune (Hindi) and The Tribune (English) both dated 21.06.2025, for inviting comments/objections from the general public/stakeholders, on or before 15.07.2025 and intimating that hearing shall be held on 23.07.2025 in the court room of the Commission. The said public notice was also hosted on the website of the Commission under the heading "Public Notice". However, in response to the public notice, no comments / objections / suggestions were received in the Commission.

5. The public hearing was held on 23.07.2025, as scheduled. In response to the public notice no comments/ objections were filed by any stakeholder including the distribution licensees/HPPC. As such, no intervener was present in the hearing. Upon hearing the review petitioner, the Commission allowed them to file a copy of its written arguments.

6. Accordingly, the petitioner, filed its written submission on 30.07.2025. HPGCL has submitted as under:-

6.1 That HERC has disallowed various rightful claims of HPGCL by truing up in an inconsistent manner and incorrectly altering the methodology / interpretation of several provisions of the HERC (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling, Distribution and Retail Supply under Multi Year Tariff Framework) Regulations, 2019 ("MYT Regulations 2019"). It has essentially altered the principles by rethinking *de novo* at the truing up stage and retrospectively changed the methodology of tariff determination, thereby failing to maintain consistency in interpretation of truing up principles. Therefore, it is in contravention of the law settled by the Hon'ble Supreme Court in *BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission* [Civil Appeal No. 4324 of 2015] (*relevant paras – 52, 53, 55*)

"*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."

6.2 That various critical tariff parameters have been incorrectly trued up on the sole reasoning that the same have been utilized and finalized by the Hon'ble HERC previously and therefore stand settled accordingly. However, the same is in contravention of the settled position of law that *every year's tariff order is a separate and distinct cause of action* and therefore ought to

be independently adjudicated based on its merits. [*Delhi Transco Ltd. v. DERC & Ors.* (APL No. 133 of 2007) (*relevant para – 17*)].

"*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.*"

6.3 That application of "Approved v. Actual" instead of "Recovered v. Actual" principle; violation of Section 61 of the Electricity Act and Regulation 30 of MYT Regulations 2019:-

6.3.1 Review Petitioner is entitled to recover on the basis of actual availability instead of normative availability as per Clause 30 (b) of the MYT Regulation 2019 considering that it has already absorbed the financial impact from unrecovered tariff due to loss of availability below normative levels. However, Hon'ble Commission has applied principle of approved vs. actual, instead of recovered vs actual at the time of truing up. The cost which has not been recovered cannot be adjusted from the amount paid to the generating station.

Regulation 30 (a) and (b) of the MYT Regulations 2019 specifically provides for *recovery of capacity charges being linked to actual availability of generating unit*. The relevant portion is reproduced hereinbelow:

"*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 the norms specified under these Regulations. Payment of capacity charge by the beneficiaries shall be on monthly basis n 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 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.*"

6.3.2 The Hon'ble Commission has failed to appreciate the fact that the ability of HPGCL to recover capacity charges is directly linked to the actual availability of the plant. Therefore, any reduction in the plant availability factor below the specified limit under Regulation 30 & 28 (1) of the MYT Regulations, 2019, *the ability to recover charges shall reduce pro-rata*. The same is illustrated in the following table:

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

6.3.3 The Hon'ble Commission has incorrectly assumed that HPGCL has recovered the entire capacity charges based on NAPAF and not on actual availability of individual generating units. Since, some of HPGCL units have been unable to achieve the normative NAPAF, it has already been unable to recover the entire capacity charges and has already absorbed the financial impact out of the same while seeking the true up. Accordingly, the "Approved" cost in this scenario shall be the cost "Recovered" by HPGCL against actual availability.

6.3.4 The aforesaid interpretation of the Hon'ble Commission has led to double-dipping into the funds of HPGCL since it being forced to pay twice for the same expense. After having incurred the loss of capacity charges due to inability to achieve normative NAPAF, HPGCL is being

forced to bear the same expense again since the expenses are being trued-up by comparing the actual cost incurred against the cost that was approved by the Hon'ble HERC against normative NAPAF. Therefore, the Hon'ble HERC has considered such quantum of expenses which were never even recovered by HPGCL. The additional delta caused due to the erroneous consideration of 'approved' cost instead of 'recovered' cost is an out-of-pocket expense for HPGCL which has caused immense financial prejudice to HPGCL.

6.3.5 For example, if a person is hired to provide services for 10 hours at the rate of INR 100 per hour, the "approved cost" in this case would be INR 1000 against the "NAPAF" of 10 hours. However, due to certain circumstances not within his control, the service provider is only able to work for 8 hours, thereby earning INR 800, being his "recovered cost". Regardless, at the time of consolidating funds and "truing up" his expenses, the concerned authority has decided to calculate the same against the original "approved cost" of INR 1000 instead of what he has actually earned, i.e., INR 800. The service provider has already absorbed the financial impact of INR 200 which could not be earned due to lack of adequate hours. Therefore, the service provider is being forced to pay the additional INR 200 out of his own pocket along with INR 200 which he has never earned, thereby being worse off from where he started before the engagement. There would be negative loss of INR 200 from the total outflow of the person, thereby reducing the entitlement from INR 800 to INR 600.

6.3.6 The Hon'ble HERC has erred in altering the interpretation of the MYT Regulations 2019 unilaterally, effectively invoking its inherent powers without any valid justification. It is settled law that the power to invoke inherent powers must be exercised cautiously by the court and shall necessarily be accompanied by sufficient explanation and justification for such invocation. [*Union of India v. Paras Laminates (P) Ltd., reported as (1990) 4 SCC 453*, relevant para – 8]

> "*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"".

6.3.7 The erroneous interpretation of the Hon'ble HERC also lies in clear violation of Section 61 (d) of the Electricity Act since it leads to over-recovery from HPGCL and unjust enrichment of the distribution utilities. The revenue that has never been recovered by HPGCL is being forced to be taken out from the HPGCL and thereafter paid to the beneficiaries, thereby constraining HPGCL to incur out-of-pocket expenses of amount which was never paid to HPGCL. This is antithetical to the principle of ensuring reasonable recovery of costs to the generators and stands in teeth of 61 (d) of the Electricity Act.

6.3.8 The Hon'ble HERC has further erroneously trued up the costs of HPGCL by misinterpreting the MYT Regulations 2019. Further, the interpretation relied upon by the Hon'ble HERC has not been adequately justified in the Impugned Order. Instead, the Impugned Order merely specifies that the true-up is carried out as per "regulations in vogue". This is not a valid justification and does not provide clarity with respect to the specific provision allowing for such interpretation as relied upon by the Hon'ble HERC.

6.3.9 The Hon'ble HERC has further incorrectly deviated from the express provisions of the MYT Regulations, 2019, promulgated by the Hon'ble HERC itself under Section 181 of the Electricity Act. It is *trite* law that the Hon'ble HERC has to necessarily conform to the letter of the subordinate legislation created under Section 181 of the Electricity Act as long as the same is in line with the principles of the Electricity Act. [*PTC India v. CERC*, reported as (2010) 4 SCC 603, *relevant paras – 54*)]

"*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 7 6(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."

6.4 The incorrect treatment of Regulation 30 has caused significant financial prejudice to HPGCL since it has affected several critical tariff parameters as per the following (*Ground S, pg. 54 of the Petition*):

	HPGCL Proposed) (in Cr)	HERC(Allowed) (in Cr)	Impact on HPGCL (Crs)	Reasons for Disallowance
Employee Cost	160.43	94.57	65.86	Disallowed on account of Approved vs Actual Cost
R&M	130.26	36.80	93.46	Disallowed due to non-appreciation of nature of expenses. However, in the order the Commission itself agreed for the allowance of the same in past.
Interest & Finance Charges	9.02	-14.90	23.92	Disallowed due to incorrect application of sharing principles which are not applicable in case of pre-payment of loan amount.
Depreciation	0.00	-11	11	Disallowed on account of Approved vs Actual Cost.
RoE	0.23	-0.08	0.31	Adjustment of additional equity of 0.23 Cr. not considered. The Hon'ble Commission has again opted for the principle of "Approved vs Actuals"
Interest on working Capital	0.22	-125.62	125.84	Disallowed due to failure to apply amended Regulation 22 which provides for reimbursement of actual book value cost of the interest.
Non-Tariff income	-	-8.58	8.58	
Total True Up	300.16	-28.89	328.97	

Specific tariff parameters affected due to incorrect interpretation of truing up principles – "Approved v. Actual" instead of "Recovered v. Actual":

6.4.1 EMPLOYEE COST FOR THE FY 2023-24:

The portion of the Impugned Order containing the finding of the Hon'ble HERC is reproduced hereinbelow:

"*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 employee 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*

Submissions of HPGCL:

6.4.1.1 The Hon'ble HERC has failed to allow the Terminal Liability component of Employee Cost as per actuals, considering that Terminal Liability is an uncontrollable factor in terms of Regulation 8.3.8 (b) of the MYT Regulations 2019. Accordingly, the Terminal Liability component of Employee Cost cannot be subject to any true-up and ought to be allowed on actuals.

> "*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* |

6.4.1.2 Regulation 8.3.8 (b) of the MYT Regulations 2019 makes it abundantly clear that Terminal Liability is not a factor that is within the control of HPGCL. Such costs pertain to any change in pay scales or dearness allowances to be paid to the employees of HPGCL. Accordingly, the costs incurred *are influenced by external factors and not within the control of HPGCL and therefore ought to have been allowed on actuals*. Further, the expenses claimed have been independently verified by Sh A. Balasubramanian, senior consultant & actuary. Accordingly, there cannot be any doubt with respect to the validity and veracity of the amount claimed.

6.4.1.3 Further, the remaining portion of the Employee Cost, i.e., INR 160.43 Crores has been claimed based on actual availability achieved by the respective generating stations of HPGCL. By doing so, HPGCL has already absorbed the loss in capacity charges recoverable due to inability to achieve normative NAPAF, as per Regulation 30 (b). Therefore, for the purpose of true-up, the 'recovered cost' was to be considered as the 'approved cost' for contrasting against the 'actual cost'.

6.4.1.4 By truing up while considering the "approved cost" against "actual cost" of the employees, the Hon'ble HERC has led to double-dipping into the funds of HPGCL and has constrained to incur out-of-pocket expenses since it has to pass through benefits of the expenses which were never recovered in the first place. In view of the same, the recovery of INR 65.86 Crores

disallowed by the Hon'ble HERC ought to be allowed and same may be paid to the HPGCL along with carrying cost.

6.4.2 REPAIR & MAINTENANCE (R&M) COST FOR THE FY 2023-24:

The portion of the Impugned Order containing the finding of the Hon'ble HERC is reproduced hereinbelow:

"*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)."

Submissions of HPGCL:

6.4.2.1 The Hon'ble HERC has erroneously disallowed the expenses of INR 93.46 Crores incurred towards capital overhauling of HPGCL's generating stations from the purview of R&M expenses. It is noteworthy that R&M cost are important to achieve and sustain optimal generation of power. It is submitted that said cost were incurred on account of urgent situation and force majeure events. Further, costs were also spread over multiple generating plants and were required to be borne on immediate basis.

6.4.2.2 It is trite of law that Capital Investment Plan ("CIP") are prepared for a period of five years, and all expenses are difficult to be anticipated and included in the CIP. In the event of emergent situations, there are operating expenses which are not recorded in the CIP, however, same are required to be undertaken to ensure continuous supply of power. In such situation, HPGCL is left with no other option but to incur such expenditure and seek reimbursement of the same. Therefore, such expenses cannot be disallowed merely on

account of being not included earlier in CIP and that too without providing liberty to include the same in future CIP.

6.4.2.3 There is a clear divergence in the views of the Hon'ble HERC since it has failed to provide necessary relief for systematic capitalization of excess R&M expenses incurred due to overhauling of generating stations. Notably, the Impugned Order duly records the reasons and justifications behind the overhauling activities undertaken by HPGCL, largely in relation to HPGCL's plans for efficiency improvement measures and to enable the generating stations to achieve the prescribed PLF and to address the higher demand. Further, HPGCL has provided sufficient documentary evidence and breakdown of overhauling activities and associated costs, which has also been recorded in the Impugned Order.

6.4.2.4 The Hon'ble HERC has erroneously recorded that HPGCL has failed to provide sufficient justification and / or documentary evidence in lieu of the aforesaid claims. Without prejudice to any other submissions, it is trite to mention that the Hon'ble HERC is sufficiently empowered to seek additional information / clarification from HPGCL to satisfy itself of the claims raised. Therefore, if the Hon'ble HERC was dissatisfied with the documents / justifications furnished, it was well within its power to direct HPGCL to provide such other specific documents / justifications as the Hon'ble HERC deemed fit to assess the validity and veracity of the claims.

6.4.2.5 The Hon'ble HERC is further sufficiently empowered by virtue of Regulation 79 and 81 to exercise its inherent powers and relax the norms of the MYT Regulations 2019 in the interest of the party in who's favour the balance of convenience lies.

6.4.2.6 Capital overhauling expenses claimed by HPGCL are unavoidable expenses which were necessarily required to be incurred to meet the statutorily prescribed PLF and increased demand. R&M expenses of INR 93.46 Crores disallowed in the Impugned Order, may be allowed to be recovered along with the carrying cost.

6.4.3 INCORRECT TRUE-UP OF DEPRECIATION FOR FY 2023-24:

The portion of the Impugned Order containing the finding of the Hon'ble HERC is reproduced hereinbelow:

"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."

Submissions of HPGCL:

6.4.3.1 HPGCL has computed Depreciation by employing the straight-line method, being the industry standard and considering the actual availability achieved by the generating stations. Accordingly, the true-up ought to have been carried out by contrasting the actual cost against the recovered cost, and not the approved cost. The actual depreciation expense was INR 219.36 Crores, whereas the approved cost was INR 217.86 Crores for FY 2023-24 and the cost recovered was INR 178.71 Crores against actual availability. Therefore, the true-up ought to have been carried out as against the recovered cost against actual availability and the actual cost.

6.4.3.2 The straight-line method used by HPGCL to compute the Depreciation is not only the industry standard, but is also in compliance with the norms provided under Regulation 23 of the MYT Regulations 2019 for computing depreciation. It provides for the annual reduction in value based on a fixed rate prescribed in Appendix II of the MYT Regulations 2019 for a certain period, and thereafter the depreciation shall be spread out.

6.4.3.3 That moment assets are capitalized, expenses of the depreciation become due and payable in terms of percentage and norms fixed by this Hon'ble Commission. There is no room of interpretation or further application of any principles, including "Approved vs. Actual cost". Depreciation being natural corollary of the capitalization, recovery of the cost is not even dependent on the "Approved vs. Actual cost" and expenses are required to be paid to the HPGCL.

6.4.3.4 HPGCL has placed on record the amount allowed as per NAPAF is 206.78 Cr and recovered under Tariff is Rs 178.71 Cr, HPGCL has already taken the hit of Rs 28.07Cr, and the Commission has incorrectly allowed the true up of Rs (-) 11 Crore, which has not been recovered in the matter.

6.4.3.5 In view of the same, depreciation expenses of INR 11 Crores disallowed to HPGCL vide Impugned Order may be allowed by this Hon'ble Commission along with adequate carrying cost.

6.4.4 RETURN ON EQUITY (RoE) FOR THE FY 2023-24:

The portion of the Impugned Order containing the finding of the Hon'ble HERC is reproduced hereinbelow:

"*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*	*RGTPS 1*	*RGTPS 2*	*WYC*	*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*

Submissions of HPGCL:

6.4.4.1 HPGCL has submitted a claim as a difference in the RoE taking into account a proportionate adjustment of the additional equity infusions into HPGCL. The approved cost against normative NAPAF for the FY 2023-24 was INR 246.66 Crores, the revised RoE after yearly equity infusions was INR 246.94 Crores and the recovered sum is INR 199.11. Accordingly, the actual recovery based on the PAF actually achieved is INR 199.34 Crores [(199.11 / 246.66) * 246.94]. Further, the differential of INR 0.23 Crores, i.e., 199.34 Crores – 199.11 Crores also ought to be allowed.

6.4.4.2 HPGCL's computation is in compliance with Regulation 30 (b) of the MYT Regulations 2019 since the increase in RoE has been computed *by accounting for the impact of capitalization being carried in the FY 2023-24 while restricting itself to the actual availability*. Accordingly, the pro-rata reduction in recoverable amount has already financially prejudiced HPGCL, and on top of that, the Hon'ble HERC has added further financial burden by truing up the RoE on the basis of approved v. actual, *forcing HPGCL to incur out-of-pocket expenses for the sum never recovered in the first place.*

6.4.5 INTEREST & FINANCE CHARGES (I&FC) FOR THE FY 2023-24:

The portion of the Impugned Order containing the finding of the Hon'ble HERC is reproduced hereinbelow:

"*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.

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*

Submissions of HPGCL:

6.4.5.1 That the Hon'ble HERC has erroneously disallowed the claim for benefits accruing from pass through of NAV due to prepayment of loans by simply quoting its findings from previous true-up orders of HPGCL where the subject matter was considered. However, such linkage is unwarranted and unjustified in the Impugned Order. The Hon'ble HERC has taken a divergent stand and has failed to maintain consistency in its findings. Notably, the Hon'ble HERC has allowed the pass through of year-on-year savin*gs* as per Regulation 12.2 and 21.1 (v) of the MYT Regulations 2019. However, it has arbitrarily denied the claim for benefits accruing from prepayment of loans, i.e., the pass through of NAV. There is a severe lack of consistency in the findings of the Hon'ble HERC and the same is against the settled principle of law [*BSES*

Rajdhani Power Limited v. Delhi Electricity Regulatory Commission [Civil Appeal No. 4324 of 2015] (*relevant paras – 52, 53, 55*)].

6.4.5.2 Notwithstanding the above, it is trite to mention that the benefits accruing from the prepayment of loans is not covered under the incentive and penalty framework as per Regulation 12.2 of the MYT Regulations, 2019 and is therefore not amenable to the mandatory 50-50 sharing with the beneficiaries. Therefore, HPGCL is not compelled to share the benefits accruing from pass through of NAV on account of prepayment of loans.

"*12. INCENTIVE AND PENALTY FRAMEWORK (Sharing of gains & losses)*

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 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

(v) Restructuring of loan portfolio – Applicable when there is a net benefit from restructuring of loan portfolio."

6.4.5.3 In view of above, this Hon'ble Commission may direct recovery of deficit amount of INR 23.92 Crores disallowed to the HPGCL along with carrying cost.

6.4.6 INTEREST ON WORKING CAPITAL (IWC) FOR THE FY 2023-24:

The portion of the Impugned Order containing the finding of the Hon'ble HERC is reproduced hereinbelow:

"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 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 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: -

"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."

Submissions of HPGCL:

6.4.6.1 The Hon'ble HERC has carried out true-up of IWC based on the incorrect principles of "approved v. actual" instead of "recovered v. actual" and has further erred in ignoring the provisions of Regulation 22.2 as amended by the 2nd Amendment to the MYT Regulations 2019 dated 31.01.2022.

6.4.6.2 The amended provision clearly states that the *true-up of interest on working capital shall be limited to the actual interest on working capital*. The relevant portion is reproduced below:

"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"

6.4.6.3 The aforesaid Regulation, as amended by the 2nd Amendment to the MYT Regulations 2019, clearly provides for the treatment of IWC component as per the actual availability achieved against the normative NAPAF and therefore, the true up ought to have been carried out taking into account the amount actually recovered after absorbing the loss of capacity charges for lower PAF as per Regulation 30 (b) of the MYT Regulations 2019.

6.4.6.4 By failing to consider the express provisions of the 2nd Amendment to the MYT Regulations 2019 and relying upon the un-amended Regulation 22.2, the Hon'ble HERC has diverted from the express provision of the MYT Regulations 2019 and has further failed to maintain consistency in the truing up exercise.

6.4.6.5 It is not open for the Hon'ble HERC to ignore the amended provision despite the same having been notified prior to the passing of the Impugned Order. Further, the Impugned Order clearly records the provisions of the 2nd Amendment. Despite the same, the truing up exercise has been carried out in contravention of the 2nd Amendment by failing to carry out such exercise by limiting it to actuals. The Hon'ble HERC is bound by the express letter of a subordinate legislation promulgated under Section 181 of the Electricity Act [PTC India v. CERC, reported as (2010) 4 SCC 603, relevant paras – 54)].

6.4.6.6 The Hon'ble HERC has erroneously sought to rely upon the ITR filings of HPGCL for truing up, being in contravention of the provisions of Regulation 13.1 of the MYT Regulations 2019. It specifically provides for the truing up exercise to be carried out by relying upon the *audited accounts* of HPGCL only and does not allow for reliance upon any other document. The Hon'ble HERC is not empowered to go beyond the audited accounts submitted along with the Petition, having been audited by the Comptroller and Auditor General (CAG) – Haryana.

"*13. TRUING UP*

13.1 Truing-up of the ARR of the previous year shall be carried out along with mid-year performance review of each year of the control period only when the audited accounts in respect of the year(s) under consideration is submitted along with the application. In case audited accounts pertaining to the year, of which truing-up is to be undertaken, are not available, the generating company or the licensee as the case may be, shall submit the provisional account duly approved by the Board of Directors of the company / licensee."

6.4.6.7 The Hon'ble HERC has displayed a trend for altering the truing up methodology to 'approved v. actual' instead of 'recovered v. actual' in relation to HPGCL for previous financial years. Such alteration has been done without any justification or logical reasoning. The lack of consistency also lies in teeth of Clause 1.4 and 4.0 of the National Tariff Policy, 2016.

Re: Disallowance of interest accruing from "Ash Fund" and "Depreciation Fund"

6.4.6.8 Without prejudice to any other submissions, at the outset it is highlighted that the Impugned Order incorrectly records the figure of interest from Ash Fund as INR 80.32 Crores, whereas the actual amount is INR 47.69 Crores. HPGCL vide its petition and supporting documents clearly apprised the Hon'ble HERC of the actual quantum of interest [*as per balance sheet of HPGCL – Note No. 20 – 'Other equity'*]. Despite the same, the Impugned Order incorrectly records the same to be INR 80.32 Crores. The said error was never rectified by the Hon'ble HERC even after HPGCL highlighted the same pursuant to the passing of the Impugned Order requesting for a suitable corrigendum to that effect.

6.4.6.9 The Hon'ble HERC has disallowed the interest accruing from the "Ash Fund" and "Depreciation Fund" in the manner claimed by HPGCL. Notably, the "Ash Fund" is statutorily

mandated pursuant to the notification dated 03.11.2009 bearing No. 2804/(E) issued by the Ministry of Environment and Forests (MoEF) read with Sections 2, 3 and 5 of the Environment Protection Act, 1986 [Annexure – 8, Pg. 583 – 593 of the Review Petition]. The entire sum lying in the Ash Fund, including the interest accruing from the same, shall mandatorily remain a part of the Ash Fund and shall only be utilized for the specific purpose as notified by the MoEF.

6.4.6.10 Further, if HPGCL fails to comply with the specific directions, it would be liable to pay penalties as may be prescribed by the concerned authorities. Ash Fund importance has also been recognized in the Journal of Government Audit and Accounts (Issue 3) dated 03.08.2015.

6.4.6.11 The Hon'ble HERC has accordingly erred by failing to allow the interest accruing from the Ash Fund to remain a part of the said fund. By disallowing the claims of HPGCL, the Hon'ble HERC has effectively directed for money from the Ash Fund to be transferred / utilized elsewhere in deviation from the MoEF directions. Therefore, the Hon'ble HERC has left HPGCL vulnerable to strict action for non-compliance of the MoEF notification, inter alia involving hefty monetary penalties. The same shall further prejudice the already financially stricken HPGCL.

6.4.6.12 HPGCL's treatment of the Ash Fund, including the interest accruing from the same, is in consonance with the practice adopted by other thermal power plants such as NTPC. However, the views taken by the Hon'ble HERC are vastly divergent from the views adopted by other state electricity regulatory commissions / central commission. The Hon'ble HERC has not operated on any precedent established by any other competent court, or provide any justification for such divergence.

6.4.6.13 Similarly, the Hon'ble HERC has incorrectly disallowed the interest accruing from the Depreciation Fund without considering the fact that such interest amount necessarily forms a part of the Depreciation Fund itself and shall not be transferred anywhere else, unless such transfer conforms with its purpose and objective.

6.4.6.14 In view of above, Rs.125.84 Crores disallowed to HPGCL in relation to interest on working capital vide the Impugned Order may be allowed by this Hon'ble Commission along with carrying cost.

6.5 Incorrect disallowance of Capital Investment Plan for PTPS Unit – 6:

The portion of the Impugned Order containing the finding of the Hon'ble HERC is reproduced hereinbelow:

"*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 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 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 the 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."

Submissions of HPGCL:

6.5.1 The Hon'ble HERC has arbitrarily disallowed the CIP proposal on the incorrect observation that *the PTPS Unit – 6 is a vintage plant and can only be allowed after submission of RLA / RLE studies without considering the actual status of the said Unit*.

6.5.2 Appendix – II of MYT Regulations 2019 specifies the useful life of the Plant as 6 (six) years. The said useful life was extended by Government of Haryana on recommendation of the CEA, being duly recorded by the Hon'ble HERC vide order dated 20.02.2024. Therefore, it is evident that the PTPS Unit – 6 is currently functional.

6.5.3 The Hon'ble HERC has erred in failing to provide necessary reliefs sought by HPGCL despite acknowledging the aforesaid fact. It is trite to highlight that the HMI parts of the generating unit require suitable upgradation to allow the unit to achieve the rated PLF and NAPAF, the said fact being corroborated by the OEM of PTPS – 6.

6.5.4 For FY 2024-25, PAF is ~77% and PLF is ~62.63%. However, the utilization far exceed the aforementioned ratings which requires the plant to be overworked and cause additional strain on the individual parts. Therefore, it requires appropriate upgradation and maintenance work. Therefore, the expenses in lieu of the same ought to be allowed, in the absence of which HPGCL shall be constrained to box up PTPS-6 due to breakdown and repeated failure. In such circumstance, the public interest shall be affected due to reduction in available electricity, or alternatively, cause additional financial implication due to electricity being wheeled from outside states at more expensive rates, having a total additional impact of ~INR 10 Cr/month.

6.6 In terms of the submissions made hereinabove the petitioner has prayed that present Review Petition may be allowed and recovery of INR 328.97 Crores which were disallowed vide Impugned Order under various heads may be allowed along with carrying cost.

Commission's Analysis and Order

7. The Commission heard the arguments of the review applicant at length as well as perused the written submissions placed on record.

8. The Commission has considered it appropriate to settle the issue of maintainability of the present review petition filed against the Commission's impugned order dated 13.03.2025 (Petition No. 64 of 2024). The Commission has examined the judgement of Hon'ble Supreme Court in matter of Kamlesh Verma v. Mayawati and others [(2013) 8 SCC 320)] which spells out the scope of a review petition i.e. it is much more restricted and in order to be maintainable, the conditions precedent laid down for the purpose under Order 47 Rule 1 of Code of Civil Procedure 1908 must be satisfied. The summary of principles set by the Apex court are reproduced hereunder: -

"When the review will be maintainable:

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

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
(ii) Minor mistakes of inconsequential import.
(iii) Review proceedings cannot be equated with the original hearing of the case.
(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
(vi) The mere possibility of two views on the subject cannot be a ground for review.
(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

Further, Hon'ble Supreme Court in case of Jain Studios Limited through its President vs. Shin Satellite Public Co. Ltd. [2006(3) RCR (Civil) 601], has held that "*the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted."*

The conditions precedent laid down for the purpose of entertaining review application under Code of Civil Procedure 1908 as well the ratio decided by the Hon'ble Supreme Court in its various judgements giving guidelines for exercise of the power of review, were analyzed in detail by Hon'ble APTEL in its judgement dated 17.04.2013 (Review Petition no. 12 of 2012 in Appeal No. 17 of 2012). The operative part of the ibid judgement is as under:-

"46 <u>To sum Up</u>

(a) This is not a case where there is an apparent error on the face of the record. The grounds urged by the learned counsel for the Review Petitioner would relate to the merits of the matter on the basis of the alleged erroneous conclusions. This would be the province of the court of appeal. If the decision by this Tribunal is not correct, then the same cannot be corrected by this Tribunal in this Review Petition.

(b) The Review Petitioner has simply sought in the Review Petition for a fresh decision of the case on rehearing the entire matter. This is not permissible under the Review jurisdiction. The so called erroneous decision cannot be characterized as an apparent error on the

face of the record. Without indicating even remotely any apparent error, the Review Petitioner cannot be allowed to re-agitate the entire matter on merits.

(c) The Review Petitioner is unable to make a distinction between an Appeal and Review Petition. The issues raised by the Appellant/Review petitioner in this Review petition have already been dealt with and decided in our judgment. So, raising the same issues, which have already been decided, cannot be raised in the Review Petition as the same could be raised only in an Appeal since the scope of the Review Petition is very limited.

…….

"48. In this case also, as observed earlier, we are constrained to refer to the conduct of the Appellant which is highly reprehensible. As such, in this case also, we feel that some cost has to be imposed on the Review Petitioner."

The Commission has carefully examined the issues raised in the present review petition, in light of the principles set out in the Order 47 Rule 1 of Code of Civil Procedure 1908 as well as above-mentioned legal pronouncements. While doing so, the Commission has considered it appropriate to club the issues which are sub judice i.e. forms part of appeals pending before Hon'ble Appellate Tribunal for Electricity (APTEL) for the FY 2022-23, FY 2021-22, FY 2020-21 and FY 2019-20 (vide Appeal No. 171 of 2024, Appeal No. 316 of 2023, Appeal No. 163 of 2022, and Appeal No. 150 of 2021) and new issues arising out of impugned order dated 13.03.2025, as under:-

(A) Issue under Appeal before Hon'ble APTEL for the FY 2022-23, FY 2021-22, FY 2020-21 and FY 2019-20 (vide Appeal No. 171 of 2024, Appeal No. 316 of 2023, Appeal No. 163 of 2022, and Appeal No. 150 of 2021).

- i) True up of difference of recovered minus actual rather than approved minus actual.
  - a) True-up of Employee Costs
  - b) True up of depreciation
  - c) True-up of RoE
- ii) True-up of Interest on term loan:

(B) New issues arising out of impugned order dated 13.03.2025.

- i) True-up of Interest on working capital loan:
- ii) True-up of O&M expenses: Failure to allow additional Repair & Maintenance (R&M) expenses (Rs. 93.46 Cr) owing to overhauling activities:
- iii) Incorrect disallowance of Capital Investment Plan of PTPS Unit – 6

The above issued raised in the present review petition are analyzed and decided as under:-

9. **Issue under Appeal before Hon'ble APTEL for the FY 2022-23, FY 2021-22, FY 2020-21 and FY 2019-20 (vide Appeal No. 171 of 2024, Appeal No. 316 of 2023, Appeal No. 163 of 2022, and Appeal No. 150 of 2021).**

9.1 True up of difference of recovered minus actual rather than approved minus actual.

The Commission has examined the submissions of HPGCL that true up exercise in the impugned order has carried out 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, derailing the entire regulatory regime.

The Commission has considered it appropriate to examine the same, more closely, in order to find out any error apparent on the face of record. The relevant provisions are reproduced hereunder:-

"61. The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;

(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

(e) the principles rewarding efficiency in performance;

(f) multi year tariff principles;

(g) that the tariff progressively reflects the cost of supply of electricity and also, reduces and eliminates cross-subsidies within the period to be specified by the Appropriate Commission;

(h) the promotion of co-generation and generation of electricity from renewable sources of energy;

(i) the National Electricity Policy and tariff policy:

Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998 and the enactments specified in

the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier."

Regulation 30 of the MYT Regulations, 2019 is also reproduced hereunder: -

"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 of 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 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;

(c) The capacity charge payable to a thermal generating plant (in Rs.) for a calendar month shall be calculated in accordance with the following formula: -

CC1= (AFC/12) (PAF1 / NAPAF) subject to ceiling of (AFC/12)

CC2 =((AFC/6) (PAF2 / NAPAF) subject to ceiling of (AFC/6)) – CC1

CC3 =((AFC/4) (PAF3 / NAPAF) subject to ceiling of (AFC/4)) – (CC1+CC2)

CC4 =((AFC/3) (PAF4 / NAPAF) subject to ceiling of (AFC/3)) – (CC1+CC2+CC3)

CC5 = ((AFC x 5/12) (PAF5 / NAPAF) subject to ceiling of (AFC x 5/12)) – (CC1+CC2 +CC3+CC4)

CC6 = ((AFC/2) (PAF6 / NAPAF) subject to ceiling of (AFC/2)) – (CC1+CC2+CC3+CC4 + CC5)

CC7= ((AFC x 7/12) (PAF7 / NAPAF) subject to ceiling of (AFC x 7/12)) – (CC1+CC2 +CC3 +CC4 + CC5 + CC6)

CC8 = ((AFC x 2/3) (PAF8 / NAPAF) subject to ceiling of (AFC x 2/3)) – (CC1+CC2 +CC3 +CC4 + CC5 + CC6 + CC7)

CC9 = ((AFC x 3/4) (PAF9 / NAPAF) subject to ceiling of (AFC x 3/4)) – (CC1+CC2 +CC3 +CC4 + CC5 + CC6 + CC7+ CC8)

CC10 = ((AFC x 5/6) (PAF10 / NAPAF) subject to ceiling of (AFC x 5/6)) – (CC1+CC2 +CC3 +CC4 + CC5 + CC6 + CC7 + CC8 + CC9)

CC11 = ((AFC x 11/12) (PAF11 / NAPAF) subject to ceiling of (AFC x 11/12)) – (CC1+CC2+CC3 +CC4 + CC5 + CC6 + CC7 + CC8 + CC9 + CC10)

CC12 = ((AFC) (PAFY / NAPAF) subject to ceiling of (AFC)) – (CC1+CC2+CC3+CC4 + CC5 + CC6 + CC7 + CC8 + CC9 + CC10 + CC11)

Provided that in case of generating station or unit thereof is under shutdown due to Renovation and Modernization, the generating company shall be allowed to recover O&M expenses and interest on loan only.

Where,

AFC = Annual fixed cost specified for the year, in Rupees.

NAPAF = Normative annual plant availability factor in percentage.

PAFn = Percent Plant availability factor achieved upto the end of the nth month.

PAFY = Percent Plant availability factor achieved during the Year

CC1, CC2, CC3, CC4, CC5, CC6, CC7, CC8, CC9, CC10, CC11 and CC12 are the Capacity Charges of 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th months respectively."

Note: Till Intra – State ABT is implemented, Plant Availability Factor (PAF), wherever mentioned, shall mean Plant Load Factor (PLF). For working out annual PLF for the purpose of recovery of annual fixed charges, deemed generation on account of backing down on the instructions of SLDC or on the request of Discoms shall be included.

……..."

HPGCL has not pointed out which clause of Section 61 of the Electricity Act and Regulation 30 of the MYT Regulations, 2019, the Commission has ignored while conducting true-up exercise. Section 61 of the Electricity Act, 2003, gives mandate to SERC to specify terms & conditions for the determination of tariff and Regulation 30 of the MYT Regulations, 2019 has specifically provided that *"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."*

In this regard, the Commission observes that the issue has been examined and decided in detail in the previous ARR order(s) as well as in the impugned order. In this regard, it is relevant to reproduce the operative part of the impugned order dated 13.03.2025, as under:-

"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 below: -

> *"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 times 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 target 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.*
>
> ***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-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 the FY 2023-24, the actual expenditure as per the audited accounts of the 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 the true-up amount in accordance with the provisions of the MYT Regulations, 2019."

HPGCL, in its every petition filed annually for determination of generation tariff, has raised the same argument, which is against the express provisions of the MYT Regulations, clarified by this Commission in so many words that 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 and that regulation 13.4 which 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 ensuring year of the control period by appropriate resetting of tariff.", is meant for DISCOMs only, where the ARR may remain unrecovered through tariff due to estimation based approvals.

In view of the above discussions, the Commission is of the considered view that the review of the present issue is not maintainable and ought to be rejected on various legal doctrines such as 'Res Judicata', 'Res Sub-judice' and 'Forum Shopping'. Further, it is not open for the petitioner to re-agitate the issues without identifying errors apparent or bringing to the record new facts and figures that were not available at the time of passing of the impugned order. A manifest illegality must be shown to exist or a patent error must be shown in an order to review a judgement. The bar against re-consideration of its own decision is a settled principle in adjudicatory jurisprudence. Once a case has been finally heard and adjudicated upon by the authority concerned, the resultant adjudication can be re-opened for consideration only in appellate jurisdiction.

Now, during the hearing held in the present case, HPGCL has taken an additional argument that they have already recovered fixed cost proportionate to the actual PAF (Plant Availability

Factor) and any further deduction from the fixed cost shall result in the reduction of already reduced recovery.

HPGCL has quoted the following example to make its case:
"if a person is hired to provide services for 10 hours at the rate of INR 100 per hour, the "approved cost" in this case would be INR 1000 against the "NAPAF" of 10 hours. However, due to certain circumstances not within his control, the service provider is only able to work for 8 hours, thereby earning INR 800, being his "recovered cost". Regardless, at the time of consolidating funds and "truing up" his expenses, the concerned authority has decided to calculate the same against the original "approved cost" of INR 1000 instead of what he has actually earned, i.e., INR 800. The service provider has already absorbed the financial impact of INR 200 which could not be earned due to lack of adequate hours. Therefore, the service provider is being forced to pay the additional INR 200 out of his own pocket along with INR 200 which he has never earned, thereby being worse off from where he started before the engagement. There would be negative loss of INR 200 from the total outflow of the person, thereby reducing the entitlement from INR 800 to INR 600."

The Commission has carefully examined the example quoted by the petitioner and observes that the whole concept of true-up conceptualize under Regulation 8.3.8 dealing with controllable and uncontrollable items of ARR, Regulation 13 dealing with True-up and Regulation 30 dealing with recovery of annual fixed charges for thermal power projects, of the MYT Regulations, 2019, has been misconstrued by the petitioner. In the example quoted by the petitioner, negative loss of Rs. 200 is not reduced from Rs. 800. In the true-up, in base amount of recovery on proportionate basis i.e. the 'approved cost' is revised to the extent of actual. In case, the 'approved cost' was Rs. 1000, applying the proportionality test on the basis of actual PAF 'recovered cost' was Rs. 800 and actual cost approved under true-up is Rs. 1100, then, the generator is allowed extra cost of Rs. 100 in proportion to the PAF i.e. 100*800/1000 = 80 in the example presented by the petitioner. Similarly, in case the 'approved cost' was Rs. 1000, applying the proportionality test on the basis of actual PAF 'recovered cost' was Rs. 800 and actual cost approved under true-up is Rs. 900, then, since the base amount eligible for recovery has changed i.e. Rs. 900 instead of Rs. 1000 meaning thereby that the generator has done excess recovery, the generator would be required to pay back extra cost recovered by it over and above the actual in proportion to the PAF i.e. 100*800/1000 = 80 in the example presented by the petitioner.

However, the said contention of the review petitioner, has been further examined in detail, with respect to each such issue raised, as under:-

9.1.1 True-up of Terminal Liabilities forming part of Employee Costs.

The review petitioner, in its original petition, had claimed the employee cost including terminal liabilities, as under:-

Rs. crore

Particular	FY 2023-24 (HERC Approved)	FY 2023-24 (Recovered)	FY 2023-24 (Audited)	Variance	True-Up claimed
	1	2	3	4 = (3-2)	5
Employee Cost	651.378	545.69	761.46	215.77	160.43
a) Employee salary			341.21		
b) Terminal Liability for 2023-24			420.25		

HPGCL had prayed in the original petition to allow the actual employee cost on proportionate basis on the basis of actual recovery (i.e. 545.69/651.378=83.78%) amounting to Rs 285.87 Cr (83.78% of Rs. 341.21 Cr) along with actual terminal liability of Rs 420.25 Cr., arriving at the true-up claim of Rs 160.43 Cr (i.e. Rs 420.25 Cr+ Rs 285.87 Cr-Rs 545.69 Cr), arguing that 'terminal liability' is an uncontrollable expenditure under Regulation 8.3.8(b) of MYT Regulation 2019.

The Commission, in its impugned order dated 13.03.2025, after examining the claim of HPGCL on the anvil of Regulation 8.3.8 (b) and Regulation 30 of the MYT Regulations, 2019, decided as under:-

"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. 386.88 crore is shown as "Other Comprehensive expense", instead of "employees 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 the 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*	*94.57*

"

From the examination of impugned order dated 13.03.2025, it is apparent that already recovered employee cost based on PAF, has not resulted in further reduction during True-up exercise, for the FY 2023-24. In fact, the same is increased by an amount of Rs. 94.57 crore. The Commission had allowed employee cost of Rs. 651.38 crore (including terminal liabilities of employees) in the order dated 25.01.2023, for the FY 2023-24, which is part of fixed cost. HPGCL has itself recovered the same at Rs. 545.69 crore (employee cost as well as terminal liabilities), applying the proportionate formulae enshrined in Regulation 30 of the MYT Regulations, 2019. However, during true-up exercise, taking a U-Turn, HPGCL had argued that this proportionate recovery test may be applied to employee cost excluding terminal liabilities, as terminal liability is uncontrollable expense as per Regulation 8.3.8 (b) of the MYT Regulations, 2019.

The Commission has examined Regulation 8.3.8 (a) of the MYT Regulations, 2019, which has explained the 'controllable' and 'uncontrollable', items of ARR elements. The ibid regulation provides that variation on account of uncontrollable items shall be treated as a

pass-through subject to prudence check/validation and approval of the Commission; Provided that the Commission may allow variations in controllable items on account of Force Majeure events, as defined under these Regulations and also those attributable to uncontrollable factors as pass-through in the ARR for the ensuing year based on actual values submitted by the generating company and licensees and subsequent validation and approval by the Commission during true-up.

Thus, the 'controllable' and 'uncontrollable', items of ARR elements, has to be examined to arrive at the expenses admissible for true-up. However, the recovery of admissible expenses are governed by Regulation 30 of the MYT Regulations, 2019 which is based on Plant Availability Factor.

Accordingly, the Commission, in its impugned order dated 13.03.2025 (Petition No. 64 of 2024), had allowed total actual employee cost (including terminal liabilities) although out of terminal liability of Rs. 420.25 crore, only an amount of Rs. 33.37 crore was booked as 'employee cost' and balance amount of Rs. 386.88 crore was booked as "Other Comprehensive expense" which has accumulated to the extent of Rs. 2185.53 crore till 31.03.2024 under the head 'remeasurement of net defined benefit asset/liability (net of tax)'. The recovery of the same has been restricted to PAF based on Regulation 30 of the MYT Regulations, 2019.

In view of the above, the Commission decides that there is no error apparent on record of the impugned order, warranting this Commission to exercise its review jurisdiction, on this issue.

9.1.2 True up of depreciation.

HPGCL in its original petition (Petition No. 64 of 2024) had submitted as under:-

"113. The Actual depreciation of HPGCL for FY 2023-24 as per the audited accounts is Rs. 219.36Cr. This excludes the depreciation for solar assets to the tune of Rs. 3.91 Cr.

114. Further, Hon'ble Commission in its Order dated 31.10.2018 & 07.03.2019 has directed HPGCL not to claim depreciation on spares and dismantling cost on account of Ind AS. Depreciation on Capitalization of spares and decommissioning cost for FY 2023-24 in accordance Ind AS, is Rs. 4.25 Cr & Rs. 8.33Cr. Thus, HPGCL in compliance with aforesaid directives has excluded a sum up to Rs 12.58Cr. (4.25+8.33) from its true up claim of Depreciation.

115. Accordingly, the net allowable Depreciation for FY 2023-24 exclusive of Solar business and depreciation on spares and decommissioning cost worked out as Rs. 206.78Cr (219.36-12.58). The Approved depreciation for FY 2023-24 was Rs. 217.86 Cr.

116. The depreciation detail for the FY 2023-24 is as under:

in Rs Cr

S. No	***Unit***	***Approved***	***Actual as per audited accounts ****	***Dep. on GAAP Spares***	***Dep. on account of Ind AS***	***Net allowable dep.***	***Recovered Dep.***	***Variance***	***True up claimed***
A	*B*	*C*	*D*	*E*	*F*	*G=(D-E-F)*	*H*	*I=(G-H)*	*J*
1	*PTPS-6*	*2.02*	*2.10*	*0.08*	*1.31*	*0.71*	*1.71*	*-1.00*	*-1.00*
2	*PTPS-7-8*	*57.75*	*56.88*	*0.47*	*4.30*	*52.11*	*52.44*	*-0.33*	*-0.33*
3	*DCRTPS 1-2*	*56.47*	*57.70*	*1.22*	*1.42*	*55.06*	*56.47*	*-1.41*	*-1.41*
4	*RGTPS 1-2*	*95.81*	*96.92*	*2.48*	*1.30*	*93.14*	*62.69*	*30.47*	*30.47*
5	*Hydel*	*5.81*	*5.76*	*0*	*0*	*5.76*	*5.40*	*0.36*	*0.36*
	Total	***217.86***	***219.36***	***4.25***	***8.33***	***206.78***	***178.71***	***28.07***	***0***

**Excluding Solar business of Rs. 3.91Cr.*

117. HPGCL falls short of Rs 28.07 Crore against the actual depreciation of the HPGCL Units. It is worth to intimate that the shortfall in recovery of tariff is on account of shortfall in plant availability of HPGCL Units against the normative availability.

118. The reference is further invited to Regulation 13.4 of the MYT Regulations 2019 has specified as under:

" 13.4 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 subsequent control period."

119. It is worth to apprise that the interpretation of Regulation 13.4 applicability on the generator is pending at APTEL for adjudication. Thus, as the matter is sub judice and the actual recovery of the depreciation is less than the approved one, HPGCL is here by not claiming / offering under the depreciation head and same shall be claimed after the outcome of the appeal pending at APTEL.

120. Accordingly, the Hon'ble Commission is requested to take the note of above, please."

The Commission, in its impugned order dated 13.03.2025, after examining the claim of HPGCL on the anvil of Regulation 13 and 30 of the MYT Regulations, 2019, decided as under:-

"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."

From the examination of impugned order dated 13.03.2025, it is apparent that depreciation already recovered by HPGCL based on PAF, amounting to Rs. 178.71 crore was based on the original approved depreciation of Rs. 217.86 crore. Now, during true-up exercise, the original approved depreciation has been replaced with the actual depreciation amounting to Rs. 206.78 crore. Therefore, HPGCL is allowed to recover its fixed cost (depreciation in the present context) taking the base as Rs. 206.78 crore instead of Rs. 217.86 crore. Since, the base amount eligible for recovery has been reduced, the same will result in further reduction of recovered depreciation during True-up exercise, for the FY 2023-24.

The Commission observes that proportionate reduction of revised base amount of deprecation from Rs. 217.86 crore to Rs. 206.78 crore, will be Rs. 9.08 crore instead of Rs. 11.08 crore. Accordingly, (Minus) Rs. 9.08 crore instead of Rs. 11.08 Crore shall be considered for true-up of depreciation.

9.1.3 True-up of RoE (Return on Equity)

HPGCL in its original petition (Petition No. 64 of 2024) had submitted as under:-

"

Table 1:Details of Equity Employed (Rs. Cr.)

Plants	*Opening*	*Additions*	*Closing*	*RoE*
PTPS-6	*156.882*	*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*	*251.683*	*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***	***2,122.934***	***246.94***

Table 2:True-up of RoE (Rs Cr.)

Approved RoE (A)	Actual RoE (B)	Recovered RoE (C)	Variance in RoE Cost (B-C)	True up claimed (E)
246.66	**246.94**	**199.11**	**47.83**	**0.23**

*The Claim in the above table has been sought is basically the difference of RoE on the basis of addition of equity infusion on proportionate basis. The approved RoE as per the Hon'ble Commission order dated 25.01.2023, stands at Rs 246.66 Crore, whereas the revised RoE after yearly equity infusion is Rs 246.94. The recovered RoE on the basis of availability is Rs 199.11. Thus, on the basis of proportionate to recovery, the actual recovery on the basis of availability needs to be Rs 199.34 Cr ((199.11/246.66)*246.94). Thus, the difference of Rs 199.34 Cr-199.11 Cr = Rs 0.23 Cr needs to be allowed."*

The Commission, in its impugned order dated 13.03.2025, after examining the claim of HPGCL on the anvil of Regulation 13 and 30 of the MYT Regulations, 2019, decided as under:-

"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**	**RGTPS 1**	**RGTPS 2**	**WYC**	**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

"

From the above, it is apparent that the petitioner has itself claimed RoE on basis proportionate to plant availability, taking HPGCL as a whole. However, the Commission in its impugned order dated 13.03.2025, has computed the same on per unit basis. Therefore, the arguments of HPGCL, in its review petition, that the Commission has failed to consider the actual expenses recovered by the Review Petitioner against its actual availability, does not stands to logic.

Having decided as above, the Commission observes that base RoE, during true-up exercise has increased from Rs. 246.66 crore to Rs. 246.94 crore. Accordingly, Rs. 0.08 crore instead of (minus) Rs. 0.08 Crore shall be considered for true-up of RoE.

Needless to add that it will negate the stand of HPGCL that already recovered RoE has been further reduced during true-up exercise.

9.2 True up of Interest on term loan:-

HPGCL in its original petition (Petition No. 64 of 2024) had submitted as under:-

"122. Hon'ble Commission in its order dated 25.01.2023 had approved the interest and finance charges of Rs 49.02 Cr for FY 2023-24 after considering the 50% of the estimated savings on account of restructuring of loans to beneficiaries. The allowance made by the Hon'ble Commission is in line with Regulation 21.1 (v) of HERC MYT Regulation, 2019.

123. Actual Interest and Finance Charges for FY 2023-24 as per audited account is Rs. 18.75Cr excluding the interest of Rs 0.29Cr of Solar Business.

124. The saving in the Interest and Finance Charges is due to restructuring of its loan portfolio & advance Payments made by HPGCL by applying prudent financial management. Refinancing cost of such restructuring has already been allowed and adjusted by the Hon'ble Commission in its Tariff Orders while arriving on the approved interest and finance charges.

125. As per the Regulation 21.1 (v) of HERC MYT Regulation, 2019 the cost associated with the refinancing has to be borne by the beneficiaries and the net savings after deducting the cost of refinancing shall be subject to incentive and penalty framework as per Regulation 12.

126. The Interest and Finance charges for FY 2023-24 as per pre & post -restructuring Loan portfolio exclusive solar business is given below:

Table 20: Pre-Restructuring Loan Portfolio & Repayments schedule (Rs. Cr.)

Particulars	*Rate of Interest*	*Opening Bal*	*Drawls during the year*	*Repayments during the year*	*Closing Balance*	*Interest during the year*
GPF Bonds	*7.10%*	*20.35*	*0.00*	*6.78*	*13.56*	*1.20*
SBI DCRTPP YNR (PFC Takeover)	*12.50%*	*150.74*	*0.00*	*120.64*	*30.10*	*11.30*
REC	*12.25%*	*274.84*	*0.00*	*75.60*	*199.24*	*29.04*
State Bank of India(RGTPP)	*11.45%*	*235.02*	*0.00*	*101.64*	*133.38*	*21.09*
APDP Loan	*12.50%*	*2.66*	*0.00*	*0.15*	*2.52*	*0.33*
Punjab National Bank (Andhra Takeover)	*8.65%*	*0.00*	*0.00*	*0.00*	*0.00*	*0.00*
Punjab National Bank (Andhra Takeover Hisar)	*8.65%*	*0.00*	*0.00*	*0.00*	*0.00*	*0.00*
Punjab National Bank (REC Takeover)	*12.25%*	*61.21*	*0.00*	*20.52*	*40.69*	*6.24*
Nabard Loan	*5.25%*	*11.49*	*0.00*	*11.49*	*0.00*	*0.30*
Total		*756.30*	*0.00*	*336.82*	*419.48*	*69.51*

* Total Interest during the year excluding solar business 69.51-0.29 = Rs 69.22Cr

Table 3:Post -Restructuring (Actual) Loan Portfolio and Int. & Fin. Charges (Rs. Cr.)

Particulars	*Rate of Interest*	*Opening Bal*	*Additions during the year*	*Repayments during the year*	*Closing Balance*	*Interest during the year*
GPF Bonds	***7.10%***	*20.35*	*0.00*	*6.78*	*13.56*	*0.97*
SBI DCRTPP YNR		*0.00*	*0.00*	*0.00*	*0.00*	*0.00*
REC	***9.25%***	*226.75*	*0.00*	*75.60*	*151.15*	*17.77*
State Bank of India(RGTPP)		*0.00*	*0.00*	*0.00*	*0.00*	*0.00*
APDP Loan	***12.50%***	*2.66*	*0.00*	*0.15*	*2.52*	*0.01*

Punjab National Bank (Andhra Takeover)		*0.00*	*0.00*	*0.00*	*0.00*	*0.00*
Punjab National Bank (Andhra Takeover Hisar)		*0.00*	*0.00*	*0.00*	*0.00*	*0.00*
Punjab National Bank		*0.00*	*0.00*	*0.00*	*0.00*	*0.00*
Nabard Loan	***5.25%***	*11.49*	*0.00*	*11.49*	*0.00*	*0.29*
Punjab National Bank(SBI Takeover)		*0.00*	*0.00*	*0.00*	*0.00*	*0.00*
Total		***261.25***	***0.00***	***94.02***	***167.23***	***19.04***

∗Excluding solar business of Rs 0.29Cr the IFC is Rs 18.75Cr

127. As per the approved Tariff order dated 25.01.2023, the savings on account of restructuring of loans already stands pass through to beneficiaries. Thus, in view of the above loan portfolios, the table at page 31 of the order dated 25.01.2023 has been modified as under:

Table 22:Interest & Finance Charges (Rs. Cr.)

Particular	*Approved interest & Finance Charges*	*Actual interest & Finance Charges*	*Pre-restructuring interest & Finance Charges*	*Savings on account of restructuring of loan*	*Allowable interest & Finance Charges*	*Recovered by HPGCL*	*True-up*
1	*2*	*3*	*4*	*5= 4-3*	*6=3+50%(5)*	*7*	*8=6-7*
Int.&Fin. Charges (A)	*49.02*	*18.75*	*69.22*	*50.47*	*43.98*	*35.19*	*8.79*
Int. On Normative Debt(B)		*0.23*			*0.23*		*0.23*
Total True up of Int.& Fin. Charges(A+B)	***49.02***	***18.98***	***69.22***	***50.47***	***44.21***	***35.19***	***9.02***

128. The Hon'ble Commission is hereby requested to kindly approve the true-up of Rs 9.02 Cr on account of interest and Finance Charges."

HPGCL, in its review petition, has submitted that there has been an inconsistency in the manner in which this Hon'ble Commission has treated the Interest & Finance Charges (IFC) during true-up. Review Petitioner has not been allowed to retain the benefit of year on year saving in interest on term loan, in line with Regulation 12 read with Regulation 21.1. (v) of the MYT Regulations 2019, which is an error apparent on face of record, warranting this Commission to exercise its review jurisdiction.

The Commission, in its impugned order dated 13.03.2025, after examining the claim of HPGCL on the anvil of Regulation 12 and 21.1 (v) of the MYT Regulations, 2019, decided as under:-

"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, 22.02.2022 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 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****."*

(Emphasis added)

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.**

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**

"

The Commission, after analyzing and interpreting the relevant regulation clauses of MYT Regulations, 2019, has decided true-up based on the methodology described above, since FY 2019-20.

The Commission has allowed the petitioner to retain 50% of the saving of interest, in line with regulation clause 12 of HERC MYT Regulations, 2019, dealing with 'Incentive and Penalty Framework'. However, HPGCL has chosen to challenge the same by filing appeals before Hon'ble APTEL for the FY 2022-23, FY 2021-22, FY 2020-21 and FY 2019-20 (vide Appeal No. 171 of 2024, Appeal No. 316 of 2023, Appeal No. 163 of 2022, and Appeal No. 150 of 2021).

In view of the above discussions, the Commission is of the considered view that the review of the present issue is not maintainable and ought to be rejected on various legal doctrines such as ""Res Judicata", 'Res Sub-judice' and 'Forum Shopping". Further, it is not open for the petitioner to re-agitate the issues without identifying errors apparent or bringing to the table new facts and figures that were not available at the time of passing of the impugned order. A manifest illegality must be shown to exist or a patent error must be shown in an order to review a judgement.

In view of the above, the Commission decides that there is no error apparent on record of the impugned order, warranting this Commission to exercise its review jurisdiction, on this issue.

(B) **New issues arising out of impugned order dated 13.03.2025.**

10. True-up of Interest on working capital loan:

HPGCL has submitted that this Commission ought to have approved the interest cost on working capital on the basis of actual cost incurred and plant availability achieved by the Review Petitioner, in line with HERC (MYT) Regulations (2nd Amendment Regulations), 2019, reproduced hereunder:-

"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."

However, the Commission has subtracted interest earned on funds earmarked as '*Dry Fly Ash Fund Investment*' and '*Depreciation Reserve Fund Investment*' with the following observations:-

"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."

In this regard, HPGCL has submitted that it is the duty of the Review Petitioner to maintain the Ash Fund as per Notification dated 03.11.2009 bearing no. 2804/(E) issued by the Ministry of Environment and Forests ("MoEF") under the Environment Protection Act, 1986. The Commission has erroneously disallowed the interest earned from the Dry Ash fund and the Depreciation fund maintained by the Review Petitioner, by deviating from the standard operating practice of other State Electricity Regulatory Commissions whereby any amounts arising from such funds, including the interest component earned, forms part of that fund and cannot be subject to any adjustments / deductions for the purpose of true-up. The 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.

HPGCL has further submitted that there is an inadvertent error in the impugned order, where interest on the Ash Fund has been considered as INR 80.32 Crores, whereas, the same should be Rs. 47.69 crore.

The Commission has examined the submissions of HPGCL that the view taken in the impugned order is against the settled norms without providing sufficient reason. However, HPGCL has failed to appreciate that the settled norm duly explained in the impugned order is that a separate 'account head' for keeping track of the proceeds from sale of dry fly ash and its utilization is required to be, by virtue of the ibid notification of MoEF, which has not given any mandate for creation of 'separate fund'. Similar rule applies for 'Depreciation Reserve Fund'. Even in case, MoEF would have mandated to create 'separate fund' and not 'separate account', the financial prudence would have been to create 'earmarked current account' carved out of 'Cash Credit Account', so that interest on Cash Credit Account is levied on net balance.

However, taking cognizance of the financial difficulty faced by petitioner, the Commission has considered appropriate to allow interest on dry fly ash fund

amounting to Rs. 47.59 crore. Accordingly, para 15.5 of the ibid order on page 80 shall be read as under: -

"In view of the above, the Commission allows true-up of the interest on working capital to the actual level i.e. 110.65 crore (i.e. Rs. 129.69 Crore minus Rs. 19.04 crore) as against the approved amount of Rs. 155.95 Crore. The Commission further observes that the petitioner had recovered IWC amounting to Rs. 125.85 crore as against the allowed amount of Rs. 155.95 crore i.e. to the extent of 80.70%, based on Plant Availability Factor. Consequently, Rs. (minus) 45.30 Crore has been considered for true-up of interest on working capital, which shall be further reduced to Rs. (minus) 36.56 crore (45.30*80.70%), based on Plant Availability Factor.

11. True-up of O&M expenses: Failure to allow additional Repair & Maintenance (R&M) expenses (Rs. 93.46 Cr) owing to overhauling activities:

The Commission, in its impugned order had observed as under: -

"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 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*

74.126	*Total*
Services	*11,86,81,165.18*
Material	*41,07,36,087.76*
Grand Total	*53,94,17,252.94*

(…)

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 DCRTPP 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 & DCRTPP, 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).”

Now, HPGCL, in its review petition, has submitted that the Commission has trued-up the R&M expenses 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 and recorded in the Impugned Order. HPGCL has further submitted that the 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 Commission to review and appropriately modify the Impugned Order.

The Commission has examined the submissions of HPGCL and observes that it has neither sought capitalization of capital overhauling expenses, nor, was the same part of its capital investment plan. Submissions of HPGCL that Capital Investment Plan (“CIP”) is prepared for a period of five years, and it is difficult to include all expenses in the CIP, does not stands to logic as CIP submitted for five years is revised on continuous basis. It is no ground to claim the expenditure of capital nature as revenue expenditure. Further, HPGCL has not provided sufficient documentary evidence to enable the Commission to exercise its prudence check,

which was specifically sought by the Commission on two occasions. The Commission, vide its letter no. HERC/Tariff/4240 dated 12.12.2024 had sought the following information:-

"4. Details of expenditure claimed under True-up of R&M on account of excess capital overhauling of HPGCL Units to Rs 53.94 Cr for RGTPP, Rs 38.71 Cr for PTPS and Rs 0.81 Cr for DCRTPP and justification of claiming the same over and above the approved R&M expenses."

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*

74.126	*Total*
Services	*11,86,81,165.18*
Material	*41,07,36,087.76*
Grand Total	*53,94,17,252.94*

"

In the annexure, HPGCL submitted the summary of vouchers i.e. date, amount and detail narration stating 'store issued'.

The Commission, being not satisfied with the reply of HPGCL, directed in its interim order dated 16.01.2025, to provide the following details:-

"4.c Capital overhauling (Rs. 93.46 crore) has been claimed over and above the normative Repair and Maintenance, on account of capital overhauling. In this regard, the following may be provided:-

i. Details of capital overhauling done in the past.

ii. Whether incremental R&M over and above the norms, was claimed in the past on account of capital overhauling.

iii. Reasons for claiming expenditure on capital overhauling as part of R&M instead of CAPEX, in the FY 2023-24, whereas the same has been claimed as part of Capital Investment Plan for the FY 2026-27 and FY 2027-28.

iv. Sufficient details of capital overhauling expenditure (Rs. 93.46 crore), in order to enable the Commission to exercise its prudence check."

HPGCL filed its reply submitting 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. The insufficient details provided by HPGCL coupled with unjustified reasoning, did not pass the prudence check of the Commission.

In the review petition, HPGCL has averred that such expenses cannot be disallowed merely on account of being not included earlier in CIP and that too without providing liberty to include the same in future CIP. However, proper reasoning of disallowance was given in the impugned order as reproduced above.

In view of the above, the Commission decides that there are no errors apparent on record of the impugned order, warranting this Commission to exercise its review jurisdiction, on this issue. However, as a one of case which should not be taken as a precedence, HPGCL is allowed to consider to capitalize the expenses incurred on capital overhauling in the nature of CAPEX, in its books of accounts for the ensuing year (s) and claim depreciation on the same, as per actual, after providing the item-wise details of such capitalization made including other details such as salvage value of replaced parts, frequency of similar work, nature of work i.e. preventive maintenance or repair of already damaged equipment, guarantee given by the contractor in respect of the work done, impact on the life of the plant on account of work so done etc.

12. Incorrect disallowance of Capital Investment Plan of PTPS Unit – 6

The relevant extract of the impugned order of the Commission is as under: -

"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 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 (Max DNA) 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…….

…….. ***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, in its review petition, has submitted that the Commission has 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.

The Commission has examined the submissions of HPGCL and observes that the issue raised in the review against the impugned order dated 13.03.2025, has in fact arisen out of the order of the Commission dated 20.02.2024 (HERC/P. No. 67 of 2023), wherein the Up-gradation of PTPS Unit-6 HMI System of pro-control amounting to Rs. 21.60 crore, was not approved. Further, HPGCL has neither submitted the information desired in the order dated 20.02.2024 (i.e. cost-benefit analysis to establish the benefit stream, details of the scheme, bidding process followed, EOI, request for proposal, negotiation if any with the bidder & purchase order), along with the original petition nor with the review petition. Therefore, the non-approval/grievance has not arisen out of the impugned order.

In view of the above, the Commission decides that there is no error apparent on record of the impugned order, warranting this Commission to exercise its review jurisdiction, on this issue.

13. **Now, after considering the true-up allowed in the present review petition, as discussed earlier in this order, the additional amount allowed for true-up for the FY 2023-24, is arrived at Rs. 34.89 Crore. Accordingly, true-up for the FY 2023-24, on page 81 of the impugned order, shall be read as under:-**

(Rs. Crore)

	HPGCL (Proposed)	**HERC (Allowed)**
O&M Expenses	290.69	131.37
Depreciation cost	-	-9.08
Interest Cost	9.02	-14.90
ROE	0.23	0.08
Interest on working capital	0.22	-36.55
Non-Tariff Income	-	-8.58
Total True-up	300.16	62.34
Add: Holding Cost @ 9.80% from 01.04.2024 to 30.09.2025 (18 months)		9.16
Total True-up including holding cost		71.50

HPGCL shall recover the aforesaid amount of Rs. 71.50 Crore from the Discoms i.e. UHBVNL and DHBVNL.

14. In terms of the above findings / decisions, the review petition preferred by the HPGCL against the Commission's impugned Order dated 13.03.2025 (Petition No. 64 of 2024) is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 17.09.2025.

Date: 17.09.2025 Place: Panchkula	(Mukesh Garg) Member	(Nand Lal Sharma) Chairman