



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**  
**5<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004**

**O. P. No. 25 of 2021**

**Dated 21.11.2022**

**Present**

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

Between:

M/s. Singareni Collieries Company Limited,  
Kothagudem Collieries,  
Bhadradi Kothagudem District.  
Telangana – 507 101

... Petitioner

**AND**

1. Southern Power Distribution Company of Telangana Limited,  
# 6-1-50, Mint Compound, Hyderabad 500 063.
2. Northern Power Distribution Company of Telangana Limited,  
# 2-5-31/2, Corporate Office, Vidyut Bhavan,  
Nakkalagutta, Hanamkonda, Warangal 506 001. ... Respondents

The petition came up for virtual hearing through video conference on 11.08.2021, 06.09.2021, 01.11.2021, 29.11.2021, and 24.01.2022 and through physical mode on 25.04.2022, 02.05.2022, 23.05.2022, 21.06.2022 and 22.08.2022. Sri. Jishnu Dutta, representative for petitioner appeared through video conference on 11.08.2021, Sri. G. V. Brahmananda Rao, Advocate representing Sri. P. Shiva Rao, counsel for petitioner appeared through video conference on 06.09.2021 and 01.11.2021. Sri. P. Shiva Rao, counsel for petitioner appeared through video conference on 29.11.2021 and 24.01.2022 and appeared for physical hearing on 25.04.2022. There is no representation on behalf of the petitioner on 02.05.2022. Sri. G. V. Brahmananda Rao, Advocate representing Sri. P. Shiva Rao, counsel for petitioner appeared on 23.05.2022. Sri. T. Sudhakar, AGM (F&A) along with Sri. J.

Dutta, DGM (R&C) representatives of petitioner appeared on 21.06.2022, Sri. P. Shiva Rao, counsel for petitioner appeared on 22.08.2022. Sri. Mohammad Bande Ali, Law Attaché for respondents appeared through video conference on 11.08.2021, 06.09.2021. Sri. D. N. Sarma, OSD (Legal & Commercial) along with Sri. Mohammad Bande Ali, Law Attaché for respondents appeared through video conference on 01.11.2021, 29.11.2021. Sri. D. N. Sarma, OSD (Legal & Commercial) appeared through video conference on 24.01.2022 and appeared for physical hearing on 25.04.2022, 02.05.2022, 23.05.2022, 21.06.2022 and 22.08.2022. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

### **ORDER**

M/s. Singareni Collieries Company Limited (petitioner) has filed the petition under Section 86 (1) (f) of the Electricity Act, 2003 (Act, 2003) seeking adjudication of secondary billing disputes for the period FY 2016-19 in respect of 2x600 MW thermal power plant at Jaipur, Mancherial District. The averments in the petition are extracted below:

- a. It is stated that petitioners is a coal mining company incorporated under the Companies Act 1956. The company is owned by the Government of Telangana with 51.096% shareholding. The other shareholders of the company are Government of India (48.902%) and private shareholders (0.002%).
- b. It is stated that it has entered in the business of power generation by setting up a 2x600 MW coal based thermal power plant, namely Singareni Thermal Power Plant (STPP) in Jaipur of Mancherial District. The units of STPP achieved its COD during financial year 2016-17. In terms of Power Purchase Agreement (PPA) dated 18.01.2016 total electricity generated from the petitioner's station is being supplied to respondents.
- c. It is stated that the petitioner earlier has filed truing up application for its 2x600 MW STPP for FY 2016-19 together with claims on certain bills which are not admitted by respondent. The Commission has passed order on 28.08.2020 for the true-up in O.P.No.04 of 2019. In the aforesaid order, the Commission had directed the petitioner to file a separate petition on the billing disputes which arose during FY 2016-19.
- d. Accordingly, the petitioner earlier filed a petition on primary billing disputes on 02.12.2020. The same is pending disposal before the Commission. Further, this

petition is now filed before the Commission to direct the respondents/ TSDISCOMs to pay Rs.1.16 crore with interest.

Therefore, this petition is filed in respect of secondary disputes arising out of bills raised by petitioner in line with PPA, but which are not paid by respondents, without any justifiable reason. Thus, the Commission has power under Section 86(1)(f) of the Act, 2003 to decide the said dispute.

**Summary of secondary billing disputes for tariff period 2016-19.**

- e. It is stated that STPP raised power bills for the period 2016-19 as per terms of PPA together with tariff order passed by the Commission for the said period.
- f. It is stated that some of these bills were not admitted by respondents without any justifiable reason. Table-A provided below shows the details of bills, which were claimed by the petitioner as per PPA and prudent commercial practices, but the same were not accepted by respondents.
- f. It is stated that in the PPA entered between SCCL and respondents on 18.06.2016, it is clearly stated that levies/taxes/ duties/cess etc., shall be borne and additionally paid by respondents to SCCL. The relevant Clauses of PPA are reproduced below:
  - 5.1 *"Article 5: TAXES, LEVIES, DUTIES, ROYALTY, CESS ETC.  
Levies, Taxes, Duties, Cess: The above Tariff is exclusive of statutory taxes, levies, duties, cess, or any other kind of imposition(s) whatsoever imposed/charged by any Government (Central/State) and/or any other local bodies/authorities on generation of electricity including auxiliary consumption or any other type of consumption including water, transmission, environment protection, sale or on supply of power/energy and/or in respect of any of its installations associated with Generating Stations and/or on Transmission System.*
  - 5.2 *The total amount of such levies/taxes/duties/cess etc. payable by SCCL to the authorities concerned in any month on account of the said levies/ taxes/duties/cess etc. as referred to above shall be borne and additionally paid by TSSPDCL and TSNPDCL to SCCL".*
- g. It is further stated that as per Clause 6.2 of the PPA supplementary bill of SCCL can include -
  - i. Claims of income tax.
  - ii. Claims for increased cost if any.
  - iii. Statutory duties, taxes, cess, levies, fees, royalty etc.
  - iv. Water charges, NALA charges etc.
  - v. Any claims of central/state/local authorities/bodies etc.
  - vi. Any other claim admissible under this agreement.

The claim in respect of Table-A is preferred as per the 5.1, 5.2 & 6.2 of PPA.

Therefore, the respondents are liable to pay the same.

**Table A**

Sl. no.	Item	FY	Amount of bill not admitted	Justification for raising bill	Bills paid to	Reference in present submission	
1	Consent for Operate Fee	2017-18	41,25,000	Raised as per PPA	Telangana State Pollution Control Board	Annexure-B	
2	Water cess	2017-18	40,94,172		Telangana State Pollution Control Board	Annexure-C	
3	Boiler Licence fee for Unit II	2018-19	4,18,500		Department of Boilers, Government of Telangana	Annexure-D	
4	Boiler Licence fee for Unit I	2018-19	2,09,250		Department of Boilers, Government of Telangana	Annexure-E	
5	Factory Licence Fee	2017-18	1,95,000		Telangana State Department of Factories	Annexure-F	
6	Factory Licence fee	2018-19	1,95,000		Telangana State Department of Factories	Annexure-G	
7	Hydrogen generation plant licence fee	2018-19	9,000		Chief Controller of Explosives (CCOE), Government of India	Annexure-H	
8	License fee for storage of Chlorine gas	2018-19	2,000		Chief Controller of Explosives (CCOE), Government of India	Annexure-I	
9	Interest differential	2016-17	3,14,803		Raised as per common financial practice.	-	Annexure-J
10	Road Tax for fire vehicle	2018-19	40,668		Raised as per PPA	Transport Department of Government of Telangana	Annexure-K
11	Payment for wireless set DOT	2018-19	78,624			Department of Telecommunication, Government of India	Annexure-L
12	Property tax paid in 2018-19	2016-17	18,99,593			Sarpanch, gram panchayath, Pegadapalli	Annexure-M
		<b>Total</b>	<b>1,15,81,610</b>				

- h. It is stated that the said bills were raised in accordance with aforesaid terms of PPA, but respondents illegally not admitted those bills. The details of the said bills and justification is placed below:

Fee for consent for operation (Ref. Sl.No.1 of Table-A)

- i) It is stated that as per Section 25 of the Water [Prevention and Control of Pollution] Act, 1974 and as per Section 21 of the Air [Prevention and Control of Pollution] Act, 1981, it is mandatory for petitioner to obtain Consent for Operation (CFO) for running of its 2x600 MW STPP thermal power plant.

In view of the said obligation the petitioner has paid CFO fee amounting Rs.41,25,000/- for a period of 5 years to Telangana State Pollution Control Board (TSPCB). Therefore, the respondents are obliged under law to reimburse the same to petitioner.

Water cess (Ref Sl.No.2 of Table-A)

- ii) It is stated that water cess is payable by every industry as per scheduled rates specified by the Central Government as per the Water (Prevention and Control of Pollution) Cess Act, 1977. The relevant part of the Act is quoted below:

*“Levy and collection of cess.—(1) There shall be levied and collected a cess for the purposes of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) and utilisation thereunder.*

*(2) The cess under sub-Section (1) shall be payable by —*  
*(a) every person carrying on any industry; and*  
*(b) every local authority;*

*and shall be calculated on the basis of the water consumed by such person or local authority, as the case may be, for any of the purposes specified in column (1) of Schedule II, at such rate, not exceeding the rate specified in the corresponding entry in column (2) thereof, as the Central Government may, by notification in the official gazette, from time to time, specify.”*

As per the said mandate of law, the petitioner has paid water cess to TSPCB as to the water consumed for its activities in FY 2017-18 which amounts to Rs.40,94,172/-. Therefore, as per aforesaid terms of PPA, the respondents are obliged to reimburse the same to petitioner.

Boiler licence fee Unit-2, Boiler licence fee Unit-1 (Ref Sl.No.3&4 of Table-A)

- iii) It is stated that STPP has two 600 MW boilers which were registered with Department of Boilers, Government of Telangana. Boiler operation license is to be renewed every year for its operation from Director of Boilers, Telangana.

In view of this STPP has paid the Boiler license fee for Unit#2 (Registry No.TS/355) amounting Rs.4,18,500/- for 2 years and for Unit#1 (Registry No.TS/273) amounting Rs.2,09,250/- for One year to the Government of Telangana.

Therefore, the respondents are obliged under law to reimburse the same to petitioner.

Factory Licence fee (Ref SI.No.5&6 of Table-A)

- iv) It is stated that every factory has to pay annual licence fee as per the Factories Act, 1948, in each calendar year. Hence, STPP has paid the annual license fee amounting Rs.1,95,000/- for period FY 2017-18 and Rs.1,95,000/- for period FY 2018-19 to department of factories Telangana.

Therefore, the respondents are obliged under law to reimburse the same to petitioner.

Hydrogen generation plant licence fee, License fee for storage of Chlorine gas (Ref SI.No.7&8 of Table-A)

- v) It is stated that the Government of India's, Chief Controller of Explosives (CCOE) issues approvals for products used in hazardous environments subject to product conforming to Indian Standards. Approval from the CCOE is mandatory for all electrical equipment installed in explosive or potentially explosive atmospheres.

It is stated that hydrogen generation plant of STPP is a plant which operates in hazardous environment with storage of hydrogen cylinders, therefore STPP took license from CCOE which was valid up to 31.09.2018. The licence was renewed by making a payment of Rs.9,000/- to CCOE. Similarly, for storage of Chlorine gas in cylinders at STPP, STPP took license from CCOE by making a payment of Rs.2,000/- towards license fee for one year.

Therefore, the respondents are obliged under law to reimburse the same to petitioner.

Difference in interest computation methodology (Ref SI.No.9 of Table-A)

- vi) It is stated that the financial institute compute interest based on t+1 methodology where t is the interval of days between taking of loan and repaying it.

*For example, if a loan is advanced on day 1 of the month and repaid on day 30 the no of days for which interest will be computed will be  $(30-1)+1=30$  here  $t=29$ . However, respondents claim that it is required to be calculated based on only the difference in no of days, i.e.,  $30-1=29$ .*

It is stated that the money was with the borrower for 30 days, as borrowing of money was done on day 1 and the money was kept upto

day 30. SCCL has submitted the claim along with the relevant computation & document.

Hence petitioner prays before the Commission to allow the methodology for computation of interest, as per well established t+1 methodology.

Road tax for fire vehicle (Ref: SI.No.10 of Table-A)

- vii) It is stated that petitioner has four vehicles for protecting plant and machinery from any fire hazards. As per the Road Transport Authority of Telangana State, road tax even for fire tenders has to be paid for every year. STPP has paid the road tax amounting Rs.40,668/- for period FY 2018-19 to Telangana Road and Transport Department.

Therefore, the respondents are obliged to reimburse the same to petitioner.

Payment of wireless set DOT (Ref SI.No.11 of Table-A)

- viii) It is stated that thirty numbers wireless sets are used for day-to-day O&M and security purposes by the petitioner. As per the direction of Department of Telecommunication, Government of India, payment of license fee and royalty fee for the wireless sets were made to Government of India.

Hence, petitioner has made payment for the years 2018-19 and 2019-20 amounting Rs.78,624/-.

Therefore, the respondents are obliged to reimburse the same to petitioner.

Property tax paid in 2018-19 (Ref SI.No.12 of Table-A)

- ix) It is stated that property tax payment for the plant buildings situated in STPP for the years 2010-11 to 2016-17 for an amount of Rs.18,99,593/- was paid in FY 2018-19 to Mandal Parishad Development Officer, Mandal Praja Parishad (MPP) Jaipur Mandal, Pegadapalli Village. Therefore, the respondents are obliged to reimburse the same to petitioner.

2. Therefore, the petitioner has sought the following prayer:

- “i) To direct the respondents to pay the bills raised during FY 2016-19 in respect of fee for consent to operation, water cess and others amounting to

Rs.1,15,81,610/- as the same are taxes and duties contemplated in PPA and paid to Government authority.

- ii) To pass orders to pay interest at @ 18% p.a. from the date of claim made and until full realization by the same by petitioner.”

3. The respondents have filed counter affidavit, stating as below:

- a. It is stated that in the present petition, the petitioner has claimed certain sums aggregating to Rs.1.16 crore under the title '*Secondary Billing Disputes*' for the period FY 2016-2019 (upto 31.03.2019) together with interest @ 18% p.a. in terms of Articles/Clauses 5.1, 5.2 & 6.2 of PPA dated 18.01.2016, averring that the respondents had not admitted the same.
- b. It is further stated that one of the claims included that "*Difference in interest computation methodology*" (Sl.No.9) for Rs.3,14,803/- for the period 2016-17, whereunder the petitioner prayed the Commission to allow the methodology for computation of interest as per the established t+1 methodology (t=interval of days).
- c. It is stated that the claims included fees/levies paid to certain departments of State & Central Governments, which claims are deemed as part of Tariff and hence these would be governed under the tariff regulations/orders issued by the Commission.
- d. It is stated that though the PPA subsisting with the petitioner contained the Clauses relating to the aforesaid tariff components including the Statutory taxes & duties and other levies, yet the tariff regulations notified/adopted as well as the orders issued by the Commission would supersede the PPA provisions in terms of the preamble of PPA as extracted below:

“ ... ..

*“The terms and conditions of the Power Purchase Agreement are as per prevailing TSERC regulations and any changes in TSERC regulations that may occur in future shall be applicable for all operating norms or any other parameters”.*

... ..”

- e. It is further stated that, the Article-6 of PPA deals with billing & payment and the Clause 6.2 stipulates that the claims towards the statutory taxes & duties, levies, cess, royalty, etc., shall have to be raised by the petitioner under the supplementary bills.

f. It is stated that in this context, the attention is drawn to the directions given in the earlier order dated 19.06.2017 passed in O.P.No.9 of 2016, wherein the Commission held as follows:

“ . . . . .  
 4.15.2 *The Billing and Payment of Annual Fixed Charges and Energy Charges shall be in accordance with the Regulation No.1 of 2008.*  
 . . . . . ”

g. It is stated that in terms of the directions given by the Commission, in the aforementioned order for the period 2016-2019, the claims of the Petitioner in the present petition would need to be examined by the Commission as to whether these claims are in accordance to the Regulation No.1 of 2008.

h. It is stated that the Tariff Regulation No.1 of 2008 has provided for (a) Taxes on Income (b) Royalty on Coal and (c) Water rates, but not provided for payment of any other sums claimed by the petitioner in the present petition.

i. It is stated that therefore, the respondents would submit that the Commission is required to examine the claims of the Petitioner and may allow after due diligence, only to the extent specifically provided in the said Tariff Regulation.

j. It is stated that however, the respondents submit that most of the claims in the present petition are relating to the Operation & Maintenance (O&M) of the two units (600 MW each) of STPP. The respondents have already submitted in the connected petition viz., O.P.No.8 of 2021, that the Commission in the order dated 19.06.2017 (at Tables 4-3 (P-60) and 4-9 (P-68)) had allowed higher O&M expenses (by adopting CERC Normative O&M expenses) to the petitioner than that was claimed in the Petition in O.P.No.9 of 2016 as extracted below:

(Rs.in crore)

Particulars	FY 2016-17		FY 2017-18	FY 2018-19
	From COD of unit 1 till COD of Unit 2	From COD of Unit 2 till 31.03.2017		
O&M expenses claimed by SCCL (a)	16.50	58.61	186.95	194.43
O&M expenses approved by TSERC (b)	18.19	64.19	207.60	220.56
Surplus Allowed (Rs.crore) = (b-a)	1.69	5.58	20.65	26.13
Total Surplus allowed in O&M expenses for the period FY 2016-19	Rs.54.05 crore			

k. It is further stated that even in the true-up petition, (in Petition, O.P.No.4 of 2019), the petitioner has claimed O&M expenses on normative basis only and

the petitioner has not shared any financial gains accrued to it in O&M expenses with the respondents and the Commission has allowed the same as claimed by the petitioner. (as recorded in the order dated 28.08.2020 at Chapter 4 (Sl.No.4.21.3 page No.70 and Chapter-6 (Sl.No.6.6.7) page No.102).

- l. It is further stated that the purpose of truing-up in MYT petition is to reconcile the actual expenses with the approved O&M expenses at the end of the control period (for FY 2016-2019) and to pass on the gains/(losses) to the DISCOMs. The Commission in several orders held that O&M expenses is a Controllable item of Tariff and therefore the petitioner was expected to share the actual gains with the DISCOMs in equal proportion, but the petitioner has not shared any gains.
- m. It is stated that regarding the petitioner's contention relating to the claim on "*Difference in Interest Computation Methodology*" (Sl.No.9) that the respondents are computing the interest on delayed payments by reckoning the interval of days as one day less than the delay period (t) and sought to allow the t+1 methodology. In this regard, it is stated that the Petitioner's contention is not correct. As per TSPCC Accounts wing, delay period is computed as the difference between two dates. i.e., due date of payment as per monthly bill and date of payment actually made. It has also been ascertained that this procedure is being adopted uniformly for all generating companies (CGS/State TSGENCO) and no generator has ever raised any objection on such methodology. Further, the petitioner has not demonstrated cogently by way of illustration how it actually incurred loss by the interest computation methodology being followed by TSPCC except enclosing a statement of reconciliation of outstanding dues between SCCL and respondents, which is not reflecting the Petitioner's contention. It is therefore prayed that this particular claim deserves to be disallowed in to as there is no merit in the contention.
- n. It is further stated that attention is drawn to the Section 61(d) of the Electricity Act, 2003, as extracted below:

" ... ..

*Section 61 (Tariff Regulations)-*

*The Appropriate Commission shall, subject to the Provisions of this Act, specify the terms & conditions for the determination of Tariff, and in doing so, shall be guided by the following, namely:-*

(a) ... ..

(b) ... ..

- (c) ... ..
    - (d) *safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;*
    - (e) ... ..”
  - o. It is stated that as could be seen from the above provision, the Electricity Act 2003 mandated the Central/State Commissions to safeguard the Consumers’ interest (DISCOMS interest) and to allow recovery of the cost of electricity in a reasonable manner.
  - p. It is stated that in view of the above, the respondents are entitled for share in the financial gains accrued to the petitioner in O&M expenses and hence the claim of Rs.1.16 crore (except Sl.No.9 Difference in Interest Computation Methodology) in the present petition may be set-off/ waived against the significant gains accrued to the petitioner and relieve the respondents from the present claim of the petitioner.
4. The petitioner has filed rejoinder and the averments of the same are extracted below:
- a. It is stated that the respondents submit that as per the orders 19.06.2017 of the Commission, the present petition is filed. It is stated that the Commission determined STPP’s tariff by adopting CERC terms & conditions of tariff Regulation 2014-19. In this respect the relevant portion of the tariff order dated 19.06.2017 is reproduced below;  
*“1.2.4 The Commission in this Order has determined the Capital Cost and generation tariff for SCCL TPP for FY 2016-17 to FY 2018-19 in accordance with the Regulation No.1 of 2008 and adopted the CERC (Terms and Conditions of Tariff) Regulations, 2014 as the existing Regulations apply to a generating station having 500 MW capacity only.”*  
Accordingly, the Commission has adopted CERC Regulation 2014-19 through application of Clause 10 of Regulation No.1 of 2008.
  - b. It is stated that the Commission has carried out true up exercise in terms of CERC terms & conditions of tariff Regulation 2014. The relevant portion from the TSERC order dated 28.08.2020 is reproduced below;  
*“4.1.1 ... .. The Commission has carried out the true up for FY 2016-17 to FY 2018-19 in accordance with the CERC (Terms and Conditions of Tariff) Regulations, 2014. ... ..”*  
The respondent has quoted para 4.15.2 of TSERC order dated 19.06.2017 which provides for billing & payment of annual fixed charges and energy

charges to be made according to Regulation No.1 of 2008. The billing & payment of charges Clause of Regulation No.1 of 2008 is quoted below:

**“17. BILLING AND PAYMENT OF CHARGES**

*Billing and payment of charges shall be done on a monthly basis”.*

- c. It is stated that it is pertinent to state from the above, that the Commission has finalized truing up petition for FY 2016-19 in accordance with CERC Regulation 2014-19. The issue of procedure of billing and payment is not the subject matter in the present proceedings. In fact, the Clause of Regulation No.1 of 2008 provides only the periodicity of energy billing, as such the same is not relevant for adjudication of the present petition. Therefore, the claim of the respondent that Regulation No.1 of 2008 is to be applied is not correct.
- d. It is stated that there is no explicit provision in CERC tariff Regulation 2014-19 which contradicts the PPA Clause 6.2. Accordingly, it is argued that the PPA Clauses which are not in contradiction with the Commission’s tariff order are also applicable for all commercial purposes.
- e. It is stated that the Commission has carried out truing up exercise in terms of CERC Tariff Regulation 2014-19 and allowed tariff components including O&M expenditure as per CERC Regulation. Therefore, the contention of the respondent that the Commission has allowed higher O&M expenditure is not correct.
- f. It is stated that the respondent submitted that O&M expense is a controllable item. In fact, the CERC Tariff Regulation 2014-19 has provided the list of controllable parameters under Regulation 8.2.(a), which does not include O&M expenditure. Accordingly, the contention of the respondents that O&M expenses are controllable item lacks merit.
- g. It is stated that even as per the tariff Regulation No.1 of 2019 water charges are not included in O&M expenses. The definition of O&M expenses as per the Regulation is quoted below:

**“2.59. “Operation and Maintenance expense” (or “O&M expense”) in respect of a Generating Entity means the expenditure incurred on operation and maintenance of the Generating Station or Unit of a Generating Entity, or part thereof, and includes the expenditure on manpower, repairs, spares, consumables, insurance and overheads, but excludes fuel expenses and water charges and shall be as determined in Clause 19 of this Regulation. In view of the above the water cess, consent operate fee & license fees are required to be reimbursed by the respondents.**

- h. It is stated that the reply submitted by the respondent on the issue of carrying cost/interests is not correct. The petitioner has already submitted the methodology of computation of interest in the petition. The relevant portion is reproduced below.
- i. It is stated that the financial institute compute interest based on t+1 methodology where it is the interval of days between taking the loan and repaying it. For example, if a loan is advanced on day 1 of the month and repaid on day 30 the number of days for which interest will be computed will be  $(30-1)+1=30$  here  $t=29$ . However, DISCOMs claim that it is required to be calculated based only on the difference in number of days, i.e.,  $30-1=29$ .
- j. It is stated that the money was with the borrower for 30 days, as borrowing of money was made available from the day 1, and such money was kept up to day 30. The petitioner has submitted the claim along with the relevant computation & document. Accordingly, the objections raised by the respondents lacks merit and deserves to be ignored.

5. In view of the above facts, the petitioner prays the Commission that it may be pleased:

- i. To direct the Respondents to pay the bills raised during FY 2016-19 in respect of fee for consent to operation, and water cess, amounting to Rs.1,15,81,610/- as the same are taxes and duties.*
- ii. To pass orders to pay interest at @ 18% p.a. from the date of claim made and until full realization by the same by petitioner and any other expenses incurred.”*

6. The Commission has heard the parties and also considered the material available to it. The submissions made by the parties on various dates are extracted for ready reference.

Record of proceedings dated 11.08.2021:

*“... .. The representative of the petitioner stated that the matter is coming up for hearing today for first time and the counter affidavit of the respondents is to be filed. He also stated that the counsel for the petitioner is unable to attend herein today, therefore, he is representing the matter. The representative of the respondents sought time for filing counter affidavit in the matter. The Commission pointed out that this matter along with another matter filed by the petitioner in O.P.No.8 of 2021, which is scheduled on 25.08.2021, are posted together to the convenient date of the counsel for petitioner. The said O.P. is*

adjourned only for submission of reply arguments. Accordingly, the matter is adjourned.”

Record of proceedings dated 06.09.2021:

“... .. The advocate representing the counsel for petitioner stated that the counter affidavit is yet to be filed in the matter. The submissions in this matter are connected to case in O.P.No.8 of 2021. As such, this matter may also be adjourned to the same date. The representative of the respondents also sought adjournment in the matter as the submissions in this matter are connected to the earlier matter. Accordingly, the matter is adjourned.”

Record of proceedings dated 01.11.2021:

“... .. The advocate representing the counsel for petitioner stated that the rejoinder has been filed in the matter. He stated that the matter is under reconciliation and therefore, he needs time to report in the matter. He requested time for four weeks for the purpose. The representative of the respondents has no objection. Accordingly, the matter is adjourned.”

Record of proceedings dated 29.11.2021:

“... .. The counsel for petitioner stated that the efforts are being made to negotiate the matter and there is no further instructions from his client, hence matter may be adjourned by at least four weeks. Sri D.N.Sarma representative of respondents stated that submissions have to be made by the counsel for petitioner for the first time, as otherwise he has no instructions on conciliation of the issues. In view of the statement of the counsel for petitioner, the matter is adjourned.”

Record of proceedings dated 24.01.2022:

“... .. The counsel for petitioner stated that the matter has been referred to the Chairman of the Power Coordination Committee for settlement of the issues. The Chairman informed them that the matter will be placed before the Coordinate Committee and after consideration, the developments will be informed to them. Therefore, the counsel for petitioner sought adjournment of the matter. The representative of the respondents stated that the matter can be proceeded with and he is ready with argument. In view of the request of the counsel for petitioner, the matter is adjourned.”

Record of proceedings dated 25.04.2022:

“... .. The counsel for petitioner stated that the matter is connected to O.P.No.8 of 2021 and substantial issues have been argued in the matter, however, he needs further time to make submissions in this matter. The matter may be adjourned for enabling him to make submissions. The representative of the respondents opposed the adjournment of the petition, stating that the matter can be proceeded with as the earlier matter has been heard and concluded. However in view of the request made by the counsel for petitioner, the matter is adjourned.”

Record of proceedings dated 02.05.2022:

“... .. The representative of the respondents stated that the connected matter is already reserved for orders. The matter may be adjourned for enabling appearance of the counsel for petitioner. Accordingly, the matter is adjourned.”

Record of proceedings dated 23.05.2022:

“... .. The advocate representing the counsel for petitioner stated that the counsel for petitioner is out of station, as such the matter may be adjourned by atleast four weeks. The representative for respondent has no objection. Accordingly, the matter is adjourned.”

Record of proceedings dated 21.06.2022:

*“... .. The representative of the petitioner stated that the counsel for petitioner is out of station, as such the matter may be adjourned. The representative for respondent has no objection. Considering the request of the representative of the petitioner, the matter is adjourned finally and no further adjournment will be given.”*

Record of proceedings dated 22.08.2022:

*“... .. The counsel for petition stated and submitted detailed arguments on the issues arising in the petition. The petitioner has sought relief in respect of reimbursement of 9 items of account, which the respondents are liable to pay to the petitioner. He enumerated the items on which relief is sought in the petition. While doing so, he has not pressed for two of the items, which are of meagre amount and no substantial submissions can be made.*

*The counsel for petitioner stated that the issues pertaining to the tariff period 2016-19 where certain amounts have been withheld by the respondents due to erroneous interpretation set out by the respondents. The provisions of the PPA, the applicable regulations and orders of the Commission have to be given effect to in a harmonious manner. The Commission while determining the tariff had in respect of certain items, relied on the regulation issued by the then APERC in 2008 and wherever no provision is made, it relied upon the provisions of the applicable CERC regulation.*

*It is the contention of the counsel for petitioner that the provisions of the PPA have to be given effect to and the same should be in consonance with the applicable regulation of the Commission or CERC as the case may be. The petitioner is aggrieved by the action of the respondents insofar as calculation of the interest is concerned as also other expenses, which have to be reimbursed by the respondents. The respondents are bound to reimburse the statutory payments arising out of or in connection with the generation activity of the petitioner. The petitioner has paid fee towards boilers, factory and pollution control. These expenses are being denied by the respondents alleging that they form part of the administration and general expenses. This interpretation of the respondents is erroneous and contrary to the provisions of the PPA which emphatically require the respondents to reimburse all such statutory payments including taxes, which do not form part of the tariff.*

*The counsel for petitioner would endeavour to submit that the provisions of the PPA are sacrosanct between the parties and any Act provision, rule or regulation if made subsequently and running contrary to the Clauses in the agreement would supersede such Clause as has been held by the Hon'ble Supreme Court. In the instant case, certain aspects are neither provided in the APERC regulation nor in the CERC regulation. As such, the same are to be given effect to in terms of the PPA only. It is trite to state that some of these expenses have been identified under O&M expenses in the regulation notified by the CERC in 2019. As the claims are relating to the period FYs 2016-19, the respondents have to apply the provisions of the regulations as applicable at the relevant time.*

*The counsel for petitioner stated that the present proceedings is an off shoot of the observations made by the Commission while passing the tariff order for the control period FYs 2019-24, as such, the respondents cannot now revert to state that these claims are not acceptable. In any case, the respondents cannot question the claims made by the petitioner as they have not preferred any*

*appeal against any of orders passed by the Commission allowing the expenses either as part of the tariff or true up, as the said orders have attained finality as against them. Therefore, the petitioner is entitled to the relief sought in the petition.*

*The representative of the respondents stated and opposed the claims made by the petitioner in the petition. He stated that the Commission had already allowed what is reasonably payable to the petitioner. The claim now made through this petition appears to be arising out of the misunderstanding or wrong interpretation of the provisions of the PPA. The claims made by the petitioner can only be considered under the applicable regulations at the relevant time and in terms of the PPA. The petitioner appears to be under the misconception that PPA provides for the amounts claimed herein along with the provisions made in the CERC regulation, 2019.*

*The representative of the respondents stated that the PPA specifically provided for certain of the aspects and the same were already considered by the Commission. All the claims now made are part of the administrative and general expenses, which were allowed by the Commission by considering the tariff that was determined as also in the subsequent orders. Though, certain claims relate to statutory payments, even then, the same cannot be treated outside the O&M expenses as it comprises of administration and general expenses also. The representative of the respondents stated and explained the various provisions of the PPA, the applicable regulations for the relevant period as also the present regulation. He also relied on the judgment of the Hon'ble ATE on the issues touching upon the claims made the petitioner in this petition. He also relied on the construction/overriding of Clauses in the PPA by the Act, rules and regulations as has been held by the Hon'ble Supreme Court.*

*It is the case of the representative that the petitioner cannot mix up the different payments in the context of controllable items which are well defined in the regulation itself. As stated the claims relate to fee payment to government on boilers, factory and pollution control, which are routine expenses and are part of administration and general expenses, which again is considered as part of O&M expenses. The O&M expenses have already been considered and allowed by the Commission to the extent it is applicable under the regulation. He also placed on record the information whereby he sought to demonstrate that no other generators have claimed such amounts separately and the respondents have not paid the same to any generator. It appears that the petitioner is seeking to take advantage of the regulations wherever the PPA does not provide for to make double claims, even though, such amounts have already been factored in the tariff.*

*The counsel for petitioner rebutted the submissions of the representative of the respondents stating that the respondents are seeking to portray that the statutory levies and duties are part of administration and general expenses, which is not correct. As the claims made in this petition relate to the statutory payments under the different enactments, these payments are required to be reimbursed to the petitioner. These expenses are not part of the tariff as the tariff determined by the Commission is exclusive of all statutory payments. He has emphasized the provisions of the regulation of CERC of 2014 and pointed out that regulation of 2019 need not be considered. It is atrocious to state that the petitioner is claiming over and above the amounts it is entitled to. The petitioner is only claiming the amounts relating to the statutory payments, which*

*are not part of the tariff and the respondents are liable to pay in terms of the PPA. No double claims or unacceptable claims are being made by the petitioner in this petition.*

*The Commission noticed that the main issue is with regard to calculation of interest by taking the number of days where difference of opinion is arising between the parties. The Commission has noted the submissions of both the parties on the subject. Having heard the parties, the matter is reserved for orders.”*

7. The issue that arises for consideration is whether the petitioner is entitled to the relief as prayed for and claimed by it?

8. Prima facie the amounts claimed in the present petition relate to the taxes and duties apart from fee that is paid to the competent authorities under respective enactments. The petitioner has referred to Article 6.2 of the PPA, whereas the respondents have relied on Articles 5.1, 5.2 and 6.2 of the PPA. To appreciate the fact, Clause 5.1, 5.2 and 6.2 of PPA are reproduced below:

“5.1 **Levies, Taxes, Duties, Cess:** *The above Tariff is exclusive of any statutory taxes, levies, duties, cess or any other kind of imposition (s) whatsoever imposed/charged by any Government (Central/State) and/or any other local bodies/authorities on generation of electricity including auxiliary consumption or any other type of consumption including water, transmission, environment protection, sale or on supply of power/ energy and / or in respect of any of its installations associated with Generating Stations and/or on Transmission System.*

5.2 *The total amount of such levies/taxes/duties/cess etc. payable by SCCL to the authorities concerned in any month on account of the said levies/taxes/duties/cess etc. as referred to above shall be borne and additionally paid by TSSPDCL and TSNPDCL to SCCL.*

... ..  
6.2 **Supplementary Bills:** *Any amount due to SCCL by TSSPDCL and/ or TSNPDCL under this Agreement other than the amounts set out in a monthly Tariff Bill shall be payable within thirty (30) days after presentation of Supplementary Bill(s) by SCCL to TSSPDCL and/ or TSNPDCL. This will include, but not be limited to the following:*

- i. Claims for Income Tax.*
- ii. Claims for increased costs, if any*
- iii. Statutory Duties, Taxes, Cess, Levies, Fee, Royalty, etc.*
- iv. Monthly Tariff Adjustments.*
- v. Water charges, NALA charges, etc.*
- vi. Any claims of Central/State/Local authorities/Bodies, etc.*
- vii. Any other claim admissible under this Agreement.”*

9. The preamble of the PPA specifies that “*the terms and conditions of the Power Purchase Agreement are as per prevailing TSERC regulations and any changes in*

*TSERC regulations that may occur in future shall be applicable for all operating norms or any other parameters.”*

10. Undoubtedly, the provisions of the PPA are sacrosanct between the parties and any regulation if made and running contrary to the Clauses in the agreement would supersede such Clause as has been held by the Hon’ble Supreme Court.

11. Apart from the provisions of the PPA, it is appropriate to notice the observations made by the Commission in its order dated 19.06.2017 in O.P.No.09 of 2016, in respect of tariff for the period under issue, insofar as tariff is concerned, the relevant paragraphs of the order are reproduced for better understanding.

“4.6 **APPROACH FOR TARIFF DETERMINATION**  
**Commission’s Analysis and Ruling**

4.6.1 *The erstwhile APERC had issued the Regulation No.1 of 2008 specifying the terms and conditions for determination of tariff for supply of electricity by a generating company to a distribution licensee and purchase of electricity by distribution licensees. Consequent upon formation of the Telangana State and constitution of TSERC, vide its Regulation No.1 of 2014, the Commission had adopted the Regulations issued by the erstwhile APERC as in existence as on the date of constitution of TSERC.*

4.6.2 *Clause 10 of the Regulation No.1 of 2008 specifies as under:*

“10 **TARIFF DETERMINATION**

*Tariffs under this Part shall be determined in accordance with the norms specified herein, guided by the principles and methodologies specified in CERC (Terms and Conditions of Tariff) Regulations 2004 as originally issued and amended by CERC (Terms and Conditions of Tariff) (First Amendment) Regulations, 2006, issued on 1st June, 2006 vide No.L-7/25/(5)/2003–CERC; any further amendments thereto shall be applicable on their adoption by the Commission, by means of a general or special order, with or without any modifications:*

*Provided that the norms or operation specified in this Regulation shall not preclude the generating company and the distribution licensee from agreeing upon improved norms of operation and in such a case, such improved norms shall be applicable for determination of tariff.*

10.1 *Tariff in respect of a generating station under this Regulation shall be determined Stage-wise, Unit-wise or for the whole generating station. The terms and conditions for determination of tariff for generating stations specified in this Part shall apply in like manner to Stages or Units, as the case may be, as to generating stations.”*

4.6.3 *From the above, it is amply clear that the Regulation No.1 of 2008 provides for the adoption of amendments to CERC (Terms and Conditions of Tariff) Regulations, 2004 by means of a general or special order, with or without modifications. The Regulations issued by CERC*

currently in force for determination of tariff of a generating company are CERC (Terms and Conditions of Tariff) Regulations, 2014 which are applicable for the Control Period from FY 2014-15 to FY 2018-19.

- 4.6.4 The Commission now discusses on the issue of whether the adoption of the CERC (Terms and Conditions of Tariff) Regulations, 2014 is required and if so, to what extent. The norms of operation of a thermal generating station comprise of Availability, PLF, Auxiliary Consumption, Station Heat Rate, Secondary Fuel Oil Consumption and Transit Loss. The norms of operation specified in the Regulation No.1 of 2008 were guided by the empirical studies conducted by the CERC for its Terms and Conditions of Tariff Regulations, 2004. Many technological advancements have taken place since then which have been taken into consideration by CERC in the issue of its Tariff Regulations for thermal generating companies subsequently. The order of BTG package was placed by SCCL on 11.11.2011. The Commission does not find it prudent to consider the norms of operation specified based on the technology in a period much prior to the placement of BTG package of SCCL for tariff determination in the instant case.
- 4.6.5 In light of the above discussion, the Commission has considered the norms of operation as specified in the CERC (Terms and Conditions of Tariff) Regulations, 2014 for determination of Energy Charges for SCCL TPP in the instant case. Further, for determination of Annual Fixed Charges, the Commission has considered the components of Annual Fixed Charges as specified in the CERC (Terms and Conditions of Tariff) Regulations, 2014.
- 4.6.6 In accordance with Regulation 21 of the CERC (Terms and Conditions of Tariff) Regulations, 2014, the Annual Fixed Charges of a thermal generating station consist of recovery of the following:
- Return on Equity (RoE);
  - Interest on Loan
  - Depreciation;
  - Interest on working capital; and
  - Operation and maintenance Expenses;

.....  
**4.11 OPERATION AND MAINTENANCE (O&M) EXPENSES**  
**Commission's Analysis and Ruling**

- 4.11.1 Regulation 29(1) of the CERC (Terms and Conditions of Tariff) Regulations, 2014 specifies the normative O&M expenses of Rs.16.27 lakh/ MW, Rs.17.30 lakh/MW and Rs.18.38 lakh/MW for FY 2016-17, FY 2017-18 and FY 2018-19 respectively. The Commission approves the O&M expenses considering the normative O&M expenses as specified in the CERC (Terms and Conditions of Tariff) Regulations, 2014. The O&M expenses approved by the Commission is as shown in the Table given below:

Table 4-9: O&M expenses approved by the Commission (Rs. Crore)

<b>Particulars</b>	<b>Units</b>	<b>FY 2016-17</b>		<b>FY 2017-18</b>	<b>FY 2018-19</b>
Installed Capacity	MW	600	1200	1200	1200
Normative O&M expenses	Rs. Lakh/MW	16.27	16.27	17.30	18.38

Normative O&M expenses	Rs. Crore	18.19	64.19	207.60	220.56
------------------------	-----------	-------	-------	--------	--------

... ..  
 4.15.2 *The Billing and Payment of Annual Fixed Charges and Energy Charges shall be in accordance with the Regulation No.1 of 2008.*”

12. It is clear that the Commission in its order dated 19.06.2017 in O.P.No.09 of 2016 has approved the O&M expenses of STPP for FY 2016-17 to FY 2018-19 by considering the normative O&M expenses as specified in the CERC (Terms and Conditions of Tariff) Regulations, 2014, but not the CERC (Terms and Conditions of Tariff) Regulations, 2019. The relevant regulation applicable for the control period have to be considered and not the subsequent regulation, as the subsequent regulation is applicable prospectively and not retrospectively. Further the Commission has carried out true up exercise in terms of CERC (Terms and Conditions of Tariff) Regulations, 2014. The relevant portion from the TSERC order dated 28.08.2020 is reproduced below;

“4.1.1 ... .. *The Commission has carried out the true up for FY 2016-17 to FY 2018-19 in accordance with the CERC (Terms and Conditions of Tariff) Regulations, 2014. ... ..*”

13. The relevant provisions with regarding to normative O&M expenses as specified in the CERC (Terms and Conditions of Tariff) Regulations, 2014 are reproduced below:

3(42) **“Operation and Maintenance Expenses”** or ‘**O&M expenses**’ means the expenditure incurred for operation and maintenance of the project, or part thereof, and includes the expenditure on manpower, repairs, maintenance spares, consumables, insurance and overheads but excludes fuel expenses and water charges;

14. Further, while notifying the CERC (Terms and Conditions of Tariff) Regulations, 2014, CERC in its Statement of Reasons No.L-1/144/2013/CERC dated 24.04.2014 has stated that -

**“Commission’s (CERC) Views**

... ..  
 49.6 *With regards to suggestion received on other taxes to be allowed [other taxes including service tax, property tax or any other tax liabilities arises from time to time], the Commission while approving the norms of O&M expenses has considered the taxes as part of O&M expenses while working out the norms and therefore the same has already been factored in. With regards to allowing these taxes on retrospective basis, the Commission is of the view that such recovery cannot be allowed on retrospective basis as such expenses were already included in the base norms.”*

15. In view of the above, the Commission is of the considered view that all the secondary billing disputes i.e., other tax liabilities, for the period FYs 2016-19 claimed by petitioner in this petition are factored in O&M expenses as the Commission in its order dated 19.06.2017 in O.P.No.09 of 2016 has approved the O&M expenses of STPP for FY 2016-17 to FY 2018-19 by considering the normative O&M expenses as specified in the CERC (Terms and Conditions of Tariff) Regulations, 2014.

16. Hence, the amounts claimed by the petitioner in the petition are untenable and cannot be allowable.

17. Since, the very main claim of the petitioner found untenable and disallowed the other prayer for payment of interest on secondary bills does not arise.

18. Accordingly, the petition is disposed of without any costs.

***This order is corrected and signed on this the 21<sup>st</sup> day of November, 2022.***

Sd/-  
(BANDARU KRISHNAIAH)  
MEMBER

Sd/-  
(M. D. MANOHAR RAJU)  
MEMBER

Sd/-  
(T. SRIRANGA RAO)  
CHAIRMAN

**//CERTIFIED COPY//**