



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

O. P. No. 8 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,
Bhadradri Kothagudem District.

... 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 01.03.2021, 02.06.2021, 28.06.2021, 29.07.2021, 06.09.2021, 01.11.2021, 29.11.2021, and 24.01.2022 and through physical mode on 25.04.2022. Sri. Jishnu, Consultant for the petitioner appeared through video conference on 01.03.2021, Sri. G. V. Brahmananda Rao, Advocate representing Sri. P. Shiva Rao, counsel for petitioner appeared through video conference on 02.06.2021, 06.09.2021 and 01.11.2021. Sri. P. Shiva Rao, counsel for petitioner appeared through video conference on 28.06.2021, 29.07.2021, 29.11.2021 and 24.01.2022 and appeared for physical hearing on 25.04.2022. Sri. D. N. Sarma, OSD (Legal & Commercial) along with Sri. Mohammad Bande Ali, Law Attaché for respondents appeared through video conference on 02.06.2021, 28.06.2021, 29.07.2021, 01.11.2021, 29.11.2021. Sri.

Mohammad Bande Ali, Law Attaché for respondents appeared through video conference on 06.09.2021. Sri. D. N. Sarma, OSD (Legal & Commercial) appeared through video conference on 01.03.2021, 24.01.2022 and appeared for physical hearing on 25.04.2022. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

The Singareni Collieries Company Limited (SCCL or Petitioner) has filed the petition under Section 86(1)(f) of the Electricity Act, 2003 (Act, 2003) seeking adjudication of billing disputes during FYs 2016-19 for its 2x600 MW thermal power plant at Jaipur of Mancherial District. The averments of the petitioner in the petition are as below:

- a. The petitioner 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%):
 - i. 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 FY 2016-17. In terms of Power Purchase Agreement (PPA) dated 18.01.2016 total electricity generated from the petitioner's station is being sold to respondents.
 - ii. Earlier it has filed true up application for its 2x600 MW STTP for FY 2016-19 together with bills which are not admitted by respondent. The Commission has issued its order dated 28.08.2020 for the true up in O.P.No.04 of 2019. In the aforesaid order, the Commission has directed SCCL to file a separate petition on the billing disputes that arose during FY 2016-19. Hence, this petition is filed on the disputes in respect of bills raised by petitioner, but which are not paid by respondents, without any justifiable reason.

Summary of bill disputes for tariff period 2016-19

- b. It has stated that it has raised power bills for 2016-19 in terms of PPA and the tariff order issued by the Commission. But some of those bills were not admitted by respondents without any justifiable reason. In the Table-A shown below the

petitioner has submitted summary of bills raised as per applicable Regulation, which were not admitted by respondents.

Table-A: Claim of items which were not admitted by respondents during tariff period 2016-19

Sl. No.	Item	FY	Amount of bill not admitted (in. Rs.)	Reference documents Attached
1	Bills towards additional coal cost	2018-19	121,43,35,923	Appendix – B Appendix - C
2	Bills as per actual metered energy	2018-19	17,75,32,208	Appendix – D Appendix – E Appendix – F
3	Bill on incentive	2017-18	29,11,37,000	Appendix – G
		Total	168,30,05,131	

Apart from the above, the petitioner has made a request for acceptance of water charges bill for financial year 2016-19 amounting to Rs.4.69 crore which was sent to Financial Advisor & Chief Controller of Accounts (FA&CCA) of TSPCC along with all supporting documents as per the directive of the Commission given in serial no 4.23.3 of tariff order dated 28.08.2020. However, TSPCC did not accept the claim of water charges vide their letter dated 16.10.2020. Accordingly, the Commission is requested to admit Water Charges which are required to be paid to petitioner as per 29(2) of the CERC (Terms and Conditions of Tariff) Regulations, 2014.

Details of claims and justification for bills towards additional coal cost raised by the petitioner which were not admitted by Respondent during the period of FY 2018-19.

- c. It is stated that that SCCL was allotted NAINI coal block located in Odisha State to meet coal requirements of STPP in Jaipur, Telangana. As the production from NAINI coal mine has not started yet, STPP is provided with Bridge Linkage by standing committee of Ministry of coal. Therefore, as per Bridge Linkage till now requisite coal has been supplied to STPP from different nearby mines of the petitioner.
 - i. The pricing of coal supplied through Bridge Linkage to any power producing company is made in accordance with the terms and conditions contained in the MOU entered between the coal producer, the SCCL and the power generating company. As per terms of said MOU entered between SCCL (mines division) and STPP, coal bill for supply of coal to STPP was raised by SCCL (Mines Division). The terms of this MOU

stands on par with the standard fuel supply agreement on which the respondents never raised any objection.

- ii. The SCCL-STPP MOU contains provisions similar to the provisions contained in other MOUs of similar nature entered by SCCL with other power generating company. The said fact can be verified from the MOU entered between NTPC and SCCL for Bridge Linkage coal.
- iii. The following table contains the relevant part of MOU reflecting the coal price charged to STPP.

Table-B: The summary of pricing provision contained in SCCL-STPP MOU

Sl. No.	Type of customer	Mine	Quantity	Price
1	Bridge Linkage	Normal	Up to 75 % Agreed Quantity	20 % over notified basic price of power for all grades of coal.
2	Bridge Linkage	Normal	Beyond 75 % Agreed Quantity	20% over and above notified basic price of non-power sector.

- iv. The SCCL charges 20% premium to Bridge Linkage customers like STPP for supply upto 75% of annual agreed quantity over and above the regular supply price charged to generating companies having regular coal linkage. This can be verified from the above table.
- v. For supply of additional quantum of coal beyond 75% of agreed quantity, the price on which 20% premium is computed gets changed to coal price applicable for non-power sector. Since the base price for the applicable grades of coal for non-power sector is found to be more than the base price for Power sector, the rates of coal for supply beyond 75% of agreed quantity increases as per the pricing provision of MOU.
- vi. The said pricing methodology led to Rs.118.18 crore additional coal bill being charged to STPP for the supply of coal in FY 2018-19. The table given below summarises the additional cost of coal that was charged to STPP, by SCCL/coal supplier.

Table: C The summary of additional cost of coal charged to STPP by SCCL/coal supplier

(Amount in Rs)

Quantity of coal Received (MT*) 2018-19	Landed total cost of coal in Rs. (As per coal price computed as per SL 1 of table B)	New landed cost of coal in Rs. (As per coal price computed by applying SL 1 & 2 of table-B)	Additional amount due to price structure applicable for supply quantum.
(i)	(ii)	(iii)	(iv) = (iii) - (ii)
50,95,179	1795,18,17,084	1913,36,31,182	118,18,14,098

* MT = Metric Ton

- vii. The agreed quantity of coal for STPP was 4.52 MMT (Million Metric Ton) per annum, 75% of which comes to 3.39 MMT per annum whereas the quantity received by STPP for FY 2018-19 is 5.09 MMT. This result in supply of 1.70 MMT additional quantum beyond 75% annual agreed quantity. The landed cost of coal increased due to application of pricing methodology as laid out in serial 2 of table B on this 1.70 MMT coal. In summary, the coal bill increased from Rs.1795 crore to Rs.1913 crore resulting in effective increase in STPP's coal bill by Rs.118 crore.
- viii. The increase of Rs.118 crore in coal bill in that year has resulted increase in landed cost of coal for all the months during FY 2018-19 as detailed below:

Table: D Month wise increase in coal bill due to increase in landed cost of coal

Sl. No.	Month	Total increase in price of coal in Rs.	Landed coal price without additional bill (Rs./MT)	Landed coal price with additional bill (Rs./MT)
1	Apr'18	10,17,52,180	3,585.06	3,821.08
2	May'18	9,26,50,398	3,503.38	3,734.01
3	Jun'18	7,51,26,475	3,578.26	3,813.83
4	Jul'18	4,63,38,432	3,557.48	3,791.68
5	Aug'18	11,14,70,224	3,471.61	3,700.16
6	Sep'18	12,42,20,221	3,724.02	3,969.18
7	Oct'18	15,11,87,694	3,668.19	3,909.68
8	Nov'18	10,57,63,429	3,432.63	3,658.61
9	Dec'18	7,11,10,904	3,400.09	3,623.93
10	Jan'19	9,83,18,871	3,638.77	3,878.32
11	Feb'19	9,83,26,806	3,570.97	3,806.06
12	Mar'19	10,55,48,464	3,412.03	3,636.65
Total		118,18,14,098		

- ix. The landed cost of coal is defined in CERC Regulation 2014 which is reproduced below:

"The landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, transportation cost by rail/road or any other means, and, for the purpose of computation of energy charge."

- x. From the above table, the increase in monthly landed coal price has occurred because of additional coal bill raised to STPP by SCCL. This in turn resulted in increase in Energy Charge Rate (ECR) for all the months as ECR computation is dependent on landed coal price. The ECR was computed as per the CERC formula given in Regulation 30(6)(a). The relevant portion is extracted below:

"Regulation 30.(6)

Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the following formulae:

For coal based and lignite fired stations

$$ECR = \frac{\{(GHR - SFC \times CVSF) \times LPPF / CVPF + SFC \times LPSFi \times 100 / (100 - AUX)\}}{100}$$

Where,

AUX = Normative auxiliary energy consumption in percentage

CVPF = Weighted Average Gross calorific value of coal as received, in kCal per kg for coal based stations

CVSF = Calorific value of secondary fuel, in kCal per ml.

ECR = Energy charge rate, in Rupees per kWh sent out

GHR = Gross station heat rate, in kCal per kWh

LPPF = Weighted average landed price of primary fuel, in Rupees per kg, during the month

SFC = Normative Specific fuel oil consumption, in ml per kWh

LPSFi = Weighted Average Landed Price of Secondary Fuel in Rs./ml during the month

- xi. From the above formula that ECR will increase if LPPF (Landed price of primary fuel) increases. In this case LPPF has increased as shown above and therefore ECR increases. The increase of ECR has resulted in increase in total variable charge of the year payable by the Respondent which is computed as a sum of results arrived by multiplying increase in monthly ECRs and monthly generated energy as per JMR. Therefore a bill dated 08.06.2019 due to additional coal price amounting Rs.121 crore was raised and the same was 10.06.2019 to respondents.

The same is duly certified by the auditor for computation of energy charges.

- xii. Raising of additional coal bills by SCCL (Mines department) has resulted in revision of energy charges for 2018-19 by STPP, which is made in accordance with the above said Clause (7) of Regulation 30 of CERC Terms and Conditions of Tariff 2014. If this bill towards additional cost of coal is not accepted, the Petitioner will be put to losses and the same will result offending Clause 61(b) of the Act, 2003. Therefore, the Commission is requested to direct the Respondent to pay the additional energy charge incurred due to additional coal bills.

Billing on actual metered energy for the year 2018-19

- d. It is stated that STPP supplying total quantity of electricity generated by it to Telangana State DISCOMs. The monthly billing of STPP is done as per actual meter reading taken jointly at the end of each month recorded in main meters in the plant. The Respondent chose to admit the bills limited to Scheduled generation, instead of actual energy injected into the grid from FY 2018-19. The said practice is in deviation from the billing methodology followed for other intra-State Generator.
 - i. The scheduled generation refers to the quantum of energy scheduled on day ahead basis by the DISCOMs to be delivered by the STPP. Actual energy is the measured energy actually injected by STPP into the state grid of Telangana. The meters register actual energy instead of scheduled energy.
 - ii. The scheduled generation cannot be exactly matched with actual generation. Most of the times due to variations in connected load, frequency and changing coal quality which are beyond the control of a generating company the actual delivered energy gets changed. The STPP had experienced that when machines are operated on real time basis, the scheduled generation could not match with the actual generation due to the above said practical difficulties in real time operation of generating station. Therefore, commercial mechanism have been developed around the country to deal with the difference in scheduled generation and actual generation which is generally known as unscheduled interchange (UI) or DSM. In the Telangana State, the

Clause 14.1 of Regulation No.1 of 2008 provides for notifying charges of unscheduled energy. Relevant portion of the Regulation is extracted below:

"Charges for unscheduled interchange

14.1 *The generating station shall be entitled to receive or shall be required to hear, as the case may be the charges for deviations between energy sent-out corresponding to scheduled generation and actual energy sent-out, in accordance with the banking and settlement code notified by the Commission.*

Provided that the rate for determination of such charges shall be as notified by the commission from time to time."

- iii. However, notification for unscheduled energy charges as envisaged in Regulation 14.1 of said Regulation which would be applicable for intra-State generators was not made/finalised in Telangana State. Therefore, in the absence of such mechanism, traditionally energy bills for State Generators were allowed based on actual energy which reflects in JMR.
- iv. Para 6.1.9 of PPA provides that SCCL would submit the monthly bill based on:
 - a. Meter reading pursuant to Article 7 of PPA.
 - b. The tariff (fixed charged and monthly variable charges).
- v. The Article 7 of PPA, more specifically Article 7.11 provides that the readings of main meter shall form the basis of billing. The relevant part of the PPA is quoted below:

*"7.11 Readings of the main meter shall form the basis of billing
... .."*
- Therefore, from the above, it is stated that the bills raised by petitioner are in accordance with the relevant stipulations in PPA.
- vi. Further, as per the DSM and related matters Regulation 2014 issued by the CERC not only recognises such deviations, but also provides commercial mechanism to deal with that. Therefore, once such Regulation recognised the deviation, such deviation cannot be in violation of IEGC 2010, nor such generation be ignored.
- vii. As per CERC Deviation Settlement Mechanism (DSM), the over injection or under injection per 15min time block shall be within the limit of 12% of scheduled injection or 150 MW whichever is lower (reference Clause 7.2(a) of DSM related matters and Regulation 2014). The actual and schedule generation of 2018-19 is given below:

- a. Scheduled generation: 8113.454 MU;
 - b. Actual generation: 8208.214 MU;
 - c. Deviation (+): 94.760 MU;
 - d. Deviation on schedule generation: 1.16%;
- viii. The deviation is very minimal and is in permissible limit as per grid code and payable as per DSM related matters and Regulation, 2014.
 - ix. A study has been conducted to understand the implication of such over injection upon the payment liability of Telangana State in regional level. This study is based on the monthly reports prepared by the CERC market monitoring cell.
 - x. The summary of report is placed hereunder: In absence of STPP's energy injection, the pay outgo for Telangana State in SRPC (southern region power committee) for the FY 2018-19 would have increased by Rs.31.88 crore.
 - xi. Accordingly, even going by the commercial transaction details of the energy quantum based on deviation, the claim of Rs.17.75 crore is quite reasonable. It is to further submit that no fixed charge is payable for such deviations/over injections.
 - xii. Further, the respondents have sold the said energy to consumers and realised the consumer tariff specified by the Commission. But, they did not choose to pay for the said energy/power. These results into unjust enrichment by the DISCOMs at the cost of SCCL which may not be permitted by law.
 - xiii. Further, as per Section 70 of Indian contract act when such quantum of power not prohibited by law has been supplied not for gratis, the recipient is bound to pay the consideration. This principle of law is laid down by Hon'ble Supreme court in a case between "*State of West Bengal Vs. B.K.Mondal*" reported at 1962 AIR (SC) 779. The same is the law of the land and is binding on all including respondents. The claim of non-acceptance by TSDISCOMs is contrary to law. Therefore, petitioner is entitled for consideration of the said supplied power and the Respondents are liable to pay the amount as claimed above.
 - xiv. Hence, the Commission to consider the same methodology of accepting actual energy injected into grid for admittance of energy bills of STPP as it is followed in respect of other State generators like KTPP. This

methodology may be allowed to continue till intra-State ABT is implemented in Telangana State.

Incentive for FY 2017-18

- e. The petitioner stated that table 4-12 in the tariff order dated 19.06.2017 connected to petitioner's project provides the norms of operation approved by the Commission. The table shows that the target PLF for earning incentive was 85% and the attached foot note to the said table provides that incentive shall be payable in accordance with the CERC (Terms and Conditions of Tariff) Regulations, 2014. The relevant portion from CERC Regulation is quoted below:

"Incentive to a generating station or unit thereof shall be payable at a flat rate of 50 paise/kWh for ex-bus scheduled energy corresponding to scheduled generation in excess of ex-bus energy corresponding to Normative Annual Plant Load Factor (NAPLF) as specified in Regulation 36(B)."

- i. Further, the incentive claimed by the petitioner for the FY 2017-18 is computed by considering the actual energy generated and recorded in Joint Meter Reading (JMR) instead of scheduled energy specified in CERC Regulation, since Telangana State does not have balancing and settlement code for intra-State generators and in absence of such mechanism, traditionally energy bills for State Generators were allowed on actual energy quantum injected into grid as recorded in JMR in terms of PPA.
- ii. The PLF of STPP achieved for the FY 2017-18 is 91.09% which was 6.09% more than the threshold PLF entitled for incentive. Thus, STPP has raised the incentive bill as per CERC (terms and conditions of tariff) Regulations, 2014 which was made applicable by the Commission to STPP. The detailed calculation of incentive bill for FY 2017-18 amounting to Rs.29.11 crore is given in below table:

Parameter	Value	Unit
Normative Annual Plant Load factor (NAPLF)	85	%
Ex-BUS Generating units at NAPLE above which incentive is payable	842,14,26,000	kWh
Cumulative Ex Bus Generation FY 2017-18	900,37,00,000	kWh
Rate of incentive	50	Paise/kWh

Parameter	Value	Unit
Units eligible for incentive	58,22,74,000	kWh
Total incentive	29,11,37,000	Rs.

- iii. The Commission is prayed to direct the respondents to pay the incentive bill raised as per CERC (Terms and Conditions of Tariff) Regulations, 2014 following prudent commercial practice prevalent for intra-State generating station in absence of DSM.

Water Charges for FY 2016-19:

- f. It is stated that requisite water for power generation in STPP is drawn from river Godavari and also from river Pranahitha from 1 TMC & 2 TMC water supply scheme respectively. Accordingly, water charges are being paid to the Government of Telangana for the water drawn for the period 01.12.2016 to 31.03.2019 amounting Rs.4,68,97,378/-:

- i. As per CERC Regulation, 2014 which are made applicable by the Commission, water charges to be payable by the respondents. The relevant Regulation is stated below:

"29.

(2) *The Water Charges and capital spares for thermal generating stations shall be allowed separately:*

Provided that water charges shall be allowed based on water consumption depending upon type of plant, type of cooling water system etc., subject to prudence check. The details regarding the same shall be furnished along with the petition."

- ii. Further, the petitioner has made a request for acceptance of water charges bill for financial year 2016-19 amounting to Rs.4.69 crore which was sent to financial advisor and chief controller of Accounts of TSPCC along with all supporting documents as per the directive of the Commission given in serial no.4.23.3 of tariff order dated 28.08.2020. However, TSPCC did not accept the claim of water charges vide their letter dated 16.10.2020.
- iii. Accordingly, the Commission is requested for admission of water charges which is required to be paid to petitioner as per 29(2) of the CERC (Terms and Conditions of Tariff) Regulations, 2014.
- iv. As per Section 61(b) of the Act, 2003 generation station shall discharge its function on commercial principles. Therefore, the petitioner is entitled for said expenditure borne by it.

2. The petitioner sought the following relief in the petition.

- a) To direct respondents to accept the disputed portion of bills raised during FY 2016-19 in respect of additional cost of coal for Rs.121,43,35,923/-.
- b) To direct the respondent to pay Rs.17,75,32,208/- towards the power received by them as reflected in JMR, but not paid.
- c) To direct the respondent to pay Rs.29,11,37,000/- towards incentive.
- d) To direct the Respondent to pay Rs.4,68,97,378/- towards water charges.
- e) To pass orders to pay interest @ 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 the petitioner has set up a 2x600 MW coal based thermal power project, namely, STPP in the year 2016 and operating the power plant, has filed the present petition u/s 86(1)(f) of the Act 2003, claiming certain sums for the period FY 2016-19 as billing disputes by citing the Commission's order dated 28.08.2020 passed in O.P.No.4 of 2019 (true-up petition).
- b. It is stated that the that some of the energy bills raised by it during the period FY 2016-17 to FY 2018-19 in terms of PPA provisions as well as the tariff order dated 19.06.2017 issued by the Commission were not admitted and paid by the respondents without any justified reasons.
- c. It is stated that the petitioner listed out the following claims, contending as not admitted by the respondents –

Sl. No.	Item	Year (FY)	Amount of Bill not admitted (Rs.)	Petitioner claimed as per the MoU / agreement / regulation
1	Bills towards additional coal cost	2018-19	1214,335,923/-	MoU between STPP and SCCL under bridge linkage coal supply
2	Bills as per actual metered energy recoded in the joint meter readings (JMRs}	2018-19	177,532,208/-	As per the PPA provision at Article 7.11

Sl. No.	Item	Year (FY)	Amount of Bill not admitted (Rs.)	Petitioner claimed as per the MoU / agreement / regulation
3	Bills on incentives	2017-18	291,137,000/-	CERC tariff regulations, 2014
4 (Additional)	Water charges	2017-18	46,897,738/-	As per CERC tariff regulations 2014

Plus (+) Interest claimed at the rate of 18% from the date of the claim made, until full realization by the petitioner.

- d. It is stated that at the outset, the present claims of the petitioner are not admissible, as per the tariff order dated 19.06.2017 passed by the Commission in O.P.No.9 of 2016 for the period FY 2016-17 to FY2018-19 as well as under the APERC Tariff Regulation No.1 of 2008, as adopted by the Commission for billing and payment and further not in consonance with PPA dated 18.01.2016 and hereby denied.
- e. It is stated that before discussing on the claims of the petitioner, the attention of the Commission is drawn to the specific directions in order dated 19.06.2017 given by the commission in the petition O.P.No.9 of 2016, as well as the PPA preamble, as extracted below for better appreciation of the case. TSERC order dated 19.06.2017

“Para 4.15.2 - The billing and payment of Annual Fixed Charge and Energy Charges shall be in accordance with the Regulation No.1 of 2008.”

*PPA dated 18.01.2016 (page No.3)
Preamble -*

*... ..
The terms and conditions of the PPA 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.”*

PPA - Article 6 - Billing & Payment

“6.1 BILLING:

6.1.1

6.1.2 SCCL shall present the bills for electricity supplied to TSSPDCL and TSNPDCL from the Project for the previous month based on Energy Account issued by Telangana State Load Despatch Centre or any other competent Authority as per TSERC Regulations applicable from time to time.

... ..

6.1.5 TSSPDCL and TSNPDCL shall arrange payment of such monthly bill(s) / supplementary bill(s) promptly through irrevocable Letter of Credit at the designated account of SCCL or through RTGS.

.....
The bill(s) of SCCL shall be paid in full subject to the condition that:-

- i. there is no apparent arithmetical error in the bill(s).
- ii. the bill(s) is / are claimed as per the notified / agreed tariff.
- iii. they are in accordance with energy accounts issued by Telangana State Load Dispatch Centre or any other competent Authority as per TSERC Regulations applicable from time to time.”

- f. It is stated that it could be seen from the above extracts, the Commission vide its orders dated 19.06.2017 specifically directed that the billing and payment for STPP (2x600 MW) shall be in accordance with the Regulation No.1 of 2008. Further, the PPA between TSDISCOMs and SCCL dated 18.01.2016 in the preamble stipulated that TSERC Regulations shall be applicable for all operating norms, which means that the TSERC order regulations will override the PPA provisions in case of inconsistency.
- g. It is stated that the Commission would be required to examine whether the claims of the petitioner in the present petition are in consonance with the Commission’s order dated 19.06.2017 for the period FY 2016-19 (or) whether as per the Regulation No.1 of 2008 (or) as per PPA dated 18.01.2016 and also whether as per the policy guidelines dated 08.02.2016 issued by the MoC, Gol for grant of 'bridge linkage' to specified end use plants for central and state PSUs, which have been allotted coal mines / blocks.
- h. Now the claims of the petitioner are discussed below:

1st Claim - Bills towards additional coal cost for FY 2018-19

- i. It is stated the petitioner claimed a sum of Rs.121.4336 crores (rounded) towards additional coal cost for the year FY 2018-19, which was declined by TSDISCOMs, for the reasons submitted hereunder.
- ii. It is stated that the pricing schedule in the MoU signed between SCCL (coal supplier) and STPP (thermal power plant) divisions is as below:

Pricing Structure for the FY 2018-19

Sl. No.	Type of customer	Mine	Quantity	Price
1	Bridge Linkage	Normal	Up to 75% agreed quantity	20% over notified basic price of power for all grades of coal
		Cost plus	Up to 75% agreed	Notified price of the mine / blended / CHP / washed

Sl. No.	Type of customer	Mine	Quantity	Price
		mine / blended CHP / washery	Quantity	coal or 20% over notified basic price of the power whichever is higher
		Normal	Beyond 75% agreed quantity	20% over and above notified basic price of non-power sector.
		Cost plus mine / blended CHP / washery	Beyond 75% Agreed quantity	Notified basic price of the mine / blended CHP / washed coal or 20% over notified basic price of the non-power whichever is higher
2.	Non- bridge linkage / MoU customer	Normal	up to MOU quantity	20% over notified basic price of non-power for all grades of coal
		Cost Plus Mine / Blended CHP / washery	upto MOU quantity	Notified basic price of the mine / belended CHP / washed coal or 20% over notified basic price of the non-power whichever is higher.

- iii. It is stated that the petitioner was allotted a captive coal mine / block in state of Odisha namely 'NAINI Block' for specific end use of coal produced from the said mine at STPP in the state of Telangana.
- iv. It is stated that the MoC, Gol granted 'bridge linkage' initially from coal mines in the state of Odisha and subsequently permitted from Singareni coal blocks for usage at STPP.
- v. It is stated that the bridge linkage was granted to STPP to bridge the gap of coal requirement of the specified end use plant at STPP till the allotted coal mine (NAINI) commences production.
- vi. It is stated that the policy guidelines issued by the MoC, Gol for grant of 'bridge linkage' stipulated that the 'bridge linkage' may be granted for a fixed period of three years from the date of allotment of coal mine block and no further extension thereafter would be entertained under normal circumstances. It further stipulated that the shorter duration of bridge linkage shall act as an incentive for allottees to expedite the production from coal mines/blocks.

- vii. It is stated that the petitioner obtained the bridge linkage in the year 2016, valid for a period of 3 years up to 2019. Subsequently, SCCL obtained further extension of bridge linkage for another 3 years term, up to the year 2023, which means that till the production commences in NAINI coal block, the bridge linkage pricing of coal supply from SCCL will continue.
- viii. It is stated that under the MOU for bridge linkage, petitioner has charged STPP, 20% additional price (premium) over the basic price applicable for power sector (non-coking coal having less heat content / gross calorific value (GCV)) upto 75% of agreed quantity and for coal supplied beyond 75% agreed quantity, 20% additional price over the notified basic price of the non-power sector, which has been objected by the respondents, despite STPP having been owned by SCCL and supplying power of 1131 MW (ex-bus capacity) to Telangana state grid, which is a major power sector. Also, TSDISCOMS are not a party to the MOU between STPP and SCCL for objecting to the non-power sector pricing, made applicable to STPP.
- ix. It is stated that that as per the MoC, the non-power sector predominantly consisting of cement, sponge iron, steel, which are supplied with high quality coal having high GCV grade (called coking coal), whose basic price itself will be higher since they come under non-regulated sector and further for supply of coal beyond 75% agreed quantity, additional price/premium of 20% on the coal basic price applicable for non-power sector, which will be still higher and there is no proper justification given by the petitioner for charging non-power sector price with additional 20% premium to STPP except stating that similar MoU was also entered with other generators like NTPC under bridge linkage.
- x. It is stated that the MoC, Gol stated that the ministry had specifically earmarked the allocation of coal mines for power sector (regulated sector) with the twin objective of augmenting the domestic coal supply for generation of power along with providing cheaper coal for the benefit of power consumers in line with national tariff policy which aimed at ensuring availability of electricity to consumers at reasonable competitive rates. As such, the respondents are of the view that if the

coal production commences early in the captive coal mine allotted to STPP, even after factoring the transportation cost, the landed cost of coal would be cheaper than the coal being supplied by SCCL under bridge linkage.

- xi. It is submit that the MOU signed between STPP and SCCL was highly irrational, inequitable and significantly burdening the respondents in turn the consumers of electricity in the state of Telangana, which is against the fundamental principle of section 61 (d) of the Act, 2003 in safeguarding the consumer's interest and solely intended to enrich the petitioner at the cost of the respondents.
- xii. It is stated that the petitioner obtained further extension of bridge linkage upto the year 2023, by which it would continue to burden the TSDISCOMs with higher coal price till production is commenced from the NAINI coal block.
- xiii. It is stated that the delay in materializing coal production for NAINI coal block is solely attributable to the petitioner itself and the petitioner is treating its own thermal power plant under non-power sector, which is a non-regulated sector and charging higher price for coal supplied to STPP at the price of coking coal in addition to additional 20% price over the basic price for non-power sector which is unjustified. Further there is no third party sampling verification of the quality of coal (GCV) being supplied by SCCL to STPP.
- xiv. It is stated that furthermore, as per the PPA/regulations, the price of coal claimed cannot be admitted directly but converted into the Energy Charge Rate [ECR / Variable Cost (VC)] as per the formula prescribed in the agreement / relevant regulations, considering the landed cost of coal. If the landed cost of coal considered the basic rate applicable for non power sector with additional premium of 20%, the computation of ECR or VC will be higher for STPP and it will not reflect in the merit order prepared by state load dispatch centre (SLDC). To overcome this, the petitioner is initially charging a low rate for coal for getting entry in the merit order, which facilitates scheduling of its power plant and injecting power beyond the SLDC schedules for higher generation (PLF) and subsequently revising the coal bills as per JMRs and claiming differential

coal price, which is totally unjustified and need to be disallowed by the Commission.

- xv. It is stated that as already submitted, the petitioner over-injected energy into grid beyond SLDC's schedules, which means higher coal consumption and consequent higher coal billing under bridge linkage. Since the pricing of additional coal applicable for non-power sector under bridge linkage is highly irrational and untenable and against the section 61(d) of the Act, 2003 by safeguarding of consumer's interest, therefore the respondents pray the Commission to disallow the petitioner's claim as not maintainable.

2nd Claim - Billing on Actual Metered Energy for the year 2018-19 contentions raised by petitioner:

- i. It is stated that the petitioner claimed Rs.17.7532 crore (rounded) towards over-injected energy charges not admitted by TSDISCOMs.
- ii. It is stated that the petitioner contended that the respondents limited the payment of energy charges to scheduled energy only instead of actual energy as per JMRs and the unaccounted energy was 94.76 MU.
- iii. To justify its claim, the petitioner extracted the PPA provision at Article 7.11, which states that "*Readings of the main meter form the basis of billing.*"
- iv. it is further contended that billing based on JMRs is being followed for other state generator (KTPP Unit-II – 600 MW) and U. I. regulation was not available in the state of Telangana for intra-state generators as required to be notified under APERC Tariff Regulation No.1 of 2008 as adopted by this Commission.
- v. It is stated that the other contention of the petitioner is that there will be variations between scheduled generation and actual generation, depending upon load, frequency and coal quality, hence commercial mechanism under U.I. regulations [deviation settlement mechanism (DSM) regulations] were notified around the country to deal with such variations, which mechanism was not available in the state of Telangana.
- vi. It is stated that the petitioner averred that in the absence of U.I deviation settlement mechanism, traditionally energy bills for state generators

were allowed based on JMRs and attached a bill copy of TSGENCO stations to substantiate its averment.

- vii. It is stated that the petitioner contended that CERC recognized such deviations and provided commercial mechanism to deal with such deviations. It is further contended that once Commission recognized the deviations, such deviations cannot be a violation of grid code (IEGC 2010) nor such generation be ignored. It also extracted the relevant portion [clause 7.2 (a)] of CERC DSM Regulation 2014 as below:

"As per CERC deviation settlement mechanism, the over-injection or under injection per 15 minutes time block shall be within the limit of 12% of scheduled injection or 150 MW, whichever is lower."

- viii. It is stated that the petitioner worked out the deviation by STPP for the complete year FY 2018-19 as below:

1.	Scheduled generation	=	8113.454 MU
2.	Actual generation	=	8208.214 MU
3.	Deviation (-)	=	94.76 MU
4.	Deviation on scheduled generation	=	1.16%

The petitioner deduced that the deviations done (1.16%) by STPP is within permissible limit of 12% as per grid code and claimed as payable as per CERC DSM Regulations 2014.

- ix. It is stated that to further justify its claim, the petitioner extracted the summary of a study report prepared by CERC market monitoring cell regarding the implication of such over-injection upon the payment liability of the state of Telangana in region level, which report estimated that in the absence of STPP's energy injection, the pay outgo for the state of Telangana in SRPC for the FY 2018-19 would have increased by Rs.31.88 crore.

- x. It is stated that by referred to the CERC market study report, the petitioner justified its claim for Rs.17.75 crore receivable by it towards energy charges for the energy supplied to the respondents (94.76 MIJ).

- xi. It is stated that the petitioner also invoked section 70 of Indian Contract Act, and averred that *"when such quantum of power not prohibited by law, has been supplied 'Not for gratis' the recipient is bound to pay the consideration"*.

- xii. It is stated that the petitioner cited the judgement by Hon'ble Supreme Court in a case between the *State of West Bengal Vs. B. K. Mondal* as reported at AIR 1962 (SC) 779 and averred that the law settled by the Apex Court is binding on the respondents and non-acceptance by TSDISCOMs is contrary to law.
- xiii. It is stated that the petitioner averred that it is entitled for consideration of the supplied power and respondents are liable to pay the amount as claimed.
- xiv. It is stated that finally, the petitioner prayed that the Commission to consider the traditional methodology of accepting energy injected into the grid for admittance of energy bills of STPP, as being followed for other state generators like KTPP, till Intra-state ABT is implemented in Telangana. It is stated that the Commission is required to examine whether the petitioner injected energy beyond schedule inadvertently or deliberately for commercial gain even though there was no grid requirement.
- xv. It is stated that the claim of the petitioner for payment of Energy Charges (Variable Charges) for the over-injected energy of 94.76 MU beyond the SLDC schedules, is not in accordance with either CERC Tariff Regulations 2014 (or) Regulation No.1 of 2008 adopted by this Commission. Hence the respondents are not liable to pay the same.
- xvi. It is stated that the relevant energy charge rate (ECR) Variable Cost (Charge) stipulated in the Regulation No.1 of 2008 as applicable for Billing & Payment of Energy Charges for FY 2016-19 as per TSERC order dated 19.06.2017 in O.P.No.9 of 2016 is extracted below:
13. *ENERGY CHARGES*
- 13.1 *Thermal Generating Stations*
- a. *Energy Charges shall cover fuel costs and shall be worked out on the basis of ex-bus energy sent out corresponding to scheduled generation as per the following formula.*
- $$\text{Energy Charge (Rs.)} = \frac{\text{Rate of Energy Charges in (Rs.kWh)}}{\text{'x' Ex-bus energy sent out corresponding to scheduled generation for the month in kWh}}$$
-”
- xvii. It is stated that in terms of the aforesaid provision for computation of energy charges, ex-bus energy sent out corresponding to scheduled

generation shall only be considered but not actual energy as per JMR as contended by the petitioner.

- xviii. It is stated that the petitioner's averment to consider the readings of main meter for billing purpose as per PPA Article 7.11, is not the dispute raised by the respondents but disputing the excess energy injected beyond SLDC's schedule, on the pretext of JMRs, as the same is contrary to the tariff Regulations, since the said PPA provision is overridden by the Regulation to the extent of inconsistency, hence the Petitioner's claim based on JMRs beyond SLDC's schedule is not sustainable in law.
- xix. It is stated that the petitioners other contention is that since the CERC Regulations recognized the variations between scheduled energy and Actual energy injected by notifying commercial mechanism, therefore the over-injection is not a violation of Grid code (IEGC).
- xx. It is stated that this is a misconception of Unscheduled Interchange (UI)/DSM Regulation. The tariff payments such as Fixed charges (Capacity charges) and variable charges (Energy Charges) are payable as per the PPA provisions/applicable tariff Regulations, whereas Grid Code violations/deviations are dealt as per the Sections 32 & 33 of the Act 2003, while commercial settlements for deviations are carried out as per CERC UI/DSM Regulations 2014 and clubbing them is not correct, since the UI Regulation deals with contingent situations occurring inadvertently such as sudden loss of generation like generating unit tripping/forced outage, tripping of lines/feeders etc., in which case SLDC does the balancing act of matching supply and demand in real time basis, to bring the system frequency within the permissible band limits, to maintain the grid security and reliability.
- xxi. It is stated that SLDC is vested with authority to monitor the real time operations and balances the supply of demand continuously in each of the 96 time blocks in a day.
- xxi. It is stated that the petitioner deliberately injected energy beyond SLDC's schedule, which amounts to non-compliance of SLDC instructions besides causing financial loss to TSDISCOMs by injecting energy not required by the grid.

- xxii. It is stated that under Section 32 of the Act, 2003, SLDC is designated as an apex body to ensure the integrated operation of the power system in a State and its functions are as enumerated below:

Section 32 Functions of State Load Despatch Centres.

- a) *SLDC is responsible for Optimum Scheduling and dispatch of electricity within a State in accordance with the contracts entered into with the Licensees or the generating companies operating in the State,*
- b) *SLDC shall monitor grid operation,*
- c) *keep accounts of the quantity of electricity transmitted through the State Grid*
- d) *exercise supervision and control over the intra-State transmission system; and*
- e) *be responsible for carrying out real time operations for grid control and dispatch of electricity within the state through secure and economic operation of the state grid in accordance with the Grid Standards and the State Grid Code.*

... ..

Further the Section 33 of the Electricity 2003 stipulated as below:

Section 33. (Compliance of directions)

- a) *The State Load Despatch Centre in a State may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in that State.*
- b) *Every Licensee, generating company, generating station, substation and any other person connected with the operation of the power system shall comply with the directions issued by the State Load Despatch Centre under Sub-Section (1)*
- c) *The State Load Despatch Centre shall comply with the directions of the Regional Load Despatch Centre.*
- d) *If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given under Sub-Section (1), it shall be referred to the State Commission for decision:
Provided that pending the decision of the State Commission, the directions of the State Load Despatch Centre shall be complied with by the licensee or generating company.*
- e) *If any licensee, generating company or any other person fails to comply with the directions issued under Sub-Section (1), he shall be liable to a penalty not exceeding rupees five lakhs.*

... ..”

- xxii. It is stated that as could be seen from the above, the Act, 2003 specifically mandated that the generating company shall comply with the directions issued by SLDC for secure and economic operation of the State Grid, therefore the generating company ought to follow the SLDC

schedules for keeping the grid secure and reliable and also for economic operations, failing which it is liable for penalty upto Rs.5.00 lakh, This is in addition to the penalty payment (DSM) as per UI Regulations, depending on the level of deviation from the stipulated volume limit in each time block of 15 minutes.

- xxiii. It is further stated that the IEGC code notified by the CERC stipulated that in case of persistent non-compliance of IEGC code by the generator, the Commission can initiate suo-motu proceedings against the concerned, which code guides the State Commissions while notifying State Grid Code.
- xxiv. It is stated that one of the functions of SLDC is to carry out the scheduling of generating sources optimally & economically, which mandated that the generating company cannot inject more energy into the grid than scheduled/required by SLDC, otherwise the excess energy causes imbalance in the supply-demand position, leading to increased frequency, high voltage in the system, higher system losses and loss of power system stability, which has a cascading effect of blackout of the integrated power system (STU network and CTU network are integrated and operate in tandem).
- xxv. It is further stated that if the petitioner had complied with SLDC instructions, limiting the generation equal to the Schedule in each time block within permissible deviation volume limit, then the issue of over-injection of 94.76 MU would not have arisen and to that extent TSDISCOMs could have saved payment of Energy charges. However, the Petitioner deliberately injected excess energy into the grid thereby intended to cause financial burden on the TSDISCOMs besides violating grid code.
- xxvi. It is stated that the Commission may note that the petitioner had already recovered full fixed charges for declaring its annual plant availability beyond the threshold PAF (85%) during the FY 2018-19. Since the petitioner recovered full Fixed Charges for entire Capacity units (part tariff recovered), the contention raised by it that "*it is not supplied for gratis*" does not sustain, as it had not supplied the Capacity units free of

cost. The issue remained is over-injected Energy (charges), beyond SLDC schedules, whether payable as per Tariff Regulations.

- xxvii. It is stated that the critical issue to be examined by the Commission is when the Petitioner over-injected energy into the system without the grid requirement by violating the grid code, whether the DISCOMs are liable for payment of Energy Charges (VC) in terms of APERC/CERC tariff Regulations. Since the Tariff Regulations does not support the contention/claim of the Petitioner, therefore the Petitioner's claim should be disallowed.
- xxviii. It is stated that the other contention raised by petitioner is that since the CERC U.I./DSM Regulation recognized the deviation as permissible, hence it is not a violation of grid code.
- xxix. It is stated that the CERC UI Regulations (now called Deviation Settlement Mechanism - DSM Regulations) stipulated a volume limit of 12% of Schedule (or) 150 MW, whichever is lower, in each time block of 15 minutes).
- xxx. It is stated that now with specific reference to the petitioner's project, the deviation volume limits as per CERC DSM Regulation are worked out as below:
- (a) There will be 96 time blocks each of 15 minutes in a day.
 - (b) In a year period, the total no. of time blocks will be 96×365 days = 35040 time blocks.
 - (c) The ex-bus capacity as determined by this Commission in O.P.No.9 of 2016 was 1131 MW and 12% of the same will be 136 MW, which means that the Petitioner is permitted to under-inject upto 136 MW (lower of 136 MW & 150 MW), without any UI penalty.
 - (d) As per the PPA provisions, the technical minimum for reducing the Capacity of this STPP plant is 65%, which means 35% of the capacity can be backed down at any point of time, as per grid requirement (35% capacity means 35% of 1131 MW = 396 MW).
 - (e) The STPP plant can be backed down upto 735 MW (1131 MW - 396 MW) in case of lower grid demand.

- (f) Assuming that, if STPP plant is backed down by 396 MW, the generation that could be avoided in each time block (15 minute) is 0.099 MU, which has been generated without grid requirement.
- (g) As furnished by the petitioner, the excess energy injected during FY 2018-19 was 94.76 MU, which means the petitioner violated the SLDC schedules for 957 time blocks (94.76 MU/0.099 MU) in the year, which clearly establishes that the petitioner deliberately violated the SLDC schedules and also grid code (IEGC) and persistently injected excess energy into the grid, even without grid requirement, for which the petitioner would have been liable to pay UI penalty charges to SLDC, if the UI Regulations were in place. The Petitioner saved the UI penalty since the UI Regulation was not in place in the State.
- (h) Further, the petitioner made a calculation of the deviation to justify that STPP deviation during FY 2018-19 was merely 1.16%, which is claimed within the permissible limit of 12%.
- (i) Though the petitioner extracted the definition of deviation from CERC deviation Regulations 2014, which stipulated that it should be calculated for each time block_of 15 minutes, however the Petitioner calculated the deviation for the entire year period of FY 2018-19, which is obviously an erroneous computation, perhaps to prejudice the Commission while justifying its claim. As such, said computation is not in consonance with CERC deviation Regulations.
- (j) The respondents enjoyed the benefit of injection of 94.76 MU and obligated to pay the consideration. This is also a misconceived notion. When there is lesser demand in the grid, excess energy injected will not be absorbed by the grid and it leads to increase in frequency of the System, causing grid imbalance (violation of grid code) and further system losses will increase, besides causing financial loss to the respondents and also it is a loss to the society as a whole, without any useful purpose, which is against the Energy Conservation Act and need to be penalized.

- (k) The CERC Market Study Report cited by the petitioner in support of its claim, the respondents submit that the study report should have made an assessment of the violation of grid code by the petitioner and its consequential impact on the grid and the penalty sum, the petitioner would be liable for such violation. Further, as per the settled law, the rights and obligations flow to the parties from the agreement/relevant Regulations but not from any study reports.
- (l) Regarding the comparison of the petitioner's plant with State Generator (KTPP) while enclosing a bill copy of TSGENCO, it is stated that the Petitioner merely enclosed a copy of the TSGENCO bill during the year 2016, based on JMRs but it does not confirm the payment by DISCOMS based on such bill alone without verifying the SLDC energy certification. Hence, the contention raised is not maintainable.
- (m) Regarding the invoking of Section 70 of the Indian Contract Act and the Case law cited by the petitioner, the following is submitted -
- (n) The Section 70 of the Indian Contract Act is extracted below:
- Section 70 of Indian Contract Act -**
70. Obligation of person enjoying benefit of non-gratuitous act - where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit.
- (o) The Section 70 of the Contract Act stipulated that "*where the person does the act lawfully.*", which categorically stipulated that the act done by the person must be lawful and the other party should have enjoyed the benefit. The petitioner is under misconceived notion that the respondents enjoyed the benefit of excess energy injected. As already submitted in the foregoing para, when there is lesser demand in the grid, excess energy injected will not be absorbed by the grid and it leads to increase in frequency of the system, causing grid imbalance (violation of grid code) and further system losses will increase and such excess energy will not flow to DISCOMS network as there would

be no demand at that point of time. Therefore, the petitioner's contention regarding the benefit derived by the respondents in respect of excess energy is not maintainable.

- (p) In the present case, the petitioner over-injected the energy without SLDC's approval/Schedule, without grid requirement, and further violated the grid code as well as the PPA provision at Article 3.4.2 (SCCL shall follow the SLDC's directives to backdown.). Hence the respondents submit that the Section 70 of the Contract Act is not attracted in the present case.
- (q) Further, the petitioner suppressed the direction of the Apex Court in the case law cited by it AIR (SC) 779 (*State of West Bengal Vs. B.K.Mondal*), wherein it held that "*when Services are imposed on. Section-70 of Contract Act is not applicable*", which endorses the stand of the respondents that if Services are thrust upon the respondents by way of over-injection despite the SLDC's backing down instructions, Section 70 is not attracted.
- (r) Further, the Hon'ble Supreme Court in Civil Appeal No.1766 of 2019 held that "*claims under Section 70 of the Contract Act cannot be raised when the parties are governed by contracts.*" The law decided in the aforesaid case law squarely applies to this case also.
- (s) Furthermore, while dealing with a case having similar facts like the present petition, the Hon'ble APTEL in Appeal No.123 of 2010 (*Indo Rama Synthetics Vs. MERC*) held as below:

"

11. *In our opinion the Section 70 and 72 of the Indian Contracts Act. 1872 will not be applicable in the present case. The present case governed the Electricity Act, 2003 which is a complete code in itself. In the electricity grid, the SLDC, in accordance with Section 32 of the Act is responsible for scheduling and dispatch of electricity within the State, to monitor the grid operations, to exercise supervision and control over the intra-state transmission system and to carry out grid control and dispatch of electricity through secure and economic operation of the State Grid. All the generators have to generate power as per the schedule given by the SLDC and the grid code in the interest of secure and economic operation of the grid.*

Unwanted generation can jeopardize the security of the grid.”

The ratio decided by the Hon'ble APTEL that “*the Section 70 of the Indian Contract Act is not applicable to the contract agreements governed under the Act, 2003*” is binding on this Commission while deciding the present claim of the petitioner.

- (t) In light of above submissions, the respondents stated that the contentions raised by the petitioner are not supported by the Regulations as well as the Case laws and deserves to be set aside as not maintainable.

3rd claim - Incentive for FY 2017-18

- i. The petitioner claimed Rs.29.1137 crore towards Incentive bill raised for the year FY 2017-18, for achieving the PLF of 91.09% beyond the threshold PLF of 85% by computing the excess energy units (over and above 85%) eligible for Incentive based on JMRs at the rate of 50 paise/kWh as per CERC Tariff Regulations 2014.
- ii. The petitioner extracted the Incentive provision as stipulated in the CERC Tariff Regulations 2014, which specifically provided for, incentive payable at a flat rate of 50 paise/kWh for the ex-bus scheduled energy over and above the threshold PLF of 85% (Normative Annual PLF).
- iii. As could be seen from the above, the petitioner's claim is contrary to the CERC Tariff Regulations 2014. The petitioner is selectively choosing the advantageous portion of the Regulations and seeking relaxations as per its convenience, which is not supported by the Regulations or settled laws and is solely intended to enrich itself at the cost of the TSDISCOMs.
- xxvii. The petitioner's contention for claiming ex-bus actual energy as per JMRs beyond 85% PLF is that there was no intra-state UI Mechanism/Regulations available in the State and energy bills for State Generator were allowed traditionally based on actual energy injection as per JMRs in terms of PPA Clause and prayed this Commission to consider the Incentive payment as per JMRs instead of ex-bus scheduled energy as certified by SLDC.
- xxviii. The UI mechanism is intended to bring in discipline among the State generators to maintain the grid frequency within the permissible band

(49.90 Hz to 50.05 Hz) as fixed by CERC from time to time in the Grid Code, whenever contingencies occur like load throw-off due to sudden feeder/line trippings (in this case generation supply availability exceeds the demand) and also reduced load (demand) due to weather conditions or generating unit tripping due to boiler tube leakages etc. (in this case supply availability will be less than the demand prevailing) causing imbalance in supply-demand scenario (Ideal frequency is 50 Hz when supply matches/equals demand). Under supply exceeding demand scenario, SLDC is authorised (real time grid monitoring) under Section 32(2)(e) of the Act 2003, to take corrective action like issuing backing down instructions to high cost (VC) generators to maintain grid frequency within the permissible band as well as for safe, economic operation of power system. Non-compliance to TSSLDC's backing down instructions amount to violation of the Indian Electricity Grid Code (IEGC) under Sections 33(1) & (2), endangering the grid security and reliability of the power system and the generating company is liable for penalty under Sections 33(5) of the Electricity Act 2003.

- xxix. Under UI Regulations, in case of deviation by any generator due to some contingency, a penalty will be imposed on the deviant generator called deviation charges and depending on the level of deviation, additional deviation charges are also payable by the deviant entity as per the procedure prescribed.
- xxx. Whereas the petitioner deliberately injected energy into the grid beyond SLDC's schedules. on the pretext of absence of UI mechanism in the State in order to gain financially, thereby violated the grid code despite SLDC notices and further raised the incentive bill @ 50 paise/kWh for all the over injected energy beyond the 85% threshold PLF in terms of CERC Tariff Regulations 2014 but seeks the Commission consider actual energy delivered as per JMRs beyond 85% threshold limit instead of excess ex-bus Scheduled Energy, which claim is contrary to CERC Tariff Regulations 2014 as well as grid code violation.
- xxxi. Further the petitioner's comparison with State Generators is not tenable since the KTHP Stage-II 600 MW unit achieved PLF of 73% against the

normative PLF of 85% during the FY 2017-18 and therefore not claimed any incentive as per JMRs as alleged by the petitioner.

- ix. The petitioner's claim of Incentive is not in accordance with CERC Tariff Regulations 2014 and the excess energy units (beyond 85% PLF) over-injected beyond TSSLDC Schedules are not entitled for Incentive payment as it has achieved such high PLF (generation) with high cost Bridge Linkage coal and also by violating grid code jeopardizing the grid security and reliability, and non-compliance of SLDC's instructions, which significantly burdens the respondents.
- x. Hence, the Commission is requested to disallow the incentive claimed by the petitioner based on JMRs as contrary to CERC Tariff Regulations, 2014 and not maintainable.

4th claim for Water Charges for the period FY 2016-17 to FY 2018-19

- i. The petitioner has claimed Rs.4.69 crore as a reimbursement towards Water charges paid to Irrigation and CAD Department, Govt. of Telangana for the 3 year period (FY 2016-19) for having utilized the water drawn from River Godavari and Pranahita for power generation.
- ii. The petitioner claimed the water charges as per the CERC tariff Regulations, 2014 as well as in terms of the directive of this Commission at Para (Sl.) No.4.23.3 of the tariff order dated 28th August 2020 in O.P.No.4 of 2019 (true-up petition).
- iii. The petitioner cited the Section 61(b) of the Act 2003 (generating station to discharge its functions on commercial principles) for supporting its claim and averred that it is entitled to the said expenditure borne by it.
- iv. The respondents invite the kind attention of this Commission to the directive given at para 4.23.3 of tariff order dated 28.08.2020 in O.P.No.4 of 2019 as extracted below:

“... .. In light of the above, the Commission has not approved any amount towards water charges in this order. The Commission directs SCCL totake up the issue of water charges with the DISCOMs.”
- v. As could be seen from the above, this Commission has not approved any amount towards Water charges for the period FY 2016-19 but directed the Petitioner to take up the issue with DISCOMs.

- vi. As such, the issue of water charges needs to be examined by this Commission afresh in terms of the TSERC order dated 19th June 2017 passed in O.P.No.9 of 2016 as well as the Regulation No.1 of 2008 applicable for the period FY 2016-19.
- vii. In the order dated 19.06.2017 in O.P.No.9 of 2016, the Commission had specifically directed at para 4.15.2 that "*The billing and payment of annual fixed charges and energy charges shall be in accordance with the Regulation No.1 of 2008.*", Hence, the Water charges claim has to be examined under the Billing & Payment methodology as prescribed in the Regulation No.1 of 2008, for annual fixed charges (Cost) (FC). The Regulation No.1 of 2008 prescribed that the annual fixed charges (Cost) shall comprise the following components.
- a. RoCE (Return on Capital Employed) [Debt + equity];
 - b. Depreciation;
 - c. O&M Expenses (Operation & Maintenance);
 - d. Interest on Working Capital;
 - e. Income Tax as per actuals;
- viii. It could be seen that O&M expenses is one of the components of Annual Fixed Charges (cost). The O&M expenses is further segregated into the following sub-components 1. Consumption of Stores 2. Repairs and Maintenance 3. Insurance 4. Security 5. Administrative Expenses 6. Employee Cost 7. Corporate Office Expenses allocation, etc. The water charges is a subcomponent under the administrative expenses, which means that Water Charges is already covered in the O&M Expenses, which is a part of annual fixed charges/cost, which was already claimed by the Petitioner during the said period.
- ix. The petitioner is well aware that the water charges claim is very much covered in O&M expenses under the Regulation No.1 of 2008. Hence in order to circumvent the same, the petitioner is seeking to claim the water charges under the CERC Tariff Regulations 2014, for which the petitioner is not entitled to, since it amounts to a double claim.
- x. The O&M expenses claimed in the Petition O.P.No.9 of 2016 vis-a-vis the O&M Expenses approved by this Commission (in the order dated 19.06.2017) to examine whether the Petitioner claim is justified or not.

The relevant Paras of the TSERC order dated 19.06.2017 are extracted below:

“

4.5. O&M EXPENSES

SCCL's submissions

4.5.1 SCCL submitted that O&M expenses have been computed in accordance with the Regulation No.1 of 2008. The submissions of SCCL in this regard are as follows:

(i) The normative O&M expenses of Rs.10.12 lakh/MW specified for FY 2006-07 for unit size of 500 MW has been escalated by the specified annual escalation rate of 4% to arrive at the normative O&M expenses for FY 2016-17. The normative O&M expenses have been annually escalated by 4% to arrive at the normative O&M expenses for FY 2017-18 and FY 2018-19. Accordingly, the normative O&M expenses have been computed as Rs.14.98 lakh/MW, Rs.15.58 lakh/MW and Rs.16.20 lakh/MW for FY 2016-17, FY 2017-18 and FY 2018-19 respectively.

4.5.2 The O&M expenses claimed by SCCL is as shown in the Table given below:

Table 4-3: O&M expenses claimed by SCCL (Rs.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	16.50	58.61	186.95	194.43

4.5.3

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 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)

Particulars	Units	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		
Installed	MW	600	1200	1200	1200

Particulars	Units	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		
Capacity					
Normative 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

- xi. It could be seen from the above, though the petitioner claimed O&M Expenses as per Regulation No.1 of 2008 and escalated by 4% annually to meet the O&M expenses for the period FY 2016-19, this Commission has allowed higher O&M expenses as per CERC Tariff Regulations 2014 as summarized below:

O&M Expenses gist

(Rs.lakh/MW)

Normative O&M Expenses claimed by SCCL	FY 2016-17	FY 2017-18	FY 2018-19	Annual Escalation
	14.98	15.58	16.20	4%
Normative O&M Expenses approved by TSERC	16.27	17.30	18.38	6.33%

Rs.crore

	FY 2016-17	FY 2017-18	FY 2018-19
Expenses claimed by SCCL	58.61	186.95	194.43
O&M Expenses approved by TSERC	64.19	207.60	220.56
Excess O&M expenses allowed by TSERC	5.58	20.65	26.13

- xii. It could be seen from the above tables that this Commission has generously allowed higher O&M expenses to the petitioner's power plant (STPP) than claimed by the petitioner and further allowed higher annual escalation of O&M by 6.33% than claimed by the petitioner @ 4%.

- xiii. The Commission is prayed to take into account the above higher provisioning allowed to the Petitioner in O&M expenses and disallow the claim of the Petitioner for Water Charges (Rs.4.69 crore) as not in consonance with Regulation No.1 of 2008, which has overridden the PPA provisions regarding Billing and payment of annual fixed charges as ordered by this Commission in O.P.No.9 of 2016, order dated 19.06.2017.
- i) In light of the above submissions, the respondents stated that there are no merits in the claims made by the petitioner together with interest in the present Petition and request this Commission to dismiss the petition as devoid of merits.
4. The petitioner has filed rejoinder and the contents of it are extracted below:
- a. It is stated that at the outset, the determination of tariff to the project through tariff order based on capital cost, and the issue of sale of quantum of power by generator, billing and payment of fixed and energy charges, are distinctly different, but the respondents unfortunately getting mixed up both. The eligibility to sell and obligation to purchase of power is governed by article 3 of PPA entered by the parties.
- b. It is stated that the respondents incorrectly submitted that operating norms of the project is as per TSERC regulation 01 of 2008. It is stated that the Commission has adopted CERC tariff regulations while determining capital cost and imposed operating norms of station heat rate, auxiliary energy, normative plant availability factor of the subject project on the ground that state regulation are applicable only for the projects with a capacity of 500 MW whereas the subject project being 600 MW unit. Therefore, target plant load factor for incentive shall be as per that CERC regulation.
- c. It is stated that the respondents have misquoted the order dated 19.06.2017. The said order is not relevant to adjudicate the present dispute of entitlement of sale of power by the petitioner and the obligation to purchase by the respondent. The respondent incorrectly stated that the Commission is required to examine whether the claims of the petitioner are in consonance with the Commission's order dated 19.06.2017 or as per regulation AP 01 of 2008 or as per PPA dated 18.01.2016.
- d. It is stated that the Commission determined STPP's tariff by adopting CERC

terms and 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”.

- e. It is stated that the terms and conditions of PPA clauses of the project which are not inconsistent with the said tariff order or the regulations are in force.

1st Claim – payment towards Additional Coal cost for FY 2018.

- f. It is already stated that SCCL-STPP MoU has similar provisions to the provisions of other MoU's of similar nature entered between SCCL and other generating companies. Hence, it is clear that neither the pricing structure as claimed by petitioner nor the terms of MoU are discriminatory against Telangana DISCOMs. Further, it is stated that fuel supply agreements are signed between the coal supplier and the generator and copy of agreement is sent to DISCOMs and SCCL also followed the same procedure. Therefore, submissions of the DISCOMs lack merit.

- g. It is stated that as per tariff policy of 2016 even projects awarded under competitive bidding process were facing difficulties in getting coal from coal producers and are allowed to approach the ERC's for admission of imported/market based e-auction coal to meet the coal shortage. The relevant portion is quoted below;

“6.1 Procurement of power

... ..

However, some of the competitively bid projects as per the guidelines dated 19th January, 2005 have experienced difficulties in getting the required quantity of coal from Coal India Limited (CIL). In case of reduced quantity of domestic coal supplied by CIL, vis-à-vis the assured quantity or quantity indicated in Letter of Assurance/FSA the cost of imported/market based e-auction coal procured for making up the shortfall, shall be considered for being made a pass through by Appropriate Commission on a case to case basis, as per advisory issued by Ministry of Power vide O.M.No.FU12/2011-IPC (Vol-III) dated 31.07.2013.”

- h. It is stated that from the above it is seen that the Gol is also encouraging to get coal from alternate sources even at higher prices to mitigate the demand - supply mismatch of electricity and hence, the usage of premium coal was not inconsistent with mandate of Gol which has statutory force. Therefore, the

contention of the beneficiary lacks merit.

- i. It is stated that further, the petitioner, as per the direction of the Commission vide order dated 28.08.2020, is making efforts to swap the NAINI coal mines with TANGEDCO to minimise the energy charge further. The relevant portion from appendix-B of Commission’s directive in the order is quoted below;

“1. **Coal Swapping**

SCCL should actively pursue the issue of coal allocation for its generating station with the Ministry of Coal so that the cumbersome task of transportation of coal from NAINI coal block in Odisha and associated losses in quantity and GCV could be mitigated by procuring coal from its own mines which are closer to its generating station.”

- j. It is stated that it is seen from the past record that Coal India recorded a sale price with a premium of 58%-92% in the spot and forward market of coal over notified prices during 2018-19 which also proves coal scarcity and high prices existing at that period. In the same period SCCL supplied additional coal to STPP with a minor premium resulting in an increase of energy charge by 15 P/kWh which translates into merely an increase of 6.5% in energy charge. The table given below shows the analysis of increase in energy charge due to premium coal pricing.

Table:A Analysis of premium Coal pricing for FY 2018-19		
Actual generation (MU) (A)	Energy charge without premium (Rs.crore) (B)	Average energy charge rate without premium (paise/unit) (C=B/A)
8208.214	1865.8	227.31
	Energy charge with premium (Rs.crore) (D)	Average Energy charge rate with premium (Paise/unit) (E=D/A)
	1987.23	242.10
	Impact of premium (paise/unit) (F=E-C)	14.79
	Impact of premium percentage	6.5%

- k. It can be stated from the above, that only a 6.5% increase in energy charge due to additional cost of premium coal price took place due to revised coal pricing approved by the authority. However, the said increase of 6.5% (15 paise) is not significant if considered the range of merit order framed by TSSLDC for relevant period in the state of Telangana. The lower and upper range of merit order was Rs.2.3/kWh and Rs.3.3/kWh respectively for the year 2018-19 whereas the energy charge of STPP was Rs.2.42/kWh including the impact of 15 paise coal premium.

- l. It is stated that petitioner is making all out efforts to swap the NAINI coal mines with TANGEDCO to minimise the energy charge as per the direction of the Commission vide order dated 28.08.2020. It is stated that the reasons for delay in materializing coal supply from NAINI coal block were seriously deliberated in the standing committee on linkage of coal under MoC and the committee after considering the representation made by SCCL had recommended extension of bridge linkage of STPP upto 2023 in form of tapering linkage in synchronization with production from NAINI coal block. This fact proves that the delay in production of NAINI coal had various legitimate uncontrollable factors and hence the delay is not attributable to petitioner. It is stated that STPP and SCCL is conducting joint sampling and issuing debit/credit notes as applicable, the total credit received by STPP from SCCL in FY 2018-19 was Rs.60.25 lakh. The submission of respondent in this respect lacks merit.
- m. It is stated that the respondent has submitted that initially charging a lower energy charge allowed STPP for a smooth entry in merit order despatch. The said claim is correct considering the fact of situation on this aspect. It may kindly be noted that the impact of premium coal pricing was 15 P/kWh and the lower and upper range of merit order was Rs.2.3/kWh and Rs.3.3/kWh respectively which provides a width of Rs.1/kWh. Hence, it may be construed that the impact in scheduling by an increase of 15 P/kWh energy charge would not vary the dispatch of power by SLDC taking into consideration of said range of merit order. Hence, the contention of the beneficiary lacks merit.
- n. It is stated that SCCL-STPP MoU has similar provisions as that of the provisions of other MoU's of similar nature entered between SCCL and other companies. In this regard reliance is placed on SCCL-NTPC MoU dated 02.12.2020.
- o. It is stated that accordingly, the Commission is prayed to allow energy bills raised as a result of additional coal bills claimed by SCCL in accordance with CERC tariff. The claim of the respondent that the terms of the MoU are onerous to them is imaginary and baseless, and the petitioner is entitled for the actual coal cost incurred by them which is claimed in the bills.

**2nd Claim - Billing on actual metered energy for the year 2018-19:
Contentions raised by the petitioner (SCCL)**

- p. It is stated that the claim towards actual energy supplied is now increased from Rs.17.75 crore to Rs.21.5 crore based on revised scheduled energy

certifications of SLDC. Therefore, the claim amount has to be considered as Rs.21.5 crore as against Rs.17.75 crore made in the petition.

Reply by TSDISCOM's

- q. It is stated that when the TSDISCOMs were not able to make payments for energy supplied by the petitioner, month after month and in this fact of situation there is absolutely no reason to say that petitioner has deliberately injected power for commercial gain as is alleged by the respondents. Hence, the contention of the DISCOMs lacks merit.
- r. It is stated that the clause 14.1 of regulation AP 01 of 2008 may be referred to which is already reproduced at point 't' of petitioner's submissions.
- s. It is stated that however, notification for unscheduled energy charges for intra state suppliers was not made in the state of Telangana and in absence of such mechanism, traditionally energy bills for state generators were allowed based on actual energy as per JMR. It is stated that it may be seen from the above that the charges for U. I. was provided in tariff regulation AP 01 of 2008 and in similar way the charges for deviation were provided in DSM regulation notified by CERC both of which recognizes additional charges to be paid over and above the energy charges corresponding to scheduled generation.
- t. It is stated that paying energy charges upto scheduled generation and paying DSM charges/UI charges for the deviation energy is almost equivalent to payment of energy charge rate for the total metered energy. This is the reason why the readings of main meter which records actual energy injection is used for billing purpose as per PPA Article 7.11. It's a fact that main meter records actual energy and not the scheduled energy. Further, the eligibility to petitioner for sale of energy, and obligation of DISCOMs to purchase such delivered power at inter connection point, is provided in Article 3 of PPA. The relevant provisions of PPA are reproduced below:

*“3.3 Sale and Purchase of Declared Capacity and Net Electrical Energy:
From and after the Commercial Operation Date of the 1st Unit, subject to the provisions of this Agreement, SCCL shall sell, and TSSPDCL and TSNPDCL shall purchase, the entire Declared Capacity and all Net Electrical energy generated by the Unit/Project from the (2 x 600 MW) Power Project for the consideration set forth in this agreement.
The obligation of SCCL to sell capacity to the TSDISCOMs under this PPA shall, in each Settlement Period, be 80% of the declared capacity of the Unit/Project or to be revised as per TSERC tariff Regulations issued from time to time.*

- (a) SCCL shall always inform, along with the Availability Declaration, the capacity committed to TSDISOMs for each Settlement period.
- (b) Net Electrical Energy: Means the Energy Units actually delivered to TSSPDCL and TSNPDCL (TSDISCOMs) by SCCL pursuant to sale to TSDISCOMs of the capacity under Article 3 of this PPA, as computed at the Inter Connection Point, which point shall be the only point at which such Net Electrical Energy shall be computed under this Agreement.

....

3.4.2 SCCL shall follow the SLDC's directives, to back down, increase or resume generation, decrease generation at times on a day, provided that such directives are consistent with the technical limits of the facility, Prudent Utility Practices or in accordance with discharge functions of SLDC. Number of Dispatch Instructions per day shall not exceed two. The duration of back down and quantum of energy backed down each day shall be reconciled and certified by both SCCL (at Station level) and SLDC on monthly basis.

3.4.3 Nothing contained in this Agreement shall be construed to require SCCL to operate the facility, at any time, including emergency, inconsistent with Prudent Utility Practices and the Technical Limits in any manner."

u. It is stated that the relevant facts are submitted to clear, the misconception entertained by respondents, between DSM regulation, IEGC and the role of SLDC. On this aspect the following excerpts from explanatory memorandum of CERC deviation settlement mechanism regulation 2018 is reproduced.

"The objective of these regulations is to "maintain grid discipline and grid security as envisaged under the Grid Code through the commercial mechanism for Deviation Settlement through drawl and injection of electricity by the users of the grid.

Currently as per the existing volume limits for deviation, the States may deviate from schedule up to 150 MW or 12% of schedule, whichever is lower, when the frequency is between 49.7 Hz and 50.1 Hz....."

v. It is stated that accordingly, it can be seen from the above that the drawl and injection of electricity through DSM helps grid security as well as enhance commercial benefits for the participants. It can also be stated that drawl/injection within pre-specified limits are not only allowed but also paid for as per the regulation.

w. It is stated that therefore, the submission of DISCOMs that U. I. regulation deals with contingent situations occurring inadvertently such as sudden loss of generation like generating unit tripping/forced outage, tripping of lines/feeders etc., is not correct.

x. It is stated that it is not denied that SLDC does the balancing act of matching supply and demand in real time basis. The supplementary commercial mechanism such as UI or DSM also helps SLDC to achieve their objective of

maintaining grid discipline.

- y. It is stated that it is incorrect to state that the additional generation caused financial loss to DISCOMs as per the claim of respondent. The said claim is baseless besides being incorrect. The petitioner has already submitted some facts and figures in form of a study report based on CERC market monitoring reports.
- z. It is stated that in the absence of quantum of energy injected by petitioner, the respondents would have to pay Rs.31.88 crore to SRPC at regional level which they avoided by the help energy supplied by the petitioner. Therefore, it is clear that the additional generation of STPP has resulted in financial gain to TSDISCOMs. It is stated that the additional generation also helped TSDISCOMs to reduce their power purchase cost from STPP. The following table illustrates the said fact;

Table-B: Average unit rate reduced on actual energy basis for FY 2018-19		
Schedule Generation (MU) * (A)	Bills upto schedule generation (Rs.crore) (B)	Unit rate (paisa/unit) (C= B/A)
8113.454	3461.57	426.6
Actual generation (MU) (D)	Bills for total actual generation (Rs.crore) (E)	Unit rate (paisa/unit) (F=E/D)
8208.214	3483.07	424.3
	Benefit to DISCOM's (paisa/unit) (G= C-F)	2.3
‘**’ Provisional scheduled generation of 8130.654 MU has been revised to 8113.454 MU by SLDC as per the finalized monthly backing down data.		

- aa. It is stated that it can be seen from above table that the average unit rate is decreased by 2.3 P/kWh considering the said generation by the petitioner.
- ab. It is stated that petitioner is aware of the functions and powers of SLDC and always tried to adhere to the schedules given by the SLDC time to time. It is stated that however, it is seldom possible to match the exact schedule provided by the SLDC on block to block basis and minor deviations sometimes arise due to change of quality coal, grid demand and frequency of the system. Further, during the time of starting up and shutting down of unit some variations with schedule may take place due to slightly different realized ramp up and ramp down rates compared to the designed ramp up and ramp down rates in ideal conditions. Also, it is stated that time to time the technical issues which prevent the compliance of backing down instructions were intimated to SLDC with the

request to provide some relaxation in backing down. It is stated that SLDC after considering the practical problems being faced by the petitioner has decided not to initiate any action for any such non-compliance till date.

- ac. It is stated that STPP has always adhered to the rules and regulations framed by the appropriate authorities with regard to grid discipline. Hence, the question of non-compliance of IEGC does not arise.
- ad. It is stated that in this respect, the excerpts from explanatory memorandum of CERC deviation settlement mechanism regulation 2018, as extracted earlier is reiterated here. It is stated that accordingly, it can be seen from the extract that the drawl and injection of electricity through DSM helps grid security as well as enhance economic benefits for the participants. It can also be stated that drawl/injection within pre-specified limits are not only allowed but also helps the grid to maintain its frequency within the desirable range.
- ae. It is stated that a slight mismatch between schedule and actual generation is inevitable irrespective of DSM/UI regulation, which can be minimized but cannot be avoided all together.
- af. It is stated that the statement submitted by the respondents regarding recovery of full fixed charges in 2018-19 by the petitioner is not correct. It is stated that the availability achieved during 2018-19 was only 83.71%, and hence, partial recovery of fixed charges were made. The under recovery of fixed charges for 2018-19 was Rs.23.64 crore. However, through this the petitioner is not claiming the fixed charges, but the respondents/DISCOMs are required to pay only energy charges for actual generation recorded in JMRs.
- ag. It is stated that in STPP's case of energy injection it is found that paying energy charge rates (ECR) on the actual metered energy was beneficial for DISCOMs compared to paying ECR upto scheduled generation and deviation settlement charges for the additional energy. The following table analyses the situation in the present case:

Table-C: Average energy charge rate claimed is less than DSM rate on actual energy basis for FY 2018-19		
1	2	3 = (1 x 2)
Schedule generation (MU)	Average energy charge rate (paisa/KWH)	Energy charges upto scheduled generation (Rs.crore)
8113.454	242.1	1964.27
4	5	6= (4 x 5)

Deviation generation (MU)	Average DSM rate of Telangana rate (paisa/kWh)	Energy charges for deviated generation (Rs.crore)
94.76	274	25.96
7=(1+4)	8= (3+6)	9= 8/7
Actual Generation (MU)	Notional Energy charges for Actual generation (Rs.crore)	Average Energy charge rate (paisa/KWH)
8208.214	1990.23	242.5

- ah. It is stated that the respondent has claimed that petitioner had violated the SLDC schedules for 957 time blocks out of 35040 time blocks in the year which is not based on actual facts and figures. Had such number is correct and the violations are significant in nature, there is no reason that SLDC till date has not initiated any proceedings.
- ai. It is stated that as per the annual report prepared by the CERC market monitoring cell for FY 2018-19, the total electricity generated in India was 1245.32 BU whereas electricity transacted through DSM in the same period was 25.13 BU. It is stated that it means that electricity transacted through DSM at country level is around 2% of the total electricity generated which provides a more useful benchmark to compare with STPP's additional generation as a percentage of its total generation in FY 2018-19. In 2018-19, the additional generation of STPP was 94.76 MU which is around 1.15% of the total generation 8208.214 MU which is reasonable compared to national benchmark level of DSM in 2018-19. It is stated that it can be said from the aforesaid facts and figures that there was no deliberate violations of schedule as alleged by the respondents.
- aj. It is stated that the respondents have never objected to pay energy charge based on actual energy as is provided in the PPA since the commissioning of the units, but started raising disputes from 2018-19. It is stated that when deviations are allowed within a pre-specified limit for each of the time block of 15 minutes, it can also be construed that deviations are allowed upto that pre-specified limit for the entire financial year because a financial year is nothing but the aggregation of 35040 numbers of such 15 minutes time block.
- ak. Even by following the latest DSM regulation which specifies to change the sign of deviation after each 6th block, allowable deviation block for single sided deviation in a day is around 83 blocks out of 96 blocks. Whereas the deviations

of petitioner, even as per respondents calculation is not more than 2-3 blocks out of 96 blocks. Hence, the contention of the respondent is unsustainable.

- al. It is stated that the respondents have submitted a scenario where excess generation is made during the high frequency period but has failed to incorporate similar events in case of low grid frequency. It is stated that generation more than schedule helps the grid in high demand scenarios when the grid frequency remains in the lower range.
- am. It is stated that the submissions of the respondents are not made based on facts and figures. The petitioner has already submitted detailed facts and figures together with a study report in this respect along with submission dated 02.12.2020.
- an. It is stated that it has come to the knowledge of petitioner that TSGENCO is raising power bills on actual energy basis similar to that of the petitioner and respondents are paying the same based on JMRs.
- ao. It is stated that the respondents have submitted a scenario where excess generation is made during the high frequency period but has failed to incorporate similar events in case of low grid frequency. It is stated that generation more than schedule helps the grid in high demand scenarios when the grid frequency remains in the lower range. It is further stated that the frequency distributions of grid over the 15 minutes blocks follow a probabilistic distribution within a range. Hence, it cannot be said that the excess generation is made only during less demand/high frequency period.
- ap. It is further stated that they have submitted a study report establishing the benefit derived by the respondents. Even otherwise, the DISCOMs have sold the excess energy given by the STPP to its retail consumers and monetized accordingly. Hence, it is clear that the DISCOMs have enjoyed the benefit of power which STPP delivered. It is incorrect to state that there is imposition of services on respondents by the petitioner considering the fact that the petitioner has followed the schedule provided by the SLDC and all the instructions are practically complied with. It is stated that the slight deviations are part and parcel of the process to achieve schedule generation which can be minimized, but cannot be made zero. Therefore, the claims of the respondents are unsustainable.
- aq. It is stated that the judgment of Hon'ble Supreme Court cited by the

respondents relates to the consequences of breach of contract as evident from the relevant excerpt of the order:

“10. *Indeed, the present case is really covered by Section 74 of the Contract Act, which occurs in Chapter VI, which is headed, “of the consequences of breach of contract”. Section 74 states:*

74. Compensation for breach of contract where penalty stipulated for.— When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.”

Hence, the case cited is not similar to the present case and therefore may not be relied upon. As such the respondent has misquoted the said judgment.

ar. It is stated that the respondents have cited Hon’ble ATE Appeal No. 123 of 2010 where it was held by the bench that the section 70 of Indian Contract Act was not applicable. However, the details of the case are completely different from the present one. It is stated that this is a case between Indo Rama Synthetics versus MERC, where Rama Synthetics had injected electricity without any schedule and without any agreement for sale of power. The relevant portion from the order is given below:

“2.3 the appellant injected 1.607 million units into the grid without any schedule and agreement for sale of power and without booking transmission corridor for transmission of power”.

as. It is stated that when the Rama synthetics approached to the State Commission seeking compensation for units of energy injected into the grid without any schedule or power sale agreement, the Commission allowed compensation for such injection. The relevant portion from the order is quoted below:

“2.5 *The appellant filed a petition before the State Commission seeking compensation for 1.607 million units of energy injected into the grid inadvertently. However, the State Commission only allowed compensation at the lowest variable cost of the power station of the state owned generating company by its order dated 29.03.2010.”*

at. It is stated that as the case cited by the respondents are different from the STPP’s case, the ratio determined by the Hon’ble ATE in Appeal No. 123 of 2010 is not applicable. Hence, the contention of the respondent is strongly refuted and the Commission may hold that said judgements are not applicable to instant case. The petitioner has supplied the energy under a contract as is provided under clause 3 of PPA and therefore the act of petitioner in injecting

the power is lawful and since the same is not intended for gratis, it is entitled for the energy charges based on actual energy supplied.

3rd Claim - Incentive for FY 2017-18

- au. It is stated that the detailed reasoning for claiming incentive bills on actual metered data was furnished before the Commission. The relevant portion quoted by the petitioner is available at point 'af' of petitioner's submissions. Further, the incentive claimed by STPP for the FY 2017-18 is computed by considering the actual energy generated and recorded in the JMR instead of scheduled energy specified in CERC regulation as state of Telangana does not have balancing and settlement code for intra state generators and in absence of such mechanism, traditionally energy bills for state generators were allowed on actual energy quantum injected into grid as per joint meter reading".
- av. It is stated that the difference of incentive computed on scheduled generation and actual generation is very minimal as evident from the following table.

Sl. No.	SG finalized by SLDC (MU)	Incentive up to scheduled generation (Rs.crore)
1	8995.09	28.68
	Actual generation (MU)	Incentive for actual generation (Rs.crore)
2	9003.7	29.11
3	Difference (Rs.crore) (2-1)	0.43

Hence, it can be seen from above table that the difference of claim of incentive is only Rs.0.43 crore (1.5%), the respondents have not accepted the claim pertaining to the period of FY 2017-18 and still is not intending to admit the same even after completion of FY 2020-21 though CERC regulation clearly provides to admit the same. It is stated that petitioner is aware about the functions and powers of SLDC and always tried to adhere to the schedules given by the SLDC time to time.

- aw. It is stated that the contention of the respondents is incorrect as deviation charges are receivable by the generators for positive deviation (excess generation compared to schedule) and deviation charges are payable for negative deviations within the permissible limits of the deviations based on the grid frequency dependent pre specified.
- ax. It is stated that the Commission has kept same operating norms for KTPP stage-II 600 MW and STPP 600 MW units for the tariff period 2014-19.

However, it is stated that petitioner has not made any comparison to KTPP with STPP in the matter of incentive claim.

- ay. It is therefore prayed that the Commission may allow the incentive bill raised as per CERC (terms and conditions of tariff) regulations, 2014 and as per Commission's directive in the Table 4-12 (Page no.70) of tariff order dated 19.06.2017 following prudent commercial practice prevalent for intra state generating station in absence of deviation settlement mechanism.

4th Claim for water charges for the period FY 2016-17 to 2018-19

- az. It is stated that the Commission has adopted CERC regulation for determination of STPP's tariff during FY 2016-19. The relevant portion from order dated 19.06.2017 which is already extracted at point 'd' of petitioner's rejoinder. It is stated that accordingly the issue of water charges needs to be examined as per CERC tariff regulation 2014-19.
- ba. It is stated that the respondents have submitted Commission's direction at para 4.15.2 of petitioner's tariff order dated 19.06.2017 where it was provided that the billing and payment of annual fixed charges and energy charges shall be in accordance with Regulation No. 1 of 2008. However, the interpretation by the respondents is not correct. The Commission has adopted CERC terms and condition of tariff regulation 2014-19 for determination of petitioner's tariff.
- bb. It can also be verified from the fact that the claim of SCCL for 2016-19 submitted for tariff determination includes return on capital employed, depreciation and O&M expenses, referred to table 4-4 of tariff order dated 19.06.2017, whereas the Commission has allowed fixed charges in five components, namely return on equity, interest on loan, depreciation, interest on working capital as also O&M expenses, referred to table 4-10 of tariff order dated 19.06.2017, as per CERC regulation. Thus, it provides that the claim of respondents that O&M expenses for FY 2016-19 are covered under Regulation No. 01 of 2008 is not correct. It is stated that the determination of tariff and the issue of billing and payment of fixed and energy charges are different, but the respondents getting unfortunately mixed up.
- bc. It is stated that petitioner has submitted the tariff petition as per AP 01 of 2008. However, the Commission has adopted CERC 2014-19 tariff regulation and computed the various components of fixed charges. It is stated that accordingly, the O&M expenditures are as per CERC regulation and the Commission has

not allowed additional O&M expenditure beyond the stipulation of CERC regulation. The same CERC tariff regulation provides that the water charges borne by the generator has to be paid by the respondents. The relevant clause is already extracted at point 'ak' of petitioners' submissions. Hence, the contentions of the respondents have no merit.

bd. It is stated that accordingly, the objections raised by the respondents lacks merit and deserves to be ignored. It is stated that in view of the above facts, the petitioner prays the Commission that it may be pleased to:

- a) To direct respondents to accept the disputed portion of bills raised during FY 2016-19 in respect of additional cost of coal for Rs.121,43,35,923/-
- b) To direct the respondent to pay Rs.21,49,84,845/- towards the power received by them as reflected in J.M.R., but not paid.
- c) To direct the respondent to pay Rs.29,11,37,000/- towards incentive.
- d) To direct the respondent to pay Rs.4,68,97,378/- towards water charges.
- e) To pass orders to pay interest at the rate of 18% p.a. from the date of claim made and until full realization by the same by petitioner.

5. The Respondents have filed their written submissions which are extracted as below:

a. It is stated that the petitioner raised the following claims in respect of the operation of its STPP in the subject Petition.

Sl. No.	Particulars	Financial Year	Amount (Rs.Crs)
(i)	Bills towards additional coal cost	2018-19	121.4335
(ii)	Bills as per JMR/Actual Metered Energy	2018-19	17.7532
(iii)	Bills on Incentive	2017-18	29.1137
(iv)	Water Charges	2016-19	4.6897
Total (Rs.Crs)			172.99025

b. It is stated that the petitioner also claimed Interest @18% on the above sums.

c. **1st Claim – Additional coal cost - Rs.121.4335 crore**

- i. The Petitioner raised the difference in coal cost as per the MoU signed by SCCL with STPP as detailed below.
- ii. The STPP project was allotted a Captive coal Mine 'NAINI' in Odisha State by the Ministry of coal, Govt of India (GoI) in the year 2015.
- iii. The STPP was also granted a short term coal linkage called 'Bridge

Linkage' (earlier called 'Tapering Linkage') under the policy guidelines of Ministry of coal, to meet the short term coal requirement of STPP till the production commences at NAINI coal block. SCCL was also permitted to supply coal to STPP under the Bridge Linkage.

- iv. The GoI policy guidelines stipulated that the duration of Bridge Linkage is 3 years and further extension beyond 3 years will not be granted under normal circumstances.
- v. The 3 years period under the Bridge Linkage was fixed by the Ministry of coal in order to expedite the production from captive coal mine.
- vi. The policy guidelines mandated that fuel supply agreement (FSA) (Regular/Long term coal linkage) shall not be signed between the end use plant (STPP) and coal company (SCCL), on account of captive coal mine whose production shall only be used by the end use plant (STPP).
- vii. The FSA (Fuel Supply Agreement) will be signed by the Thermal Power plants with coal Suppliers (SCCL/coal India Limited) under long term coal supplies, with coal pricing at the notified prices for the different grades of coal to be supplied.
- viii. Whereas, the pricing structure of coal under the Bridge Linkage will be different than the pricing under long term FSA.
- ix. Under the Bridge Linkage (Short term linkage), the coal pricing will be higher by additional 20% on the Basic Notified Price of coal for the respective grades to be supplied.
- x. As no long term FSA shall be signed by STPP as per GoI Policy guidelines, hence STPP signed MoU (Memorandum of Understanding) with SCCL for coal supplies till the production commences at NAINI coal Block.
- xi. SCCL obtained further extension of Bridge Linkage from the Ministry of coal till the year 2023, which will further burden the STPP and consequently the additional financial burden will have to be passed on to the DISCOMs/End Consumers till the Captive coal Mine (NAINI) production commences.
- xii. Now coming to the details of MoU signed between STPP & SCCL the following is submitted:

- a) **MoU dated 1st November 2017 – Power Sector Pricing**
 Period - 01.11.2017 to 31.03.2020
 Coal Supply = 6 Million Tons per Annum
 Coal Pricing = Clause 3.3 – For G9 to G15 grades,
 Notified Basic Price for the grade +
 20% of the Notified Basic Price
 (additional) of Power Sector
- b) **Amended MoU dated** 6th April 2018/12th April 201`8
 Period of Agreement 01.04.2018 to 31.03.2020
Supplementary MOU-I - Power Sector Pricing +
 Non Power Sector Pricing

Bridge Linkage	Upto 75% Agreed Quantity (AQ)	20% additional price on – Notified Basic Price of POWER SECTOR
	Beyond 75% (AQ)	20% additional price on - Notified Basic Price of Non-Power Sector

- xiii. As could be seen from the above, the coal Supplier (SCCL) amended the MoU dated 1st November 2017 and incorporated the additional pricing of 20% on the Notified Basic price applicable to Non-Power Sector for the quantities beyond 75% Agreed Quantity, which is arbitrary and irrational.
- xiv. Since STPP achieved higher Plant Load Factor (PLF) of generation in the range of 85% to 91% during the period 2016-19, then the coal requirement of STPP will be more than 75% of Agreed quantities, which will burden the DISCOMs, with 20% additional coal pricing applicable to Non-Power Sector.
- xv. Normally the coal supplies are made to power sector and non-power sectors. The power sector is a regulated sector, where the tariff is fixed by the State Regulatory Commissions, after due process of public consultation. Therefore, any increase/abnormal increase in coal/fuel prices for power generation shall have to be reflected in the Consumer tariff, which is a very time consuming process and Public would raise objections. Whereas there will no such restrictions in the Non-Power Sector (Non-Regulated Sector), such as Steel, Cement, Sponge Iron, etc., where any increase in the coal (Fuel) prices will be immediately passed on to the End products manufactured by the Industries.
- xvi. By amending the MoU dated 1st November 2017 unilaterally and incorporating the additional 20% on the Notified Basic Price applicable

to non-power sector, SCCL (the Petitioner) over burdened the DISCOMs. If SCCL had amended the MoU at the beginning itself, then DISCOMs would have limited the generation commensurate to 75% of agreed coal requirement. Further the petitioner sought the revision of all monthly energy bills for FY 2018-19 vide its letter dated 8th June 2019 i.e., after completion of the financial year 2018-19, by the time the SLDC Scheduling & despatch were completed.

- xvii. The SLDC/DISCOMs cannot revise the implemented Schedules of previous year, which were based on Merit order rates of Variable Cost billed at that point of time.
- xviii. No plausible justification was given by SCCL on incorporating the additional levy of 20% on the Notified basic price applicable to non-power sector, when its own Power Plant (STPP) is supplying entire Capacity of 1200 MW (2x600 MW) to the power sector in Telangana State.
- xix. The petitioner (SCCL) ensured higher revenue generation in its coal business by levying additional 20% on the price applicable to non-power sector, while ignoring that their STPP is supplying power to power sector (Regulated Sector), and the STPP, the power plant having achieved higher generation (Plant Load Factor) by using high cost fuel, thereby the ultimate burden has been sought to be levied on DISCOMs in the present claim.
- xx. The act of SCCL (the Petitioner) in levying additional 20% price applicable to Non-Power Sector is highly irrational and against the mandate of the Section 61 (d) of the Electricity Act 2003 for appropriate Commissions in safe-guarding of the Consumers' interest and at the same time recovery of the cost of electricity to be permitted in a reasonable manner. By levying additional 20% price of notified price applicable to non-power sector, the petitioner attempted to enrich itself at the cost of DISCOMs, which shall not be permitted. It is the responsibility of the Petitioner to expedite the coal production from the captive coal mine (NAINI), the pricing of coal produced is expected to be cheaper than regular FSA coal supplies due to low cost of production and also lower taxes and reduce the high cost coal quantum from Bridge

Linkage gradually (tapering) but the petitioner having obtained the extension of Bridge Linkage till 2023, further burdened the DISCOMs by way of 20% additional coal price applicable for non-power sector/non-regulated sector where the Notified basic price of coal itself will be higher by 30% to 40% due to high Quality (GCV) of coal grades required vis-a-vis the Notified basic coal Price of Power Sector (require G9 to G15 grade coal viz., GCV lower grade) and further burdening with additional 20% has no justification which deserves to be disallowed.

- xxi. However, the petitioner attempted to justify the additional 20% pricing of Non-Power Sector by submitting that similar MOUs were entered with NTPC & other utilities and no utility has ever raised any such dispute. This is not a plausible justification. Firstly, the SCCL/STPP is supplying its entire generation capacity to power sector in Telangana State. They are already charging 20% additional price on basic price applicable to coal for power sector. Further, levy of additional 20% on the basic price applicable for non-power sector will cause additional burden on the DISCOMs.
- xxii. Regarding the contention of the petitioner that other Utilities have not raised any issue, it is submitted that Bridge Linkage will be granted to the Thermal Power Plants, which have been allotted captive coal mines. NTPC, the Central Generating Station, is setting up 2x800 MW Thermal Power Plant in Ramagundam (Telangana STPP-I) which has also been allotted Captive coal Mine (Mandakini) in Orissa and till the production commences in its Captive coal block, NTPC has also been granted Bridge linkage from Singareni Collieries (the Petitioner). If the additional cost is levied on NTPC, the additional financial burden will be simply passed on to DISCOMs in the monthly bills and NTPC is protected to that extent. However, NTPC vide its letter 30th March 2021, addressed the JMD/TSTRANSCO requesting to take up the matter of pricing of Bridge linkage coal at Notified prices of Power Sector only (without additional premium).
- xxiii. Further, had the Petitioner amended the MoU and raised the bills immediately after the month during FY 2018-19, then due to higher Variable cost (Energy Charge per kWh), the STPP would have been

placed in higher cost slot in the Merit order and thus their thermal Power Plant would not have been scheduled by SLDC except during Peak hours and reduce the burden. The Respondents have been insisting on SCCL to levy at power sector pricing.

xxiv. In this context, it is pertinent to draw the attention of the Commission to the latest MoU dated 30th March 2020 between SCCL and STPP as detailed below:

c) **MoU dated 30th March 2020**

Period of supply - 01.04.2020 to 31.03.2021

Pricing = 20% additional price on Notified Basic Price of Coal of 100% (*) Coal requirement applicable for Power Sector

(*) Earlier the additional 20% price was upto 75% Coal requirement applicable to Power Sector and beyond 75% coal requirement, 20% additional price applicable to Non-Power Sector.

d) **MoU Amendment dated 12.11.2020 effective from 01.06.2020**

Upto 4.52 MT	Additional 10% price on the Notified Basic Price of coal applicable for Power Sector.
Beyond 4.52 MT	Entire quantity (100%) at Notified Basic Price of Power (Power Sector).

xxv. As could be seen from the above, the Petitioner corrected the earlier unjustified MoU, by amending the MoU (effective from 01.06.2020) with pricing at reduced Premium of additional 10% on the notified basic price applicable to power sector upto 4.52 million tons coal and for coal supplies quantity beyond 4.52 million tons, the petitioner totally reduced the additional premium of 10% on the pricing applicable to power sector. This pricing reflects the reasonable pricing, which has been insisted by the Respondents (DISCOMs) from the very beginning.

xxvi. The Commission is prayed to take the above facts into consideration and disallow the claim of the petitioner for additional coal cost for FY 2018-19 onwards at 20% premium applicable to non-power sector in the interest of end consumers.

d. It is stated that with regard to other claim (2nd) i.e., bills as per JMR/Actual Metered Energy (FY 2018-19), TSPCC management has taken steps to settle the matter mutually outside the Court, which will be submitted to the Commission.

e. It is stated that regarding the 3rd claim i.e., Incentive claim for FY 2017-18, the earlier submissions made by DISCOMs will hold good.

- f. It is stated that regarding the last claim (claim No.4) on water charges, it was already submitted that these charges have already been factored in O&M expenses component of Fixed Charges as stipulated in the APERC Tariff Regulation No.1 of 2008 as adopted by the Commission and allowing separate claim on water charges will amount to double payment and hence need to be disallowed.
 - g. It is stated that the contention of the petitioner that CERC Tariff Regulations 2014-19 has allowed water charges separately and sought to allow the same. In this context, it is stated that the Commission has not adopted the CERC tariff Regulations in toto but partially adopted, which has been contested by the Petitioner before APTEL and their Appeal is still pending (under Appeal No.312 of 2017). Therefore, the claim of the Petitioner for allowing water charges separately as per CERC Tariff Regulations 2014-19, is not sustainable.
 - h. It is stated that, the Commission has allowed normative O&M expenses to the petitioner in the true-up petition for the period 2016-19 in, O.P.No.4 of 2019 and O.P.No.5 of 2019 and share of gains accrued in actual O&M expenses have not been passed on to DISCOMs. DISCOMs are entitled for $\frac{2}{3}$ rd of the gains accrued (Rs.25.67 crore) to the petitioner in actual O&M expenses vis-a-vis the earlier Normative O&M expenses. As such, the Commission is prayed to waive the water charges against the gains share entitled to the DISCOMs, in case the claim of the Petitioner is considered as per CERC Tariff Regulations.
 - i. It is stated that finally, the petitioner claimed interest on the aforesaid claims @ 18%, which is claimed as per the CERC tariff Regulations 2014-19. Whereas, the Commission directed to carry out Billing as per Tariff Regulation No.1 of 2008 for the period FY 2016-19, which had prescribed @ 1.25% per month, i.e., @ 15% per annum. Therefore, the Commission is prayed to consider the interest rate as prescribed in the Tariff Regulation No.1 of 2008 only on the amounts allowed by it.
6. The petitioner has filed written submissions and the same are extracted as below:
- a. 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”.

- b. It is stated that the Commission, while approving the true up, it had clearly stated that this truing up was done in accordance with CERC tariff regulation 2014 and shall be subject to the outcome of Appeal No.312 of 2017 pending before Hon'ble APTEL.
- c. It is stated that at the outset, the determination of tariff of the project through tariff order based on capital cost, and the issue of sale of quantum of power by generator, billing & payment of fixed and energy charges, are distinctly different, but the respondents unfortunately trying to mix up both. The eligibility to sell and obligation to purchase of power is governed by article 3 & 6 of PPA entered by the parties. The said article 3 clearly state that the respondents are obliged to purchase the entire energy generated by the petitioner's project. This article has predominant effect with reference to other stipulations in the PPA.

Bills on additional coal cost:

- d. It is stated that commission vide its order dated 28.08.2020 reiterated its earlier directive to SCCL to pursue the coal swapping for NAINI coal block to minimize the losses. The relevant portion from the order dated 28.08.2020 is given below:
- “1. **Coal Swapping**
SCCL should actively pursue the issue of coal allocation for its generating station with the Ministry of coal so that the cumbersome task of transportation of coal from NAINI coal block in Odisha and associated losses in quantity and GCV could be mitigated by procuring coal from its own mines which are closer to its generating station.”
- e. It is stated that therefore, the contention of the respondent that the extension of Bridge Linkage by the govt of India and with said effect, getting the coal by STPP from nearby mines, instead of transporting coal from NAINI coal mine, is adversely burdened them financially is misconceived and factually incorrect.
- f. It is stated that the contention of respondent stating that power sector being a regulatory sector is restricted to pass only the increase in fuel price of coal meant for power sector is incorrect with reference to stipulations relating to utilization of coal from alternate sources. The statement of DISCOMs is far from reality. As per terms of annexure to PPA, it is clear that to utilize the coal from alternate source the generator need not take prior permission. Further the

contention of the DISCOMs that had the generator informed the higher cost of coal, DISCOMs could have decided either to give schedule of power or not to issue schedule. But, the said contention is contrary to terms of PPA besides the aforesaid orders of hon'ble Commission. The contention of DISCOMs that since the petitioner raised the invoice after the end of the relevant FY, the same is not tenable is incorrect and not tenable. In this regard the petitioner submits that since the MOU entered by STPP with fuel supplier is within the knowledge of respondent/DISCOMs and that said MOU reads that the same is amenable for amendments time to time, the amended MOU is deemed to have agreed by the DISCOMs. Further the quantity of coal used in the relevant financial will be known only after the expiry of the year, and the major part of the utilized coal is as per notified price, and only 25% of aggregate contracted quantity (ACQ) is higher rate i.e 20% of premium of non power sector. All these are decided as per the orders of Govt of India., and therefore such claim of higher price for 25% of coal cannot be faulted, nor any motive can be attributed to generator.

- g. It is stated that on top of it, the electricity distribution companies can pass through the increase in fuel cost as per the regulatory provision and there is no uncertainty in recovering the same from retail customers though there may be some delay due to regulatory process the cost of which is also allowed as carrying cost in retail tariff.
- h. It is stated that accordingly, the effort of the respondents to canvas the contrast of non-power sector product pricing and power sector energy pricing due to change in input price is uncalled for and clear misconception of fact.
- i. It is stated that the petitioner during oral submissions have stated that the pricing of coal depends on many factors including market demand, productivity levels of mining companies and the stock positions. Further, all these factors are reviewed by high power committees and only with the approval of appropriate Government officials of Ministry, coal is sold at revised prices time to time.
- j. It is stated that respondents also stated that initially scheduling based on lower energy charge cannot be revised based on increase fuel cost submitted at the end of FY 2018-19. A detailed reply in respect of this contention is already submitted vide petitioners rejoinder dated 23.06.2021. The relevant portion is reiterated below:

“Re: Sl.No.(xiv)

The respondent has submitted that initially charging a lower energy charge allowed STPP for a smooth entry in Merit order despatch. The said claim is correct considering the fact of situation on this aspect. It may kindly be noted that the impact of premium coal pricing was 15 P/kWh and the lower and upper range of Merit Order was 2.3 Rs./kWh and 3.3 Rs./kWh respectively which provides a width of 1 Rs./kWh (one sample Hence, it may be construed that the impact in scheduling by an increase of 15 P/kWh energy charge would not vary the dispatch of power by SLDC taking into consideration of said range of merit order. Hence, the contention of the beneficiary lacks merit.”

- k. It is stated that further the contention of the respondent stating that levy of additional 20% price applicable to non-power sector is highly irrational and against the mandate of section 61(d) of the Act, 2003, is not tenable, in fact the said objection was already replied in rejoinder dated 23.06.2021. The relevant portion is quoted below:

“Re: Sl.No.(x)

It is to submit that as per tariff policy of 2016 even projects awarded under competitive bidding process were facing difficulties in getting coal from coal producers and are allowed to approach the ERC’s for admission of imported/market based e-auction coal to meet the coal shortage. The relevant portion is quoted below;

“6.1 Procurement of power

However, some of the competitively bid projects as per the guidelines dated 19th January, 2005 have experienced difficulties in getting the required quantity of coal from coal India Limited (CIL). In case of reduced quantity of domestic coal supplied by CIL, vis-à-vis the assured quantity or quantity indicated in Letter of Assurance/FSA the cost of imported/market based e-auction coal procured for making up the shortfall, shall be considered for being made a pass through by Appropriate Commission on a case to case basis, as per advisory issued by Ministry of Power vide OM No.FU12/2011-IPC (Vol-III) dated 31.7.2013.”

From the above it is seen, that the Government of India is also encouraging to get coal from alternate sources even at higher prices to mitigate the demand - supply mismatch of Electricity, and hence, the usage of premium coal was not inconsistent with mandate of Govt of India which has statutory force. Therefore, the contention of the beneficiary lacks merit.”

- l. It is further stated that the contention of DISCOMs stating that the non-power sector pricing is financially burdened them, is not correct. This objection is already refuted by the petitioner in the rejoinder dated 23.06.2021. The relevant portion is given below:

“Re: Sl.No.(xi).

It is stated that it is seen from the past record that coal India recorded a sale price with a premium of 58%-92% in the spot and forward market of coal over notified prices during 2018-19 which also proves coal scarcity and high prices existing at that period. In the same period SCCL supplied additional coal to STPP with a minor premium resulting in an increase of energy charge by 15 P/kWh which translates into merely an increase of 6.5% in energy charge.

The table given below shows the analysis of increase in energy charge due to premium coal pricing.

Table:A- Analysis of premium coal pricing for FY 2018-19		
Actual generation (MU) (A)	Energy charge without premium (Rs.crore) (B)	Average Energy charge rate without premium (Paisa/unit) (C=B/A)
	1865.8	227.31
8208.214	Energy charge with premium (Rs.crore) (D)	Average Energy charge rate with premium (Paisa/unit) (E=D/A)
	1987.23	242.10
Impact of premium (paisa/unit) (F=E-C)		14.79
Impact of premium percentage		6.5%

It can be stated from the above, that only a 6.5% increase in energy charge due to additional cost of premium coal price took place due to revised coal pricing approved by the authority. However, the said increase of 6.5% (15 Paise) is not significant if we consider the range of merit order framed by TSLDC for relevant period in the State of Telangana. The lower and upper range of Merit Order was 2.3 Rs./kWh and 3.3 Rs./kWh respectively for the year 2018-19 whereas the energy charge of STPP was 2.42 Rs./kWh including the impact of 15 Paise coal premium

- m. It is stated that the petitioner during oral submission stated that the pricing of coal depends on many factors including market demand, productivity levels of mining companies and the stock positions. Further, all these factors are reviewed by high power committees and only with the approval of appropriate Government officials of Ministry of coal such prices are revised for the entire market. It is also to state that when such revision happens, it happens for all the consumers and not for any specific consumer.
- n. It is stated that the MoU premiums, time to time, are determined based on the prevailing market condition and implemented through MoU amendments of

pricing structure. For example, the pricing structure for FY 2022-23 provides for paying premium of 20% over notified basic price of power sector for all grades of coal which was 10% in the previous year i.e., for the FY 2021-22. It is stated that therefore, the contention of respondents that the earlier MoU was unjustified is not tenable.

- o. It is stated that coal charges cannot be identified due to consumption of coal in excess of 75% of agreed quantity before the end of financial year and the charges only can be ascertained at the end of the year 2018-19. As such, the cost incurred towards actual coal consumption was identified and invoices were raised for the same after the closing of the financial year 2018-19. The increased cost is payable by the beneficiary as per regulation 30 of CERC terms & condition of tariff regulation, 2014.
- p. It is stated that the PPA clause 6.2 provides for raising supplementary bills for claims in respect of increased cost. Accordingly, when the year end additional bill for coal consumption was received by STPP, supplementary bill for the same was raised in accordance with regulation 30 of CERC terms & condition of tariff regulation, 2014 and enabling PPA clause of 6.2.
- q. It is stated that as such, the claim made by STPP/petitioner is in accordance with the relevant regulation and terms of agreement and needs to be paid by the DISCOMs/beneficiary. Therefore, the Commission is requested to direct respondents to pay additional coal cost of Rs.121,43,35,923/-.

Bills as per actual metered energy FY 2018-19:

- r. It is stated that that the TSPCC has considered the claim of bills as per actual metered energy for FY 2018-19. A letter dt 12-05-2022 to this effect is issued by JMD, TSTRANSCO/member TSPCC.

Incentive FY 2017-18:

- s. It is stated that the claim of incentive is made as per the terms of PPA .this claim is for the year 2017-18 but not for the year 2018-19 .In respect of power supply during the year 2017-18 there is no dispute of supply of excess energy than schedule given by DISCOMs/SLDC .The contention of DISCOMs that petitioner is not entitled for incentive in respect of energy supplied beyond threshold PLF is contrary to terms of PPA and thus not tenable. Earlier submissions made by petitioner/STPP during hearing dated 25.04.2022 holds good.

Water charges:

- t. It is stated that the Commission has adopted CERC regulation for determination of STPP's tariff for the period during FY 2016-19. The relevant portion from order dated 19.06.2017 is given 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."

- u. It is stated that as stated above, the Commission has adopted CERC terms and condition of tariff regulation 2014-19 for determination of petitioner's tariff. Accordingly, the issue of water charges needs to be examined in terms of CERC tariff regulation 2014-19. Law is very much settled that relevant regulation make inroads and overrides into terms of existing agreements.

- v. It is stated that it can be verified from the fact that the claim of SCCL for 2016-19 submitted for tariff determination includes return on capital employed, depreciation and O&M expenses (Refer table 4-4 of tariff order dated 19.06.2017) whereas the Commission has allowed fixed charges in five components, namely return on equity, interest on loan, depreciation, interest on working capital & O&M expenses (Refer table 4-10 of tariff order dated 19.06.2017) as per CERC terms & conditions of tariff regulation 2014. This provides that the claim of respondents that O&M expenses for FY 2016-19 are covered under regulation 01 of 2008 is not correct.

- w. It is stated that CERC terms and conditions of tariff regulation 2014 does not contain any provision for sharing of O&M expenditure. Further, the definition of O&M expenditure as given in clause 3(42) of CERC terms and conditions of tariff regulation 2014 is produced below:

"(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;"

It can be said from the above definition that allowed O&M charges excludes water charges.

- xxxii. It is stated that as per CERC terms and conditions of tariff regulation 2014 which are made applicable by Hon'ble commission, water charges to be payable by the respondents. The relevant portion is stated below:

“29(2) The water charges and capital spares for thermal generating stations shall be allowed separately:

Provided that water charges shall be allowed on water consumption depending upon type of plant, type of cooling water system etc., subject to prudence check. The details regarding the same shall be furnished along with the petition.”

- y. It is stated that hence, the Commission is requested to direct respondents to pay water charges of Rs.4,68,97,378/- as the contentions of the respondents have no merit.
- z. It is stated that the Commission has provided in its order dated 19.06.2017 that billing and payment is required to be made in accordance with regulation AP 01 of 2008. Accordingly, the interest rate @1.25% per month, i.e., @15% per annum proposed by TSDISCOMS are agreeable subjected to outcome of case no.312 of 2017 pending before Hon'ble APTEL.

7. The Commission has heard the counsel for the petitioner and the counsel for the respondents in the matter on the dates mentioned in the preamble to this order. It has perused the material available on record. The submissions made on the relevant days of hearing are briefly extracted below:

Record of proceedings dated 01.03.2021:

“... .. The representative of the respondents sought time of four weeks for filing counter affidavit on behalf of the respondents. Accordingly, the matter is adjourned.”

Record of proceedings dated 02.06.2021:

“... .. The advocate for the petitioner sought time for filing rejoinder to the counter affidavit in the matter which is already filed and received by them. Accordingly the matter is adjourned as a last chance for filing rejoinder the counsel for petitioner may file the rejoinder on or before the next date of hearing by duly serving a copy of the same on the respondents in advance either through email or in physical form.”

Record of proceedings dated 28.06.2021:

“... .. The advocate for the petitioner stated about the issue involved in the petition. He has stated that the petition relates to payment of bills based on coal supply and also incentives payable to it upon achieving PLF over and above the normative.

The counsel for petitioner stated that the Commission has fixed the quantum of energy to be supplied by the petitioner in the tariff order for the year 2018-19. However due to various factors, the petitioner could not achieve the target supply envisaged in the retail supply order for FY 2018-19. The difficulty faced by the generator is twofold, namely, supply of coal at higher cost and backing down instructions by SLDC. The petitioner had difficulty in procuring the coal due to delicensing of mining activity and allocation being made by the Government of India to meet the requirement of generating stations. The petitioner made efforts to procure coal of required quantity for generation

purpose, but ended up getting tagged to a captive coal mine in the State of Orissa. Thus, the landed cost of coal have to be worked out in terms of the CERC Regulation of 2014.

The counsel for petitioner stated that the petitioner has been able to generate power substantially to the extent of the target fixed by the Commission. Further, the petitioner has been facing the backing down instructions from SLDC and it resulted in the petitioner supplying under capacity, though it was ready to supply the quantum fixed by the Commission. The petitioner raised bills claiming variable charges, which includes the fuel cost. The fuel cost has to be worked out in terms of the Regulation of CERC and has been done so including the figures in respect of landed cost of coal. Despite the above difficulty, the petitioner could achieve more than 85% PLF, which is normative fixed by the Commission.

The counsel for petitioner stated that the tariff payable to the petitioner and O&M expenses have to be based on CERC Regulation and this includes variable cost also. The CERC Regulation is applicable to this case as the Regulation No.1 of 2008 of the then APERC as adopted by this Commission does not provide the mechanism in respect of power projects of the capacity more than 500 MW.

The counsel for petitioner stated that the petitioner is entitled to incentive for generation over and above the normative of 85% PLF at the rate of 0.50 paise per unit. The respondents have not accepted the claim made by the petitioner. The reasoning accorded that the petitioner has excessively generated over and above the quantum of day ahead schedule cannot be accepted, as the Regulation requires consideration of the normative for the full year and not on the daily supply. The Commission may consider allowing the prayer.

The representative of the respondents stated that they are not liable to pay any amount as claimed by the petitioner. He stated that there are two concepts of assessing the generation that is plant availability factor and plant load factor. In fact, the petitioner having achieved the plant load factor of 85% is adequately gaining on fixed cost, which is sufficient and substantial amount.

The petitioner has generated energy as per tariff order for FY 2018-19, however, the SLDC is at liberty to back down the generation to maintain grid discipline upto 35% of the plant. The petitioner has raised issues in this petition whereas it had already filed an appeal in Appeal No.312 of 2017 before the Hon'ble ATE, which is pending consideration. The petitioner sought to make claims under the Regulation of CERC, whereas it has approached the Hon'ble ATE on the ground that the Commission has applied the CERC Regulation and the then APERC Regulation No.1 of 2008 in a sporadic manner.

The representative of the respondents stated that the petitioner is relying on the provisions of the PPA, but the provisions of the Regulation are superior to the provisions of the PPA. He brought to the notice of the Commission various provisions of the PPA as are subsisting today. Excess generation made by the petitioner would result in penalties in terms of the Regulation made by CERC on unscheduled interchange. The Regulation on unscheduled interchange provides for penalty to the generator and the licensee for excess generation or under drawl. The Commission had notified deviation mechanism and provided that the power supply shall be discontinued, if the normative of 50 Hz per cycle is exceeded by the band width as provided in the Regulation. The petitioner cannot claim that it has generated less than the projected capacity and claim

that it had supplied according to the directions of SLDC. The petitioner, in fact, achieved more than normative PLF. The deviations are reckoned in a fifteen minutes time block.

The representative of the respondents stated that as the petitioner is achieving more than 85% PLF, it is not losing on the fixed cost. The petitioner cannot have any grievance over the variable cost and incentive.

Having heard the submissions at length, the matter is adjourned for further hearing.”

Record of proceedings dated 29.07.2021:

“... .. The representative of the respondents stated that the petition involved specific issues arising out of the PPA dated 18.01.2016. The Commission had considered all the aspects raised in the present petition while determining the tariff in the year 2017. This PPA came to be entered originally for establishment of the power project and coal linkage had been agreed on the basis of MOU and not under fuel supply agreement. The fuel considered for the project is of the variety of G-9 to G-15. Also, the coal supply is under Bridge Linkage and not under the regular agreement of supply.

The representative of the respondents stated that the petitioner had approached the Hon'ble ATE alleging that the Commission had invoked the provisions of Central Electricity Regulatory Commission's Regulation on tariff in a sporadic manner and not considered all the aspects. Some of the issues are subject matter of appeal as well as this petition. In order to appreciate the issue, the representative explained the provisions of the PPA with reference to the issues in the present petition.

The representative of the respondents stated that the petitioner had exceeded the generation quantum as fixed by the Commission in the tariff order and therefore, the state load despatch centre had to give instructions to back down the generation. Excess generation beyond the demand would result in system frequency being enhanced over and above the normative figure of 50 Hz. Such excess of system frequency would involve and result in unscheduled interchange charges on the DISCOMs. Excess generation over and above the demand would cause system losses and it may result in tripping of the grid. As regards UI charges, he has referred to a judgment of the Hon'ble Supreme Court rendered in the matter of the then Central Power Distribution Company of Andhra Pradesh, which had explained the concept of UI charges and its importance. Several times, the SLDC had to back down other units in view of excess generation by the petitioner. It had also issued notice regarding the excess generation done by the petitioner. In this context, section 33 of the Act, 2003 provides for functions of the SLDC, wherein it is allowed to levy penalty for violating the directions of the SLDC. The amount leviable is only Rs.5.0 lakhs only. However, the DISCOMs would be burdened with additional expenditure of Rs.30 crore, as they have to pay the fixed charges and also incentives over and above normative PLF.

The representative of the respondents stated that the SLDC has specific functions assigned to it under section 32 of the Act, 2003. The Hon'ble ATE also considered the issues of SLDC regarding unscheduled interchange and the necessity to maintain the system frequency. The petitioner ought to have limited the generation to the extent of tariff order as ordered by the Commission. However, it has taken the generation figures as approved in the ARR of DISCOMs. The ARR of the DISCOMs is only a tentative estimation of the

requirement of power and cannot be the basis for generation by the petitioner. The petitioner can only generate according to its tariff order.

The representative of the respondents stated that the water charges claimed by the petitioner is in excess of the tariff order. In fact, the Commission had allowed excess amount more than what has been spent by the petitioner towards this head as could be seen from the true up petition and the original tariff order. The said charges are part of the O&M expenses and have to be spent in accordance with the approval of the Commission in the tariff order of the petitioner. The true up petition clearly demonstrates that this claim now made is contrary to the factual position. The respondents are not required to consider payment of any amount over and above the tariff order as modified in the true up petition of the petitioner.

The representative of the respondents referred to the provisions in section 70 of the Indian Contract Act and the connected judgments rendered by the Hon'ble Supreme Court. It is his case that no one can have gratuitous benefit according to the said provision. The petitioner originally relied on the said provision, but has rescinded such contention in his reply. It is stated that the provisions of the PPA become subservient to regulation and the provisions of regulation are subservient to Act, 2003. As such, the inconsistent provisions in the PPA to the regulation have to be inline with the regulation. In the instant case, the petitioner cannot claim any amounts on the basis of the provisions of the PPA, as the same have to be read in conjunction with the regulation subsisting at the relevant time.

The representative of the respondents explained about the high frequency by placing the provisions of code of interface as notified by the combined APERC as also the grid code as notified by the Commission including the latest regulation on deviation settlement. It is his case that deviation from the scheduled generation is permissible but violation of the order passed by the Commission is impermissible. The petitioner has also attracted the CAG paragraph on the fuel aspect and other charges.

The representative of the respondents stated that the Commission may consider refusing any relief as claimed by the petitioner as the same are contrary to the regulations of the Commission and orders passed thereof.

The counsel for the petitioner sought time to make submissions in reply and sought for an early date. Accordingly, the matter is adjourned.”

Record of proceedings dated 06.09.2021:

“... .. The advocate representing the counsel for petitioner stated that the matter is coming for reply arguments of the petitioner. However, the counsel needs some more time to file additional documents before the submissions are made in the matter. Accordingly, he requested for adjourning the matter by a month. The representative of the respondents stated that the other representative in the matter is unable to attend the hearing being out of station and as such, time may be granted to make submissions in the case. Considering the request of the parties and the specific request that the matter may be posted in November, 2021, the same is adjourned.”

Record of proceedings dated 01.11.2021:

“... .. The advocate representing the counsel for petitioner 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 he has no instructions on conciliation of the issues and the counsel for petitioner has to submit his arguments in reply to the submissions made by him earlier. 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 petition has five prayers and one of the prayers (viz., (b) for payment from respondents towards the power received by them as reflected in JMR) has been substantially settled between the parties and the last (5th) prayer (i.e., interest from the date of claim till full realization) as may be decided by the Commission and as such he is confining the argument to three (3) other prayers. He relied on the provisions of the PPA and the order passed by the Commission determining the tariff for generation in the year 2017 along with the Memorandum of Understanding (MOU) entered between it [Singareni Thermal Power Plant (STPP)] and the Singareni Collieries Company Limited. It is his case that the additional amount of Rs.118 crore towards landed cost of coal due to factoring beyond 75% of agreed quantity of 4.52 MMT of coal per annum at 20% over notified base price of nonpower sector in terms of the supplementary MOU. For the year 2018-19, the Commission had pegged the supply from the petitioner to be 8.42 MU, whereas it had only supplied approximately 8200 MU.

The coal charges cannot be identified regarding excess consumption during the course of the year and can only be ascertained at the end year. As such, the cost incurred towards excess consumption has been identified and invoices have been raised for the same after close of the financial year. The Commission had while determining the tariff relied upon the CERC Regulation with regard to consumption of coal and refused to entertain the proposals and considered the request of the petitioner to factor the normative as provided in the Regulation No.1 of 2008 of the then APERC as adopted by this Commission. This was done so primarily for the reason that the AP Regulation did not provide for normatives in respect of 600 MW project. The CERC had provided for the normatives for 600 MW power plants and the same were considered while determining the tariff in case of the petitioner's project.

The counsel for petitioner raised the issue of incentive which is 3rd prayer in the petition and item c in the array of prayers. It is his case that the petitioner is entitled to payment of incentive upon supplying power more than 85% of the PLF at the flat rate of Re.0.50 per unit for the additional generation of power. It is his case that the petitioner has generated and supplied 90.79% of the

capacity for the year 2017-18 and this is misunderstood by the respondents as the claim for the year 2018-19, which is not so. The petitioner did not achieve the capacity directed by the Commission for the year 2018-19. The claim now made is therefore with reference to the previous year only. The counsel for petitioner emphasized the aspect of scheduling generation and more particularly corresponding schedule as provided in the CERC Regulation. Therefore, the petitioner may be allowed to claim the amount towards excess generation. The counsel for petitioner stated that though the petitioner made excess generation but was well within the contracted capacity. The State Load Despatch Centre did issue notice for deviating from the schedules but a suitable reply was given to it and it dropped the action against the petitioner. The petitioner had amply made it clear that generation was made based on availability of coal and nothing stopped the SLDC from levying penalty, if at all excess generation was pumped into the grid duly endangering the grid. The DISCOMs have no right to allege that they have not allowed payment and have denied additional claims as the petitioner had deviated from the schedules. It is not for the DISCOMs to allege or claim action against the petitioner in the matter of scheduling the energy and it is for the SLDC to take action in the matter. Thus, the petitioner sought intervention of the Commission for payment of incentives earned by it due to achieving of higher PLF.

The counsel for petitioner extensively relied on the provisions of the PPA, CERC Regulation, tariff order passed in favour of the petitioner in the year 2017 as also the true up order passed by the Commission in the year 2020 with regard to the control period of 2016-19. It is his case that the Commission emphatically refused to consider the provisions of the Regulation No.1 of 2008, but substantially relied on CERC Regulation of 2014 while determining the tariff or for that matter the true up petition. This was done so as the normatives and parameters in respect of several aspects relating to the above prayers were not found in the Regulation No.1 of 2008 and the same were provided in the CERC Regulation including the project capacity for 600 MW as the installed capacity is 2x600 MW. He also relied on the judgments submitted earlier as rendered by the Hon'ble ATE.

The counsel for petitioner sought a decision on the reimbursement of water charges and stated that the said amount is payable by the DISCOMs as confirmed by the Commission in the tariff order as also in the true up order. It is his case that the same have to be reimbursed in terms of the provisions of the PPA as also CERC Regulation. At the same time, he also distinguished the judgments referred to by the DISCOMs on the earlier occasion.

The representative of the respondents, while continuing his earlier submissions, defended the action of the DISCOMs stating that the petitioner is not entitled to any amount claimed by the petitioner in this petition. He stated that excess energy injected into the grid would attract penalties and SLDC had issued notice for violation of the schedules. It is his case that the petitioner did not deliver the quantum of energy as directed by the Commission but is now claiming incentive as also additional coal cost. He has extensively quoted from the order of the Commission determining the tariff in the year 2017 as also the true up order passed by the Commission in the year 2020 and also interpreted the provisions of the Regulation No.1 of 2008 along with CERC Regulation. It is stated that the petitioner has entered into MoU with the coal supplier by providing that excess quantum of coal over 75% of the requirement would be

paid for at the rate of 20% higher than the applicable to non-power supply coal price. This has led to additional cost to the petitioner, which it wants to pass on the same to the consumers through DISCOMs, which is not permissible under law. The petitioner is not entitled to the same. In fact in the year 2020, the MoU is modified to include power supply tariff instead of nonpower supply tariff. This has happened in view of the objection raised by the DISCOMs only.

The representative of the respondents endeavoured to submit that the petitioner is not entitled to any incentive as the petitioner has provided excess generation and violated the schedules given by itself. Claiming that it has generated excess amount of energy more than required and violation of the schedules would attract penalty, however, the DISCOMs have honoured payment only to the extent of applicable scheduled generation and refused to pay the amount both for coal charges as well as incentive.

The representative of the respondents further submitted that the petitioner, in fact, had questioned the order of the Commission determining the tariff before the Hon'ble ATE and the same is pending consideration. The petitioner is making an attempt to pick and choose according to his choice the clauses which are beneficial to it and seeking to omit the clauses which provide fetters on the actions of the petitioner. He also relied extensively on the clauses in the PPA, the orders passed by the Commission and the regulations applicable to the case both for the relevant and subsequent period. He has strenuously explained the background of the claims as also the intention of the petitioner to make such claims. The petitioner has gained in terms of certain economics of true up, which has to be shared with the DISCOMs, which is not done by the petitioner.

The representative of the respondents also pleaded the legal aspects by relying on latin maxim and the understanding thereof along with judgments of the Hon'ble Supreme Court on the mode of interpretation regarding reading of act, rule, regulation etc. He sought to emphasize that any act, rule or regulation have to be read in toto and not in bits and pieces according to the requirement or which provide for beneficial understanding to one party.

The counsel for petitioner replied that the submissions made by the representative of the respondents are confusing and contradicting to each other. It is his case that the DISCOMs are seeking to make submissions contrary to applicable law and regulations so as to ensure rejection of the petition at the hands of the Commission. It is also stated that several submissions are made, which are beyond the written down pleadings made before the Commission. He stated that the Commission, while deciding the matter, is requested to carefully check the submissions and consider the case of the petitioner as the claims made are of bonafide nature and cannot be negated. The petitioner has incurred the expenditure and it has to rightfully be reimbursed the same. In support of his contention, he has relied upon section 61 of the Act, 2003 extensively. At the same time, he also stated that the consumer cannot be mulcted with unnecessary burden and the DISCOMs cannot claim dual benefit both from the generator and consumer. The generator has to run on commercial principles and it should be allowed to recover the cost and at the same time, the sector should be run on economic principles. Stating so, he has pleaded for allowing the petition.

Insofar as the 2nd prayer i.e., (b), on which both the parties have reached some understanding, the petitioner would file a memo to that effect if not the same

has to be argued subsequently. The representative of the respondents also stated that he has no instructions on the issue from the management and would report back, if a decision is taken by them. Having heard the submissions of the parties in detail, the matter is reserved for orders.”

8. The petitioner filed the present petition seeking several reliefs as abstracted above claiming amounts due and arising out of the supply of power undertaken by it to the respondents. At the time of hearing as recorded in the proceedings dated 25.04.2022 two (2) issues mentioned in the prayer at (b) and (e) have been substantially settled among themselves. As such, the petitioner intended to file a memo conveying the same to the Commission. Alas after six (6) months also, no such submission is made before the Commission. The Commission decides to proceed with the issues and will express its opinion at the issues while concluding the order.

9. Arguments were rendered by the parties extensively on the issues arising between them. The prayer made in the petition has several aspects as submitted by the parties and contentions which run as corollary to each other. Even the relief sought is also inter twined between each other except for the issue of water charges. The petitioner had referred to several documents to support its case in the context of the claims made in the petition. However, the entire claim rests on the conditions of the PPA as also the applicable regulations governing the subject. Therefore, any finding contrary to regulations would amount to giving extraneous interpretation to the provisions thereof.

10. It is worth to mention that the Commission while undertaking determination of tariff invoked the provisions of the CERC regulation only to a limited extent as specified in the order dated 19.06.2017. In fact, aggrieved by the order of the Commission about non-application of CERC Regulation on all the aspects, it had questioned the order of the Commission before the Hon'ble ATE in Appeal No.312 of 2017. The said appeal is pending consideration by the Hon'ble ATE.

11. In this regard, it is appropriate to notice the relief sought in the said appeal by the petitioner and the issues raised therein. The prayer and the relevant issues are reproduced below:

“A. *Whether the impugned order has been passed in violation of the provisions of the Act, 2003 and the APERC Regulations as adopted by*

- the Commission?*
- B. *Whether the Commission has adopted an erroneous approach by sporadically applying the CERC Regulations as well as the APERC Regulation No.1 of 2008 without any justification behind the said application?*
 - C. *Whether the Commission has wrongfully deferred the computation and approval of additional capitalization provisionally as such a step is not within the bounds of the law?*
 - D. *Whether the Commission has wrongfully denied the benefit on account of loan restructuring to the appellant?*
 - E. *Whether the Commission has erroneously not considered the reasons for delay in the analysis of BOP timelines?*
 - F. *Whether the Commission has wrongfully disallowed the cost borne by the appellant for the development of township?*
 - G. *Whether the Commission has adopted such an approach in the process of determination of tariff that the cost of generation borne by the appellant on account of certain miscellaneous costs is not being recovered which is directly in contravention to the principles laid down in Section 61 of the Act, 2003?"*

Prayer:

"to set aside the impugned order dated 19.06.2017 passed by the Commission in O.P.No.09 of 2016, in terms stated in the present appeal."

The above stated grounds and questions of law before the Hon'ble ATE do not have direct bearing on the case, as such the same can be proceeded.

12. Issue-1 (Payment of bills towards additional Coal Cost for FY 2018-19):
- a. The petitioner raised the issue of payment of additional coal cost running about Rs.118 crore for the period 2018-19. In this regard, the petitioner has extensively quoted the provisions of the Regulations and also the PPA in view of the objection raised by the DISCOMs.
 - b. It is the submission of the petitioner that raising of additional coal bills by SCCL (Mines department) has resulted in revision of energy charges for 2018-19 and such revision is made in accordance with the Clause (7) of Regulation 30 of CERC Terms and Conditions of Tariff 2014 and if this bill towards additional cost of coal is not accepted, the Petitioner will be put to losses and the same will result offending Clause 61(b) of the Electricity Act, 2003. Hence the requested the Commission to direct the respondents to pay the additional energy charge incurred due to additional coal bills.
 - c. As response to above submission of the petitioner it is the say of the respondents that the petitioner deliberately injected energy beyond SLDC's schedule, which amounts to non-compliance of SLDC instructions besides

causing financial loss to them and such injecting of excess energy was not required by the grid and if the petitioner had complied with SLDC instructions, limiting the generation equal to the Schedule in each time block within permissible deviation volume limit, then the issue of over-injection of 94.76 MU would not have arisen and to that extent they could have saved payment of Energy charges and such deliberate injection of excess energy into the grid intended to cause financial burden on them besides violating grid code. The critical issue to be examined by the Commission is when the petitioner over-injected energy into the system without the grid requirement by violating the grid code, in such situation are they liable for payment of Energy Charges (VC) in terms of APERC/CERC tariff Regulations. However, the Tariff Regulations does not support the contention/claim of the Petitioner; therefore the Petitioner's claim should be disallowed.

- d. The Commission opines that the dispute raised by the petitioner is with regard to additional cost of coal drawn for generating power apart from the regular cost agreed already. The petitioner having raised the invoices for the power supply made earlier, also raised supplementary bill towards amount incurred by it for availing coal supply through its own mines, which was permitted by Gol as a bridge linkage. The pricing for the said purpose would show that there is a division of two parts of 100% capacity of coal and the cost that is involved thereof. Further, the Gol through MoC in its memorandum dated 08.02.2018 had provided for modalities towards bridge linkage of coal without mentioning the pricing in that Office Memorandum and the MoU reflects the same.
- e. In order to refute the claim of the petitioner with regard to additional coal cost, the respondents referred to the order passed by the Commission in O.P.No.9 of 2016 filed by the petitioner itself, the terms of the PPA as also the pricing structure as derived from MoU signed by the petitioner with its power plant division. The respondents relied heavily on the fact that the petitioner was allotted coal mine, and it was not drawing coal from the said source citing the reason that the production has not yet started and in turn required availing coal through other means and sources by requiring allotment by Gol to run its power plant. According to them, this has resulted in higher cost of fuel as onerous conditions have been imposed as a part of the allotment of bridge linkage, which had specific conditions on pricing as mentioned in the pleadings.

- f. It appears that the petitioner in order to facilitate itself to operate the thermal plant proceeded to acquire coal allocation from the captive coal mine, which did not start production of coal, thus requiring the petitioner to source the coal supply from its own coal mines duly obtaining the permission from Gol. However, it is not clear from the pleadings and from the submissions of both sides as to whether the respondents had been put on notice with regard to availing bridge linkage of the coal and also entering into MoU by the petitioner with its thermal plant unit for supplying such bridge linkage coal. According to the petitioner that the coal supply availed would be at a higher cost under bridge linkage and such cost is reimbursable under the PPA and that coal supply availed under the MoU to the thermal plant in the absence of availability of coal through the original allocation made by the Gol and thus, it had incurred additional cost for procuring the same, which was noticed only on completion of FY 2018-19.
- g. It is made to understand from the averments of the petition that the petitioner had raised supplementary bill towards additional coal cost after FY 2018-19 when the actual cost of coal was very much within its reach being the coal supplier as also the generator. The petitioner submits that it had drawn additional coal beyond the agreed quantum in order to generate additional power beyond the PLF agreed between the parties. This action of the petitioner appears to be in contravention to the regulations that are applicable and the agreement reached between the parties. Moreover, the petitioner had failed to inform the beneficiaries/respondents of the higher pricing of coal in a timely manner. Further, the petitioner sought to increase generation by using additional coal and it is not made clear whether it was at the instance of respondents or out of its own volition.
- h. Utilization of additional coal beyond the agreed quantum at a higher rate is neither permissible nor within the ambit of the agreed conditions between the parties. Propriety would require that the parties should adhere to the Act, 2003, rules, regulation and the clauses in the PPA to the extent they are applicable.
- i. As per Article 3.4.2 of the PPA in between the parties “ *the SCCL shall follow the SLDC directives, to back down, increase or resume generation, decrease generation at a times on a day, provided that such directives are consistent with the technical limits of the facility, Prudent Utility Practices or in accordance with*

discharge functions of SLDC. Number of Dispatch instructions per day shall not exceed two. The duration of back down and quantum of energy backed down each day shall be reconciled and certified by both SCCL (at station level) and SLDC on monthly basis”

- j. As per clause 2 (ii) of Regulation 1 of 2008 “ Schedule generation at any time or for any given period or time block means the scheduled of Generation in Mw at ex-bus given by the SLDC”.*
- k. As per clause 14.1 of Regulation 1 of 2008 “ the generating station shall be entitled to receive or shall be required to bear as the case may be, the charges for the deviation between energy sent out corresponding to scheduled generation and actual energy sent out, in accordance with the balancing and settlement code notified by the commission”.*
- l. Further as per clause 13.1(a) of Regulation 1 of 2008 “Energy charges shall cover fuels cost and shall be worked out on the bases of ex-bus energy sent out corresponding to Scheduled generation ”*
- m. Needless to add that as per the PPA it is the bounden duty of the petitioner to follow the dispatch instructions of SLDC and as per the Regulation 1 Of 2008, the petitioner is eligible for payment of energy charges for ex-bus charges sent out corresponding to schedule generation. But it appears the petitioner has not followed dispatch instructions and injected excess energy to the grid in violation. The liability of the respondents to pay shall be only to the extent of coal cost corresponding to schedule generation and not for the energy generated over and above of the scheduled generation. For that, the Tariff Regulations does not support the claim of the Petitioner; therefore, the Petitioner is not entitled to receive additional coal cost beyond scheduled generation. Hence this issue is answered.

13. Issue-2 (Payment of Bills on actual metered energy for FY 2018-19):

- a. The contention of the petitioner is that scheduled generation refers to the quantum of energy scheduled on day ahead basis by the DISCOMs to be delivered by the STPP. Actual energy is the measured energy actually injected by STPP into the state grid of Telangana. The meters register actual energy instead of scheduled energy.
- b. The scheduled generation (SG) cannot be exactly matched with actual

generation. Most of the times due to variations in connected load, frequency and changing coal quality which are beyond the control of a generator, the actual delivered energy gets changed. The STPP had experienced that when machines are operated on real time basis, the SG could not match with the actual generation due to the above said practical difficulties in real time operation of generating station. Therefore, commercial mechanism have been developed around the country to deal with the difference in SG and actual generation which is generally known as unscheduled interchange (UI) or deviation settlement mechanism. In the state of Telangana, the Clause No.14.1 of Regulation No.1 of 2008 provides for notifying charges of unscheduled energy. Relevant portion of the regulation is extracted below:

"Charges for unscheduled interchange

14.1 The generating station shall be entitled to receive or shall be required to bear, as the case may be the charges for deviations between energy sent-out corresponding to scheduled generation and actual energy sent-out, in accordance with the banking and settlement code notified by the Commission.

Provided that the rate for determination of such charges shall be as notified by the Commission from time to time. "

- c. However, notification for unscheduled energy charges as envisaged in Clause 14.1 of said regulation which would be applicable for intra state generators was not made/ finalised in the Telangana State. Therefore, in the absence of such mechanism, traditionally energy bills for state generators were allowed based on actual energy which reflects in JMR.
- d. Respondent stated that the claim of the petitioner for payment of energy charges (variable charges) for the over-injected energy of 94.76 MU beyond the SLDC schedules, is not in accordance with either CERC Tariff Regulations 2014 (or) APERC Regulation No.1 of 2008 adopted by this Commission. Hence the respondents are not liable to pay the same.
- e. The relevant energy charge rate (ECR) variable cost (charge) stipulated in Regulation No.1 of 2008 as applicable for billing and payment of energy charges for FY 2016-19 as per TSERC order dated 19.06.2017 in O.P.No.9 of 2016 is extracted below:

"

13 ENERGY CHARGES

13.1 Thermal Generating Stations

- a. Energy Charges shall cover fuel costs and shall be worked out on the

basis of ex-bus energy sent out corresponding to scheduled generation as per the following formula.

Energy Charge (₹.) = Rate of Energy Charges in (Rs. kWh) 'x' Ex-bus energy sent out corresponding to scheduled generation for the month in kWh.

-“
- f. In terms of the aforesaid provision for computation of energy charges, ex-bus energy sent out corresponding to scheduled generation shall only be considered but not actual energy as per JMR as contended by the petitioner.
 - g. The petitioner's averment to consider the readings of main meter for billing purpose as per PPA Article 7.11, is not the dispute raised by the respondents but disputing the excess energy injected beyond SLDC's schedule on the pretext of JMRs, as the same is contrary to the tariff regulations, since the said PPA provision is overridden by the regulation to the extent of inconsistency, hence the petitioner's claim based on JMRs beyond SLDC's schedule is not sustainable in law.
 - h. The dispute between the parties is with regard to considering the actual generation as recorded in the JMR instead of scheduled generation.
 - i. The Commission opines that as per paragraph 4.15.2 of Order dated 19.06.2017 in O.P.No.09 of 2016, *the billing and Energy charges shall be in accordance with the Regulation No.1 of 2008.*
 - j. As per Clause 2(II) of Regulation No.1 of 2008 *“Scheduled Generation at any time or for any given period or time block means the scheduled of Generation in MW at ex-bus given by the SLDC”*
 - k. As per clause 14.1 of Regulation No.1 Of 2008 *“the generating station shall be entitled to receive or shall be required to bear as the case may be, the charges for deviation between energy sent out corresponding to scheduled generation and actual energy sent out, in accordance with the Balancing and settlement code notified by the Commission”*
 - l. Further, as per clause 13.1(a) of Regulation No.1 of 2008 *“the Energy charges shall cover fuel costs and shall be worked out on the basis of ex-bus energy sent out corresponding to scheduled generation”*
 - m. The Commission is of the considered view that billing shall be done as per the order in O.P.No.09 of 2016 and shall be inconsonance with above quoted Clauses of the Regulation No.1 of 2008. Hence the Commission disallowed the claim on the basis of JMR recordings of the petitioner.

14. Issue-3: Incentive for FY 2017-18:

- a. The contention of the petitioner is that the incentive is computed for the FY 2017-18 by considering the actual energy generated and recorded in the Joint Meter Reading (JMR) instead of scheduled energy as specified in CERC (Tariff and Conditions of Tariff) Regulations 2014, since the State of Telangana does not have balancing and settlement code for Intra-State generators and in absence of such mechanism, traditionally energy bills for state generators were allowed on actual quantum of energy injected into grid as recorded in JMR in terms of PPA.
- b. The respondent in their counter affidavit contented that petitioner has deliberately injected energy into the grid beyond SLDC's schedules on the pretext of absence of UI mechanism in the State in order to gain financially, thereby violated the grid code despite SLDC notices and further raised the incentive bills. The excess energy units, beyond 85% PLF over-injected beyond TSSSLDC schedules are not entitled for incentive payment as it has achieved such high PLF generation with high cost bridge linkage coal and also by violating the grid code jeopardizing the grid security and reliability and non-compliance of SLDC's instructions.
- c. The relevant portion from CERC Regulations, 2014 is extracted below:

“Incentive to a generating station or unit thereof shall be payable at a flat rate of 50 paise kWh for ex-bus scheduled energy corresponding to scheduled generation in excess of ex-bus energy corresponding to Normative Annual Plant Load Factor (NAPLF) as specified in regulation 36(B).”
- d. In para 4.13.4 of the Commission order dated 19.06.2017 in O.P.No.9 of 2016 the Commission has approved the target PLF for incentive as 85% as against the petitioner's claim of 80% and held that the incentive shall be in accordance with CERC (Terms and Conditions of Tariff) Regulations, 2014.
- e. In view of the above the Commission disallows the incentive claimed by the petitioner based on JMR which is contrary to the CERC (Terms and Conditions of Tariff) Regulations, 2014.

15. Issue-4: Water Charges for FYs 2016-19

- a. The contention of the petitioner is that the requisite water for power generation in STPP is drawn from rivers Godavari and Pranahitha through 1 TMC and 2 TMC water supply schemes respectively. Accordingly, the petitioner has

claimed for reimbursement from the respondents towards Water Charges paid to Irrigation and CAD Department, Government of Telangana for three (3) years period i.e., FYs 2016-19 for having utilized the water drawn for power generation. The petitioner placed reliance on the Section 61(b) of the Act, 2003 and the provisions under CERC (Terms and Conditions of Tariff) Regulation, 2014 for supporting its claim and averred that it is entitled to the said expenditure borne by it for reimbursement from respondents.

- b. The respondents on the other hand contended that the expenditure relating to water charges is part of administrative expenses and the said administrative expenses is part of the O&M expenses. As such, this claim had already been considered in the tariff order for FY 2016-19 passed on 19.06.2017 in O.P.No.9 of 2016. It is their contention that annual fixed cost as provided in Regulation No.1 of 2008 comprises of O&M expenses also, as such the payment of water charges incurred for FY 2016-19 cannot be considered.
- c. It is worth to mention that the Commission in its order dated 28.08.2020 has carried out the truing up for FY 2016-17 to FY 2018-19 for STPP. The relevant portion with regard to directive of the Commission is extracted below:

“4.23 Other Charges

... ..

Commission’s View

4.23.2 *Regulation 29(2) of the CERC (Terms and Conditions of Tariff) Regulations, 2014 provides for allowance of water charges and capital spares separately. The other charges claimed by SCCL are towards water charges and capital spares.*

4.23.3 *Regulation 29(2) of the CERC (Terms and Conditions of Tariff) Regulations, 2014 provides for allowance of water charges subject to prudence check. SCCL has claimed the total water charges of Rs.4.69 crore for the period from FY 2016-17 to FY 2018-19 and submitted the copies of letters dated 28.03.2019 and 20.05.2019 addressed to the Irrigation Department. SCCL also requested the Commission to allow the water charges of Rs.3.63 crore for the period from 01.12.2016 to 31.08.2018 in its submissions on billing disputes to which the DISCOMs submitted that all the monthly energy bills including supplementary bills towards taxes & duties as per the Tariff Regulations have been paid and sought the reconciliation of the sums received by SCCL. In light of the above, the Commission has not approved any amount towards water charges in this Order. The Commission directs SCCL to take up the issue of water charges with the DISCOMs.*

- d. 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;

... ..
29(2) *The Water Charges and capital spares for thermal generating stations shall be allowed separately:
Provided that water charges shall be allowed based on water consumption depending upon type of plant, type of cooling water system, etc., subject to prudence check. The details regarding the same shall be furnished along with the petition:*

... .. “
e. As such, the Commission is of the considered view that the Water Charges for the period FYs 2016-19 claimed by the petitioner in this petition are not 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. Hence the Commission allows the Water Charges as claimed by the petitioners.

16. Issue-5: Payment of Interest Charges:

a. The other issue that remains for consideration is with regard to payment of interest on the amounts due and remained unpaid by the respondents to the petitioner. The amounts now claimed by the petitioner and liable to be paid by the respondents are to be in accordance with Regulation No.1 of 2008, but the claim is made for payment in terms of CERC tariff regulation 2014. Paragraph 4.15.2 of TSERC order dated 19.06.2017 in O.P.No.9 of 2016 specifies that, *“The billing and payment of Annual Fixed Charges and Energy Charges shall be in accordance with the Regulation No.1 of 2008.”* As such, the Commission is of the view that the delayed payment surcharge shall be levied as per the Regulation No.1 of 2008.

17. The respondents referred to the judgment as quoted by the petitioner to state that the same is not applicable in respect of *State of West Bengal Vs. M/s B.K.Mondal and Sons*. The said judgment, though established the principle of non-gratuitous act, but does not fit into the issues involved in the petition. Likewise, reliance is placed on Civil Appeal No.1766 of 2019 between *M/s Mahanagar Telephone Nigam Limited Vs. Tata Communications Limited*. Though, the principle as set out in the above judgment

is examined and considered, but the facts in that case would not go to show that such principle can be applied in this case. Further, reference has been made to a judgment of the Hon'ble ATE in Appeal No.123 of 2010 between *M/s Indo Rama Synthetics (I) Ltd. Vs. M/s Maharashtra Electricity Regulatory Commission & others*. The principle of Section 70 of the Contract Act, 1872 is relied upon, however, the said principle was applied taking into account the specific facts and as the matter is arising out of the Act, 2003, which is complete code in itself. Also, in the said case action of the SLDC is considered as it is a party to that case. In this case, the SLDC is neither a party nor its actions are questioned by the petitioner. Hence, this order cannot be of any support to either of the parties.

18. The respondents further relied upon the maxim *Casus Omissus Pro Omissis Habendus Est Law*, which means 'A person, object, or thing omitted from an enumeration in a statute must be held to have been omitted intentionally'. This maxim does not support the case of the respondents, as being a party to the contract cannot allege that something is missing in the contract, regulation, rule or Act, hence no relief can be given in favour of the petitioner. Further, a reference has been made to the judgment rendered in the matter of *O.P. Singla & Anr. Etc. Vs. Union of India & Ors*. The relevant portion relied upon by the respondents is extracted below:

"2.1 When a rule or a section is part of an integral scheme it should not be considered or construed in isolation. One must have regard to the scheme of the fasciculus of the relevant rules or sections in order to determine the true meaning of any one or more of them. An isolated consideration of the provision leads to the risk of some other inter-related provisions becoming otiose or devoid of meaning."

The parties did not emphasize as to the difficulty of construction in the provisions or relied upon the provisions in the agreement, rule or regulation in a isolated manner so as to apply this judgment.

19. The respondents further relied upon the judgment in the matter of *C.I.T. Central, Calcutta Vs. National Taj Traders*. The relevant portion of the judgment relied upon by the respondents is extracted below:

"In regard to the latter principle the following statement of law appears in Maxwell at page 47:

A statute is to be read as a whole - "It was resolved in the case of *Lincoln College [(1595) 3 Co. Rep. 58b, at p. 59b]* that the good expositor of an Act of Parliament should make construction on all the parts together, and not of one part only by itself. 'Every clause of a statute is to 'be construed

with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute.”

20. The interpretation rendered by the Hon'ble Supreme Court is akin to the earlier proposition in the above referred judgment in the preceding paragraph. Though, it is true that Act, rule or regulation cannot be read in isolation or in pieces, at the same time, wherever required specific provisions have to be considered and such consideration may require independent reading for interpreting the specific rule or regulation in the facts and circumstances. Therefore, in this particular case, this principle cannot be applied. Further, law rendered in the case of taxation is much stricter than other laws and the finding rendered in the above judgment is with reference to the taxation only.

21. In view of the observations and findings in the preceding paragraphs, the petition is partly allowed to the extent indicated above, without any costs.

This order is corrected and signed on this the 21st day of November, 2022.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

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

Sd/-
(T. SRIRANGA RAO)
CHAIRMAN

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