



ORDER

OF THE

**WEST BENGAL ELECTRICITY REGULATORY
COMMISSION**

IN THE MATTER OF

CASE NO: TP(R)-33/21-22

IN REGARD TO THE PETITION SUBMITTED BY HIRANMAYE ENERGY LIMITED (HMEL) FOR REVIEW OF TARIFF ORDER DATED 31.05.2021 PASSED BY THE COMMISSION IN FAVOUR OF HMEL IN CASE NO. TP-82/19-20 FOR THE YEARS 2018 – 2019 AND 2019 – 2020.

PRESENT:

**SRI SUTIRTHA BHATTACHARYA, CHAIRPERSON
SRI DURGADAS GOSWAMI, MEMBER
SRI PULAK KUMAR TEWARI, MEMBER**

DATE: 18.03.2022



FACTS IN BRIEF

1. This is in regard to the petition submitted by Hiranmaye Energy Limited (H MEL) in terms of section 94(1)(f) of the Electricity Act, 2003 read with regulation 3.3 of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013 for review of Multi Year Tariff (MYT) order of Hiranmaye Energy Limited for the years 2018 – 2019 and 2019 – 2020 under sixth control period issued by the West Bengal Electricity Regulatory Commission on 31.05.2021.
2. In their review petition, IPCL has submitted that, being aggrieved with arithmetical / computational errors apparent on the face of the record in the impugned order of the Commission, they are filing the review petition with a prayer to admit the petition and review the impugned order to the extent sought in the petition. IPCL in their petition inter-alia highlighted the following issues:
 - A. Clerical / Arithmetical mistakes in para 4.3 and para 4.4 regarding “gross generation”, “auxiliary consumption” and “Ex-bus generation” vis-a-vis figures mentioned in Annexure 4 of the order”.
 - B. Pricing of imported coal based on prices of domestic coal.
 - C. Error in computation of road transportation cost in FY 2018-19 & FY 2019-20.
 - D. Error in computation of Landed Price of Imported Coal and Weighted Average Price of Coal.
 - E. Treatment of Fixed charge / Final project cost at paragraph 5.2.3 and 5.2.4.
 - F. Error in computation of Employee cost in paragraph 5.3.
 - G. Error in computation of Coal and Ash Handling expenses in paragraph 5.5.
 - H. Error in computation of Operation and Maintenance expenses in paragraph 5.7.2 and wrongful consideration of applicable norms of Sagardighi Stage-I as benchmark in paragraphs 5.7.2 .
 - I. Error in computation of Interest on working capital in paragraph 5.14.
3. The petitioner has submitted that in view of all the following changes, the figures of the interest on working capital, T&D gains, interest credit, capacity charge etc. may also be revised accordingly. It has also been prayed to allow the petitioner to submit further documents, clarification and explanation as may be required by the Commission and to pass such further and other orders, as the Commission may deem fit and proper, keeping in view the facts and circumstances of the case.



4. The prayers of H MEL have been narrated below.

Now, the Commission proceeds to find whether any case for review has been made out by the Review Petitioner in terms of Order 47 Rule 1 of CPC, according to which a person aggrieved by order of a Court can file review on the following grounds, if no appeal against the said order has been filed :

(a) Discovery of new and important matter of evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made.

(b) On account of some mistake or error apparent on the face of record; and

(c) For any other sufficient reason.

In this connection, reference could be made to the following judgments:

(a) In **Lily Thomas & Ors. vs. Union of India & Ors. [(2000) 6 SCC 224]**

Judgment, the Hon'ble Supreme Court has held as under:

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review...."

(b) In **Union of India vs. Sandur Manganese and Iron Ores Limited &**

others {(2013) 8 SCC 337}, the Hon'ble Supreme Court has held as under:

"23. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In Parsion Devi & Others Vs. Sumitri Devi & Others, this Court held as under:

"9. Under Order 47 Rule 1 of CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47

Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."



(c) In **M/S Goel Ganga Developers India Pvt. Ltd. vs. Union of India**

2018 SCC Online SC 930, the Hon'ble Supreme Court has held as under:

"In this behalf, we must remind ourselves that the power of review is a power to be sparingly used. As pithily put by Justice V.R. Krishna Iyer, J., "A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon"

2. The power of review is not like appellate power. It is to be exercised only when there is an error apparent on the face of the record. Therefore, judicial discipline requires that a review application should be heard by the same Bench. Otherwise, it will become an intra-court appeal to another Bench before the same court or tribunal. This would totally undermine judicial discipline and judicial consistency"

Review sought on the issues B, C, D, E, G and H have been discussed below :

B. Pricing of imported coal based on prices of domestic coal:

Submission by H MEL

H MEL submitted that, the Commission in the impugned order has considered the landed cost for 1000 kCal of coal purchased from different e-auctions as a capping for landed cost of imported coal during FY 2018-19. H MEL submitted that, in this process the Commission has employed the price of domestic coal for arriving at the price of imported coal, which is an error on part of the Commission.

It is also submitted that it is an error apparent on the part of the Hon'ble Commission to ignore the actual cost of imported coal as the expense towards imported coal has already been incurred in FY 2018-19 and therefore has attained the "fait accompli" and this is a sufficient ground for seeking review on this aspect.

It is further submitted that, H MEL had considered coal from SHAKTI scheme during FY 2019-20, but actual coal from SHAKTI scheme was made available to H MEL in FY 2020-21. So, the plant was operated in FY 2019-20 using e-auction and imported coal. Accordingly, H MEL proposed to approve the variable tariff of FY 2019-20 considering the actual coal cost.

Observation of the Commission:

In paragraph 4.5.5 of the tariff order it has been mentioned that, in absence of any competitive bidding-based purchase of imported coal, as is required under regulation 5.8.5 of Tariff Regulations, the landed cost of imported coal has been capped to the landed cost per 1000 kCal of coal purchased from e-auction during 2018-19.



C. Computation of road transportation cost in FY 2018-19 & FY 2019-20:

Submission by H MEL:

H MEL submitted that, the Commission overlooked the justification given by them regarding increase of road transportation cost during 2018-19 and 2019-20. H MEL has also submitted that, though the road transportation cost claimed by them in the petition (Rs. 1300/tonne) was discovered under a transparent tendering process, the Commission has not admitted the same and erroneously considered road transportation cost based on earlier work order of Rs. 489.30/tonne and applied CPI & WPI on it.

In this regard H MEL has further submitted that, coal transportation through Haldia Dock involves manual labour in place of mechanical unloading due to issues of various unions, non-availability of dedicated fleet, heavy traffic of goods & consignments at Haldia Dock, route congestion, etc. Further Haldia Dock complex siding being a common user siding, H MEL was allowed only 3 to 4 hrs of free time for unloading of coal. Thus, H MEL has to shift the coal nearer to railways track and it required multiple handling of coal for about 5 times. H MEL also mentioned that, the agency who was awarded work order on Rs. 489.30 per tonne discontinued after transportation of only 2 rakes and as a result EMD for balance 7 rakes were forfeited by CCL, which resulted in substantial financial loss to H MEL.

H MEL also submitted that, disallowance of handling & supervision charge of Rs. 94/tonne during FY 2019-20 is not as per provision of regulation 5.8.1(iv) read with definition of fuel cost in regulation 2.1(vi) of WBERC Tariff Regulations.

Observation of the Commission:

The reasons behind non-acceptance of the proposed road transportation cost by the Commission has been detailed under paragraph 4.5.6 of the Tariff Order, which is self-explanatory.

D. Computation regarding landed price of Imported Coal and weighted average price of Coal:

Submission by H MEL:

H MEL submitted that, in the table under paragraph 4.5.7 of the tariff order, the Commission has considered landed price of e-auction coal as Rs. 1.33 per 1000 kCal, which will be Rs. 1.332 per 1000



kCal. Accordingly, the admitted landed cost for imported coal will also change to Rs. 5594 /tonne from the admitted value of Rs. 5586/tonne.

It is submitted that, this submission is without prejudice to their submission that the Commission could not have applied domestic coal price for deciding the imported coal price.

Observation of the Commission:

This is a simple issue of rounding up the figures. The Commission has rounded up the per 1000 kCal landed cost up to two decimal places. Thus, Commission has considered the rate as Rs. 1.33 (landed cost of 5727 per tonne divided by GCV of 4300 Kcal/Kg), whereas HMEL in this review petition proposes for rounding upto 3 decimal places. The Commission observes that, rounding up the Rupee value upto two decimal is as per extant practice and hence, no modification in this regard is considered by the Commission.

E. Treatment of Fixed charge / Final project cost at paragraph 5.2.3 and 5.2.4:

Submission by HMEL:

HMEL submitted that, as per their prayer in the tariff petition, the Commission has considered proportionate Capital cost for 2 units for determination of tariff based on the “in-principle” approved amount of Rs. 2672.09 crore for three units. However, the Commission in the order remained silent about the treatment of the balance amount (that is the in-principle amount vis-à-vis the Final Project Cost) arising out of the difference in the tariff approved based on the final Project Cost and the tariff based on the in-principle clearance.

In this regard, HMEL submitted that, the Commission has permitted the petitioner to file application/petition for determining the Final Project cost by 31.12.2022. The present tariff is based on “in-principle” admitted project cost and applicable from date of commercial operation of the plant. Accordingly, HMEL submitted that, the impact of balance amount between the admitted Final Project cost and the “in-principle” project cost needs to be effective from the date of commercial operation of the plant. HMEL argued that, this is necessary as the procurer, that is WBSEDCL enjoys the power supplied from the commencement of commercial supply (COD).



Observation of the Commission:

In paragraph 5.2.4 of the tariff order, it has been mentioned that, prorated capital cost based on “in-principle” approved value has been considered to determine the ARR. The paragraph is self-explanatory.

G. Coal and Ash Handling expenses in paragraph 5.5:

Submission by HMEL:

HMEL submitted that, coal & ash handling charges is a function of transportation cost between the coal yard and the plant, labour charges, quantum of ash generation, transportation rate and distance between plant & ash disposal site. HMEL also submitted that, without going into the merits of justifications the Commission has erroneously decided the coal & ash handling expenses by considering the normative level of generation during the years and multiplying it with a benchmark cost per MWh of generation.

HMEL in this regard referred to the judgement of APTEL dated 26.08.2014 in appeal no 244 of 2012 in the matter of DPSC Limited vs WBERC.

Observation of the Commission:

The tariff order for 2018-19 and 2019-20 is the first tariff order for HMEL. In their petition, HMEL estimated a cost of Rs. 66.67 lakh and Rs. 400.00 lakh for the years 2018-19 and 2019-20 respectively. In absence of any historical data for the plant, the Commission finds it prudent to allow the expenses on this head based on target normative generation vis-à-vis the benchmark cost as explained in paragraph 5.5.2 of the Tariff order. In the said paragraph, it has been mentioned that the actual expenses will be analysed during turning up exercise.

H. Operation and Maintenance expenses in paragraph 5.7.2 and wrongful consideration applicable norms of Sagardighi Stage-I as benchmark in paragraphs 5.7.2 :

Submission by HMEL:

HMEL submitted that, in the tariff order the Commission has refused to rework/re-compute the O&M norms for HMEL for the year 2017-18 on the ground that the O&M norms determined by the Commission for 2017-18 in its order dated 13.09.2018 was neither questioned for a review nor



challenged before any court of law. The Commission computed O&M cost for 2018-19 and 2019-20 base on the O&M norms for 2017-18 with escalation.

H MEL submitted that, the O&M norms of 2017-18 for H MEL has been allowed as Rs. 7.92 lakh/MW, which is same value of O&M norms of Sagardighi plant during 2017-18. In this respect H MEL submitted that, the Commission has not even considered any escalation in O&M cost of Sagardighi from 2016-17 to 2017-18. It is further stated that, being much smaller unit capacity from Sagardighi, O&M norms for H MEL should be at least 10% higher than that of Sagardighi. Accordingly, H MEL proposed O&M norms of Rs. 9.78 lakh/MW and Rs. 10.36 lakh/MW for 2018-19 and 2019-20 respectively. In this respect H MEL has referred O&M norms allowed by CERC for 125 MW NLC Lignite for justifying their claim of proposed O&M norms.

Observation of the Commission:

The matter has been elaborated in paragraphs 5.7.2 and 5.7.3 of the tariff order

5. In all the prayers above, the prayers are to review ratio of prudence adopted by the Commission and no ingredient for review on grounds permitting such reviews are manifest in the relevant submissions and the Commission keeping in mind that it is estopped from encroaching into the original jurisdiction of the Honourable Appellate Authority does not propose to entertain the above prayers on review.
6. Observations of the Commission on the remaining issues have been narrated below:
 - A. **Clerical / Arithmetical mistakes in paragraph 4.3 and paragraph 4.4 regarding “gross generation”, “auxiliary consumption” and “Ex-bus generation” vis a vis figures in Annexure 4 of the order:**

Submission by H MEL:

The Gross Generation is shown as 2102.40 MU for 2019-20 and the Ex-bus Generation is shown as 1881.65 MU in Annexure – 4 of the impugned order, whereas in the table under paragraph 4.4 the admitted Gross-generation and Ex-bus Generation for 2019-20 is shown as 2330.80 MU and 1999.25 MU respectively. There is a conflict between the figures in the table under para 4.4 and in the table under Annexure – 4 of the impugned order which requires to be corrected. Further, in table under paragraph 4.3 projected gross generation by H MEL for 2019-20 is shown as 2330.80 MU as against projected gross generation of 2233.80 MU proposed by H MEL in their petition.



Observation of the Commission:

In paragraph 4.3 of the order, it has been specified that gross generation proposed by H MEL for 2019-20 is 2233.80 MU. Thereafter, it has also been mentioned that the Commission has admitted gross generation for 2019-20 based on normative PLF (which comes to 2102.40 MU). Considering normative loss of 10.50%, the ex-bus generation comes to 1881.65 MU (which has been correctly considered for the purpose of determination of fuel cost as may be seen from the computations shown in Annexure-4). The same ex-bus generation of 1881.65 MU has also been mentioned in paragraph 4.6 of the order.

- However, in table under paragraph 4.3, projection of H MEL shown as 2330.80 MU in place of 2233.80 MU, is a typographical error.
- In table under paragraph 4.4, for 2019-20 the admitted figures of H MEL has been erroneously mentioned.

The corrected figures for table under paragraph 4.3 is as below:

Year	Gross Generation (in MU)	
	Projected by H MEL	Admitted
2018-19	80.71	80.71
2019-20	2233.80	2102.40

The corrected figures for table under paragraph 4.4 is as below:

Year	Gross Generation (in MU)	Rate of Aux Consumption (%)	Aux Consumption (In MU)	Ex-bus Generation (in MU)
2018-19	80.71	10.50 %	8.47	72.24
2019-20	2102.40	10.50 %	220.75	1881.65

The fuel cost has been computed in Annexure -4 of the order with correct values of gross-generation (2102.40 MU) and per unit fuel cost has been determined in paragraph 4.6 considering the correct value of ex-bus generation (1881.65 MU). Thus, there is no financial impact in ARR due to these typographical errors.



F. Employee cost in paragraph 5.3:

Submission by H MEL:

- (a) H MEL submitted that, while determining employee cost for H MEL the Commission has benchmarked the employee cost considering the employee cost of Sagardighi plant (Rs. 7179 lakh) as per tariff order of WBPDCCL dated 13.09.2019 for 2017-18 but overlooked subsequent revision of employee cost (Rs. 7702.93 lakh) for Sagardighi in revised order of the Commission dated 02.12.2019.
- (b) H MEL also submitted that, in the revised order dated 02.12.2019, number of employees admitted for Sagardighi was 672 and the same needs to be considered to arrive at benchmark for per employee cost.
- (c) H MEL further submitted that, considering man/MW ratio of 1.30 for 150 MW power plant of H MEL is not just in view of admitting man/MW ratio of 1.35 allowed for much higher sized plant of Sagardighi (300 MW). In view of lower unit size, H MEL proposed man/MW ratio higher than Sagardighi and allow an escalation of 9.28% based on average escalation of Sagardighi plant from 15-16 to 17-18.

Observation of the Commission:

Employee cost subject to man/MW ratio is recognised as uncontrollable element under the Tariff Regulations. Being first year of operation, a benchmark cost is required to be considered for employee cost of H MEL plants, which shall be subject to truing up during APR considering man/MW norms. Accordingly, per employee cost of Sagardighi as approved from 2017-18 has been considered as benchmark with suitable escalation. The issue has been explained in paragraph 5.4.3 of the tariff order.

Regarding the submissions at (a) and (b) above, the Commission observes that the revised order dated 02.12.2019 regarding ARR of Sagardighi plant of WBPDCCL needs to be considered for the purpose of computation of admissible employee cost of H MEL as the said revised order was overlooked owing to clerical mistake while preparing the MYT order dated 31.05.2021 in respect of H MEL. However, the man/MW norms fixed by the Commission in its order dated 13.09.2018 in Case no. OA-287/18-19 as a part of operating parameters should be maintained.



In view of above, table under Paragraph 5.4.3 is revised as under:

SI No	Particulars	Value
1	Employee Cost of SgTPP Stage-I for 2017-18 in Rs. lakh (as per revised order dated 02.12.2019)	7702.93
2	No of employees at SgTPP Stage-I per MW (as per revised order dated 02.12.2019)	672
3	Rs. in lakh per employee as per revised Order dated 02.12.2019 for 2017-18	11.463

Accordingly, the admissible employee cost in table under Paragraph 5.4.4 of the order dated 31.05.2021 is revised as below:

SI No	Particulars	2018-19	2019-20
1	Man / MW norms for H MEL	1.3	1.3
2	Maximum Manpower [1.3 X 300] (no)	390	390
3	Per employee (normative) cost of SgTPP Stage-I for 2017-18 (as per revised order dated 02.12.2019)	11.463	11.463
4	Annual Escalation over Employees Cost (Average of CPI for 17-18 to 19-20)	5.35%	5.35%
5	Admissible Rs. lakh per employee [* Sl. no 3 X 1.0535]	12.08	12.72 **
6	Admitted Emp Cost [Sl. no 2 X Sl. no 5] (Rs lakh)	4711.20	4960.80

**[11.463 X 1.0535^2]

Considering the claim of H MEL in their tariff petition, the employee cost is restricted to their claim for 2018-19 and 2019-20 as Rs. 4231.50 lakh and Rs. 4621.50 lakhs respectively. However, employee cost being uncontrollable in nature, is subject to truing up during APR.

I. Interest on working capital in paragraph 5.14:

Submission by H MEL:

H MEL submitted that, the Commission has erred in computing the interest on working capital by considering MCLR rate, instead of short-term prime lending rate of SBI or adjusted base rate of short-term lending as mentioned in regulation 5.6.5.2 of the tariff Regulations, as amended. H MEL submitted that, by this the Commission acted in contrary to its own Tariff Regulations. H MEL referred judgement of Hon'ble Supreme Court in the matter of PTC India Ltd. v. CERC (2101), 4 SCC 603.



Observation of the Commission:

The Reserve Bank of India introduced the Marginal cost of Fund-based Lending Rate (MCLR) in April 2016 to modify the existing base rate / prime lending rate (PLR) system in terms of Notification dated December 15, 2015. Accordingly, after 1st April 2016, all loans are priced based on MCLR benchmark. Thus, in order to safeguard the interest of consumers as well as to ensure recovery of cost in a reasonable manner as per section 61(d) of the Electricity Act 2003, the Commission, for the purpose of calculation of interest on working Capital, has considered the existing practice of the banks for pricing of their loans

However, due to change in fixed charges arising out of revision in employee cost, there will be a consequential revision in the amount of interest on working capital admitted in the tariff order dated 31.05.2021. The revised interest on working capital is given in annexure – I.

ORDER

7. In view of above, the Commission re-determines the Annual Revenue Requirements of HMEI for the years 2018 – 19 and 2019 – 20, after carrying out the adjustments on account of employee cost and interest on working capital as below:

REDETERMINED ARR (in Rs. lakh)			
SI. NO.	PARTICULARS	As admitted	
		2018-19	2019-20
1	Fuel Cost	2666.66	55729.92
2	Employee Cost	4231.50	4621.50
3	Coal and Ash Handling Charge	109.68	114.15
4	Water Charges	1152.86	1171.40
5	Operation and Maintenance Expenses	2487.00	2586.00
6	Insurances	126.00	126.00
7	Rent, Rates and Taxes	290.45	290.45
8	Interest on borrowed capital	16709.47	16709.47
9	Filing Charges	0.00	10.00
10	Other Financing Charges	27.00	27.00
11	Interest on Working Capital	300.25	834.21
12	Depreciation	6306.13	6306.13
13	Return on Equity	8283.48	8283.48
14	Gross Aggregate Revenue Requirement (sum 1:13)	42690.48	96809.71
15	Less Misc. other income	0.00	0.00
16	Less: Interest on Credit	845.02	845.02
17	Net Total Revenue Required (14 -15-16)	41845.46	95964.69



8. There shall be no change in fuel cost amount as admitted in the tariff order dated 31.05.2021. Impact of re-determined ARR will increase the Capacity charge by Rs. 595.26 lakh and Rs. 791.94 lakh in 2018-19 and 2019-20 respectively as detailed below:

Sl. No.	Particulars	Rs. in lakh			
		Admitted in tariff order dated 31.05.2021		Redetermined on review	
		2018-19	2019-20	2018-19	2019-20
1	Aggregate Revenue Requirement	41250.20	95172.75	41845.46	95964.69
2	Fuel Cost	2666.66	55729.92	2666.66	55729.92
3	Capacity Charge @ 85% PAF	38583.54	39442.83	39178.80	40234.77
4	Enhancement in capacity charge after redetermination of ARR	-	-	595.26	791.94

9. The additional capacity charge receivable by the petitioner based on the admitted amount in this review order vis-à-vis the actual PAF, shall be recovered from the beneficiary in six monthly instalments from the date of issuance of this order.
10. The Review petition of H MEL is thus disposed off.
11. Copy of the order shall be posted in the website of this Commission. H MEL shall download the copy of the order from the website and act on it. Certified copy of the order, if applied for, will be given to the parties on completion of the formalities laid down in the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013, as amended and on submission of necessary fees.
12. H MEL is to take note of this order.

Sd/-

(PULAK KUMAR TEWARI)
MEMBER

Sd/-

(DURGADAS GOSWAMI)
MEMBER

Sd/-

(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

DATED: 18.03.2022

Sd/-
SECRETARY



ANNEXURE - I

RECOMPUTATION OF INTEREST ON WORKING CAPITAL

Sl. No.	Particulars	2018-19	2019-20
1	Gross Annual Fixed charges now arrived excluding interest on working capital	39723.57	40245.58
2	Fuel Cost as admitted	2666.66	55729.92
3	Sub Total (1+2)	42390.23	95975.50
	Less:		
4	Depreciation	6306.13	6306.13
5	Advance against depreciation	0	0
6	Deferred revenue expenditure	0	0
7	Return on Equity	8283.48	8283.48
8	Reserve for Unforeseen Exigencies	0	0
9	Sub Total (4+8)	14589.61	14589.61
10	Allowable charges for working capital (3-9)	27800.62	81385.89
11	Normative requirement of Working Capital (10% of 10)	2780.06	8138.59
12	Interest allowable @ 10.80% on 11 for 2018-19 and 10.25% on 11 for 2019-20	300.25	834.21