ASSAM ELECTRICITY REGULATORY COMMISSION

FILE NO. AERC. 747/2020/ Petition No.: 12/2020

ORDER SHEET

23.06.2020

Before the Assam Electricity Regulatory Commission
ASEB Campus, Dwarandhar,
G. S. Road, Sixth Mile, Guwahati – 781 022

Assam Power Generation Corporation Limited. (APGCL)-------Petitioner
Consumer Advocacy Cell (CAC) --------Respondent

Date of Hearing: 23rd June 2020

Representative for Petitioner: Shri Abhijit Bhuyan CGM (Gen)
Shri Bandana Goswami GM (HQ)
Shri A.K Zaman AGM (F&A)
Smt.Pinki Deb. AM (F&A)

Representative of Respondent Shri Subodh Sharma (CAC)
Shri Khanin Talukdar (CAC)

<u>In the matter of</u>

Review Petition No. 12/2020 for Review of APGCL'sTariff Order dated March 7, 2020 in Petition No 10/2019 for Truing up of FY 2018-19, Annual Performance Review for FY 2019-20 and Revised Annual Revenue Requirement and Tariff for FY 2020-21

CORAM

Shri S. C. Das, Chairperson
Smt. B. Borthakur, Member

ORDER

1. The Assam Power Generation Corporation Ltd. (herein after referred as "the Petitioner" or "APGCL") filed a Petition before the Commission on May 15, 2020 for review of its Tariff Order dated March 7, 2020 in Petition No 10/2019 for Truing up of FY 2018-19, Annual Performance Review for FY 2019-20and Revised Annual Revenue Requirement and Tariff for FY 2020-21.The Petition was registered as Petition No 12/2020.

2. The Petitioner has raised certain issues for reconsideration of the aforesaid Order, including computation of Interest and Finance Charges of NTPS, Depreciation for

NTPS and LTPS, Return on Equity of NTPS and LTPS, Fixed Cost consideration of NTPS and LTPS, and O&M expenses for LTPS for FY 2019-20 and FY 2020-21.

3. The AERC (Conduct of Business) Regulations, 2004 specifies as under:

> *"**34. Review of the decisions, directions and orders: -***
>
> *(1) Any person aggrieved by a decision or order of the Commission, from which no appeal is **preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decision/order was passed by the Commission or on account of some mistake or error apparent from the face of record, or for any other sufficient reason,** may apply for review of such order within 60 days of the date of decision/ order of the Commission.*
>
> *(2) An application for review shall be filed in the same manner as a petition under Chapter II of these regulations.*
>
> *(3) When it appears to the Commission that there is no sufficient ground for review, the Commission shall reject such review application.*
>
> *(4) The application for review shall be accompanied by such fee as may be specified by Commission."(**emphasis added**)*

4. The Petitioner filed the Review Petition on May 12, 2020, which is after the time period of 60 days from the date of issuance of the Order. Since the Order was issued on March 7, 2020, the Petition was supposed to be filed by May 06, 2020. Hence, there is delay of 6 days from the last date of filing the Review Petition as specified in the above provisions of AERC (Conduct of Business) Regulations, 2004.

5. However, the Commission notes that the Hon'ble Supreme Court, vide its Judgment dated 23 March 2020 in Suo Motu Writ Petition (Civil) No(s).3/2020, has extended the limitation period for filing of all types of Petitions including Review Petitions. The relevant part of this Judgment is reproduced below:

> *"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).*
>
> *To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings."*

6. Therefore, the Commission has considered the Review Petition and condoned the delay of 6 days.

7. Accordingly the Petition was admitted vide order dated 30/05/2020.

8. The Commission sent the copies of the Review Petition to the respondents in the original Petition no 10/2019 for their comments within 15th June 2020 and also directed APGCL to submit their replies on the above within 20th June 2020.
9. Shri Subodh Sharma submitted his comments on 15th June, 2020 on the Review Petition filed by the Petitioner.
10. The Commission heard the Petitioner and the Respondent on 23rd June 2020.

11. Before discussing the issues raised by APGCL in its Review Petition, the Commission has addressed the general comments made by the Respondent on the review prayer filed by APGCL.

Respondents' Submission

Shri Subodh Sharma submitted that the consumer gives his views regarding the optimum tariff to be granted to the Utility based on the audited Balance Sheet and the documents submitted by the Utility along with the original Petition. The Commission adopts a formula to ascertain normative values of expenditure, which act as a ceiling norm, and issues the Tariff Order after hearing the consumers' objections on the Petition.

The ceiling expenditure approved by the Commission are tentative and may differ from the actual expenditure incurred by the Utility in the financial year. The true-up done after closure of accounts for the particular year should invariably be as per the actual expenditure and not the normative amounts. APGCL is submitting a review for APR of FY 2019-20 though the audited Accounts for FY 2019-20 has not yet been compiled and shall be submitted at the time of true-up for FY 2019-20.

Commission's View

The Truing-up of any financial year is done on the basis of audited accounts except for those components that are allowed on normative basis as specified in the applicable MYT Regulations. Further, sharing of gains and losses is done at the time of truing-up where these normative numbers are compared with actual audited numbers and the difference is shared between the Utility and beneficiaries in the specified ratio.

The MYT Regulations also specifies for Annual Performance Review (APR) to be carried out for the current year when the tariff Petition is being processed. However, as per MYT Regulations, the Gap/(Surplus) derived in the APR is not passed on in the Tariff of the ensuing year. APGCL in the Review Petition has sought review on certain components of the APR of FY 2019-20, as determined in the APR, which has no financial impact on the Tariff of FY 2020-21.

12. Having heard the Petitioner and Shri Subodh Sharma and considering the submissions on record, the issue-wise submissions of the Petitioner, submissions made by Shri Subodh Sharma and Commission's analysis and decisions are discussed in the following paragraphs:

13. Issue 1 - Interest and Finance Charges of NTPS for FY 2019-20

APGCL's Submission

The Petitioner has requested the Commission to revise the computation of Interest and Finance Charges of NTPS for FY2019-20 based on the submission made by APGCL. The Petitioner has made the following submissions:

i. The Commission had approved Interest and Finance charges for NTPS for FY 2019-20 as Rs. 0.25 crore (Table 59), which has been reduced to Rs. 0.21 crore (Table 64) due to effective capacity being considered.

ii. However, in Table 65, the Commission has again reduced the Interest and Finance charges as part of the overall ARR on account of the effective capacity, which has resulted in double deduction due to effective capacity.

Respondents' Submission

Shri Subodh Sharma submitted that the actual interest expenses should be allowed at the time of true-up for FY 2019-20.

Commission's View

The Commission has verified the Interest and Finance charges approved in the APR of FY 2019-20. APGCL's contention that there has been double deduction in the Interest and Finance Charges for NTPS on account of the effective capacity, appears to be correct.

Hence, there is an error apparent in the Interest and Finance charges approved for NTPS for FY 2019-20 and therefore, the Review is admissible on this issue.

APGCL, in its Review Petition, has sought to revise Table 64 (ARR Summary Table). However, the Commission is of the view that double deduction has been done in Table 65 (Gap/Surplus Table). Therefore, Table 65 of the Order needs to be revised under this Review. The revised Table 65 after restating the amount disallowed twice, has been summarised in last section of this Order.

14. Issue 2 –Depreciation of NTPS and LTPS for FY 2019-20

The Petitioner has made the following submissions:

i. The Commission has approved Depreciation for NTPS for FY 2019-20 as Rs. 1.55 crore (Table 58), which has been reduced to Rs. 1.29 crore (Table 64) due to effective capacity being considered.

ii. Similarly, the Commission has approved Depreciation for LTPS for FY 2019-20 as Rs. 15.24 crore (Table 58), which has been reduced to Rs. 11.55 crore (Table 64) due to effective capacity.

iii. However, in Table 65, the Commission has again reduced the depreciation for NTPS and LTPS as part of the overall ARR on account of the effective capacity, which has resulted in double deduction due to effective capacity.

iv. APGCL therefore, requested the Commission to review the Depreciation computation for NTPS and LTPS for FY 2019-20.

Respondents' Submission

Shri Subodh Sharma submitted that while approving the ARR for FY 2019-20, Opening GFA for

FY 2019-20 was shown as Rs. 190.40 crore and additional assets of Rs. 4.80 crore were supposed to be created. However, the details of asset addition were not indicated. At the time of true-up for FY 2019-20, the specific asset created should be mentioned.

Commission's View

As regards Shri Subodh Sharma's comments, all the details of GFA and asset addition have been provided in the Tariff Order.

The Commission has verified the Depreciation approved in the APR of FY 2019-20. APGCL's contention that there has been double deduction in the Depreciation for NTPS and LTPS on account of the effective capacity, is correct.

Hence, there is an error apparent in the Depreciation approved for NTPS and LTPS for FY 2019-20 and therefore, the Review is admissible on this issue.

APGCL, in its Review Petition, has sought to revise Table 64 (ARR Summary Table). However, the Commission is of the view that double deduction has been done in Table 65 (Gap/Surplus Table). Therefore, Table 65 of the Order needs to be revised under this Review. The revised Table 65 after restating the amount disallowed twice, has been summarised in last section of this Order.

15. Issue 3 –Return on Equity (RoE) for NTPS and LTPS for FY 2019-20

The Petitioner has made the following submissions:

i. The Commission has approved RoE for NTPS for FY 2019-20 as Rs. 8.53 crore (Table 60), which has been reduced to Rs. 7.10 crore (Table 64) due to effective capacity being considered.
ii. Similarly, the Commission has approved RoE for LTPS for FY 2019-20 as Rs. 22.18 crore (Table 60), which has been reduced to Rs. 15.16 crore (Table 64) due to effective capacity.
iii. However, in Table 65, the Commission has again reduced the ROE of NTPS and LTPS as part of the overall ARR on account of the effective capacity, which has resulted in double deduction due to effective capacity.
iv. APGCL therefore, requested the Commission to review the ROE approved for NTPS and LTPS for FY 2019-20.

Respondents' Submission

Shri Subodh Sharma submitted that APGCL is a PSU and should serve consumers' interest with better efficiency and optimum utilization of its capacity. Cost of inefficiency should not be passed on to consumers.

Commission's View

The Commission has verified the ROE approved for NTPS and LTPS in the APR of FY 2019-20. APGCL's contention that there has been a double deduction of RoE on account of reduction in effective capacity is correct.

Hence, there is an error apparent in the ROE approved for NTPS and LTPS for FY 2019-20

and therefore, the Review is admissible on this issue.

APGCL in its Petition has sought to revise Table 64 (ARR Summary Table) in its review Petition. However, the Commission is of the view that double deduction has been done in Table 65 (Gap/Surplus Table). Therefore, Table 65 of the Order needs to be revised under this Review. The revised Table 65 after restating the amount disallowed twice, has been summarised in the last section of this Order.

16. Issue 4 –Double Deduction in Fixed Cost due to effective capacity for NTPS and LTPS for FY 2019-20

APGCL submitted that there has been a double deduction in the Fixed Charge approved for NTPS and LTPS in the APR of FY 2019-20, as the reduced values of Interest & Finance Charges, Depreciation, and RoE have been considered for pro-rata reduction due to effective capacity.

APGCL requested the Commission to review the reduction in the Fixed Charge approved for NTPS and LTPS for FY 2019-20, by restating the amounts approved in Tables 59, 58 and 60, respectively.

Commission's View

As stated earlier on the respective issues of Interest & Finance Charges, Depreciation, and RoE, APGCL's contentions regarding double deduction on account of the effective capacityin the APR of FY 2019-20 are correct.

Hence, there is an error apparent in the ARR approved for NTPS and LTPS for FY 2019-20 and therefore, the Review is admissible on this issue.

APGCL in its Petition has sought to revise the respective Tables59, 58 and 60, in its review Petition. However, the Commission is of the view that double disallowance has been done in Table 65 (Gap/Surplus Table). Therefore, Table 65 of the Order needs to be revised under this Review. The revised Table 65 after restating the amount disallowed twice, has been summarised in the last section of this Order.

17. Issue 5 – O&M expenses for LTPS for FY 2019-20 and FY 2020-21

APGCL has made the following submissions in this regard:

<u>FY 2019-20</u>

i. The Commission has approved the normative O&M expenses for LTPS for FY 2019-20 as Rs. 56.69 crore (Table 53), which has been reduced to Rs. 22.86 crore (Table 55) due to effective capacity being considered. However, by considering effective capacity, the allowable O&M expenses works out to Rs. 35.05 crore, rather than Rs. 22.86 crore. This appears to be an error in calculation by the Commission.
ii. Further, in Table 65, the Commission has again reduced the O&M expenses as part of the overall ARR on account of the effective capacity, which has resulted in double deduction due to effective capacity.

iii. APGCL requested to review the O&M expenses for LTPS for FY 2019-20.

<u>FY 2020-21</u>

iv. APGCL submitted that the Commission has approved the normative O&M expenses for LTPS for FY 2020-21 as Rs. 60.05 crore (Table 77), which has been reduced to Rs. 24.31 crore (Table 55) due to effective capacity being considered. However, by considering effective capacity, the allowable O&M expenses works out to Rs. 37.26 crore, rather thanRs. 24.31 crore. This appears to be an error in calculation by the Commission.

v. APGCL requested to review the O&M expenses for LTPS for FY 2020-21

Respondents' Submission

Shri Subodh Sharma submitted that the Commission should allow such expenses on the basis of actuals only at the time of true-up, else such fictitious and unjustified claims shall continue by Utilities.

Commission's View

As regards Shri Subodh Sharma comments, at the time of APR expenses are worked out on the basis of norms specified in the MYT Regulations. The variation between normative and actual expenses are considered for sharing of gains/losses at the time of Truing-up, in accordance with the MYT Regulations.

As regards APGCL's contention, the Commission has verified the computations from the financial model. It is confirmed that there is no error in the computation of O&M expenses approved for FY 2019-20 and FY 2020-21 for LTPS. The reduction in O&M expenses is due to consideration of effective capacity, which has been clearly explained in the true-up of FY 2018-19, in the same Order. The relevant extracts of the Order are reproduced below:

*"4.9.7 Further, the Commission notes that **LRPP has been commissioned on April 26, 2018**. The Commission in its Order dated March 1, 2019 in Petition No. 18 of 2018 has **approved normative O&M Expenses for LRPP** while undertaking APR for FY 2018-19. The Commission hereby approves normative O&M Expenses of Rs. 17.56 Crore for LRPP for FY 2018-19 as per MYT Regulations, 2015.*

*4.9.8 The Commission notes that, **for operation of LRPP, no separate employees are recruited. The employees of LTPS has been allocated to LRPP. The Commission notes that APGCL submitted the actual O&M Expenses for LTPS and LRPP**.*

*4.9.9 In response to the specific query regarding the allocation of expenses between LTPS and LRPP, **APGCL submitted that Employee Cost has been allocated in proportion to installed capacity of LTPS and LRPP i.e., 99.25 MW and 64.98 MW respectively**. Moreover, A&G Expenses and R&M Expenses have been considered based on actuals.*

*4.9.10 **The Commission has approved the normative O&M Expenses for LTPS based on past trend. Since, the employees have been allocated to LRPP, the normative O&M expenses for LTPS ought to revise on account of the same**. The Commission notes that APGCL submitted the actual Employee Cost of Rs. 18.83 Crore for LTPS and Rs. 14.63 Crore for LRPP, which are in the ratio of 56:44. However, the ratio of Installed capacity is 60:40. For the purpose of truing up, the Commission has revised the Employee cost for LTPS based on* *actual Employee cost submitted by APGCL. Further, there is no revision in A&G Expenses and R&M Expenses has been considered as the same has been considered based on actuals.*

4.9.11 In view of the above, the Commission approves the normative O&M Expenses for APGCL for FY 2018-19 as shown in the following Table:

Table 21: Normative O&M Expenses for FY 2018-19 as approved by the Commission (Rs. Crore)

Station	*Employee Cost*	*A&G*	*R&M*	*Total*
NTPS	*35.51*	*2.47*	*4.75*	*42.73*
LTPS	*22.05*	*2.22*	*4.88*	*29.15*
KLHEP	*15.70*	*4.51*	*3.63*	*23.84*
LRPP				*17.56*

*…" (**emphasis added**)*

The Commission has adopted the same principle for APR of FY 2019-20 and ARR of FY 2020-21. Normative O&M Expenses have been computed for LTPS as whole based on past O&M Expenses. Thereafter, O&M Expenses have been allocated between LTPS and LRPP based on actuals of FY 2018-19, as the same employees are being employed for LRPP. Thereafter, the employee expenses allocated to LTPS have been reduced based on effective capacity.

APGCL cannot claim the same O&M expenses under LTPS (under actual expenses) as well as LRPP (under normative expenses), with the same employees being utilized in both the places. Hence, the contention of APGCL regarding double deduction in the O&M expenses for LTPS in the APR of FY 2019-20 and FY 2020-21 on account of the effective capacity, is not correct.

Hence, there is no error apparent in the O&M expenses approved for LTPS for FY 2019-20 and FY 2020-21 and therefore, the Review is not admissible on this issue.

18. Impact of Review Order

As discussed in the above sections of the Order, the Commission has computed the impact on double disallowance of Interest and Finance Charges, Depreciation and ROE on the ARR and Revenue Gap/(Surplus) for FY 2019-20. Accordingly, the Table 65 of the Order dated 07.03.2020 is revised as below:

Table 1: ARR approved after APR for FY 2019-20 (Rs. Crore)

Sr. No.	**Particulars**	**Approved in APR of FY 2019-20**	**Approved in After Review**
1	ARR for NTPS	104.65	113.19
2	ARR for LTPS	151.03	165.23
3	ARR for KHEP	78.48	78.48
4	ARR for LRPP	138.42	138.42
5	**Combined ARR**	**472.57**	**495.31**
6	Less: Revenue from sale of Power	510.30	510.30
7	**Revenue Gap/(Surplus)**	**(37.72)**	**(14.98)**

Hence, Revenue Surplus after APR of FY 2019-20 is revised to Rs. 14.98 Crore, as against Rs. 37.72 crore approved in the Tariff Order dated March 07, 2020.

The Commission had ruled in the Tariff Order dated March 7, 2020 that the Revenue Gap of FY 2019-20 is only indicative and the same will be considered during the Truing-up process of FY 2019-20 after the audited accounts are made available. In view of the same, the revision in Revenue Gap of FY 2019-20 has no financial impact on the Tariff of FY 2020-21.

With the above observations and decisions on the issues submitted for review, the Review Petition filed by the Petitioner stands disposed of.

Sd/- **(Smt. B. Borthakur)** **Member, AERC**	**Sd/-** **(S. C. Das)** **Chairperson, AERC**