

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION,  
SITE NO. 3, SECTOR 18-A, MADHYA MARG, CHANDIGARH**

**Review Petition No. 5 of 2020 in  
Petition No. 32 of 2019.  
Date of Order: 07.04.2021**

Petition under section 94(1)(f) of the electricity act, 2003 read with regulation 64 of Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 seeking review of order dated 07.09.2020 in petition no. 32 of 2019 and for clarification of order dated 07.09.2020

**AND**

In the matter of: GVK Power (Goindwal Sahib) Limited, Plot No.10,  
Paigah House, Sardar Patel Road, Secunderabad –  
500003

Petitioner

Versus

Punjab State Power Corporation Limited, The Mall,  
Patiala, Punjab – 147 001

Respondent

Present : Ms. Kusumjit Sidhu, Chairperson  
Ms. Anjuli Chandra, Member  
Mr. Paramjeet Singh, Member

**ORDER**

GVK Power (Goindwal Sahib) Limited (GVK) filed petition No. 32 of 2019 for True Up of Tariff for FY 2016-17 which was disposed of by the Commission vide Order dated 07.09.2020. GVK has filed the present review petition seeking review of the Order dated 07.09.2020 passed by the Commission in petition No. 32 of 2019 submitting that there are errors apparent on the face of record with respect to the calculation of components for interest on loan, interest on working capital and

depreciation in the said Order under review and has prayed to review/modify the Order dated 07.09.2020.

GVK filed the petition alongwith IA No. 10 of 2020 for condonation of delay in filing the petition. The delay was condoned and the petition was admitted vide Order dated 07.01.2021. PSPCL was directed to file its reply by 14.01.2021 and rejoinder, if any, by the petitioner by 21.01.2021. GVK was further directed to publish a public notice inviting objections/suggestions from the public/stake holders. The public notice was published on 15.01.2021. PSPCL filed its reply vide memo No. 5131 dated 18.01.2021 and GVK filed rejoinder thereto vide e-mail dated 27.01.2021. The petition was taken up for public hearing on 28.01.2021 however, nobody appeared from the public in the public hearing. After hearing the parties on 03.03.2021, Order was reserved further directing the parties to file written submissions, if any, by 08.03.2021. GVK and PSPCL filed their respective written submissions on 09.03.2021.

## **2. Observations and Decision of the Commission.**

The Commission has examined the review petition and submissions made during the hearing and all other documents adduced on the record. The issue wise summary of submissions made by GVK for review, objections/comments received, GVK's reply thereto and the Commission's analysis are discussed in the following paragraphs:

### **3 Interest on Loan**

3.1 GVK submitted that in terms of Regulation 26 of the PSERC Tariff Regulations 2005, interest ought to be computed taking into account the opening gross normative loan on the completed capital cost approved this Commission and the actual rate of interest paid by GVK. GVK had computed the interest considering

repayment towards outstanding loan amounts and applicable interest rates in line with the PSERC Tariff Regulations, 2005. The computation of interest on term loans is based on the following:

- (a) The opening gross normative loan on the Completed Capital Cost as approved by this Hon'ble Commission.
- (b) The rate of interest has been considered at the actual applicable interest rate which was at 13.22 % p.a., for FY 2016-17.
- (c) The repayment for the period FY 2016-17 has been considered equal to the depreciation allowed for that year.

3.2 GVK further submitted that, in the Order under Review, interest charges have been allowed at a much lower rate, as under:

***“Commission’s Analysis***

- 6.10 *The Commission had provisionally approved Interest and finance charges of Rs. 225.51 Crore for GVK for the period 17.04.2016 to 31.03.2017 in the order dated 17.01.2020.[...]*
- 6.12 *The Commission in its order dated 17.01.2020 has determined capital cost of the GVK’s project as Rs. 3058.37 Crore and equity as Rs. 1118.06 Crore. Long term loans of Rs.1940.31 (3058.37–1118.06) Crore have been considered. The Commission has further considered additional loan of Rs. 200.55 Crore (equity in excess of 30%) as part of normative long term loans as per Regulation 24 of PSERC (Terms and Conditions for determination of Tariff), Regulation 2005 for the purpose of allowing interest. As such, the long term loans allowed for interest purpose workout to Rs. 2140.86 (1940.31+200.55) Crore. The depreciation for FY 2016-17 which has been worked out as Rs. 141.27 Crore in this Order is considered as re-payment of the long term loans as per Regulation 26(5) considering that there would be moratorium period in the 1st year of operation*
- 6.13 *In the Annual Audited Accounts of GVK for FY 2016-17 interest charges were shown as Rs. 451.91 Crore. But in the Annual Audited Accounts of FY 2017-18, the previous year figures of interest charges for FY 2016-17 has been rearranged/regrouped as Rs. 448.37 Crore and Rs 3.54 (451.91 - 448.37) Crore has been shown as Other Finance Charges.*
- 6.14 *As per the Regulation, 26 (2) of PSERC (Terms and Conditions for determination of Tariff), Regulation 2005, the rate of interest is to be considered at the actual rate of interest paid /payable by the licensee or the State bank of India advance rate as on April, 01 on the relevant year, whichever is lower. The State Bank of India Advance Rate (SBAR) as on 01.04.2016 was 14.05%. GVK in its revised submission dated 21.07.2020 has*

claimed weighted average rate of interest of 13.22% (including penal interest). During hearing on 29.07.2020, GVK was asked to submit the rate of penal interest included in 13.22%. GVK stated that weighted average rate of interest is only 13.22% and is exclusive of penal interest. The Commission considers the weighted average rate of interest of 13.22% for long term loans as claimed by the GVK in the revised submission dated 21.07.2020. Therefore, the Commission determines the interest on long term loans as under:

**Table No.12: Interest on Long Term Loans determined by the Commission for the period 17.04.2016 to 31.03.2017 (Rs. Crore)**

Sr. No.	Particulars	Amount
1.	Opening Long term Loans as on 17.04.2016	1940.31
2.	Add: Normative Loan	200.55
3.	Opening Long Term Loans	2140.86
4.	Addition during the year	0.00
5.	Re-payment of Loans (equal to depreciation)	141.27
6.	Closing Long Term Loans	1999.59
7.	Average Long Term Loans	2070.22
8.	Rate of Interest	13.22%
9.	Interest (7 x 8) for FY 2016-17	273.68
10.	Interest (273.68 x 349/365)	261.69

6.15 As per the Annual Audited Accounts of GVK for FY 2016-17 interest has been worked out to Rs. 448.37 Crore but GVK has a liability of Rs. 226.42 Crore towards interest accrued. The interest actually paid on long term loans is only Rs. 221.95 (448.37-226.42) Crore.

Accordingly, the Commission approves the interest of Rs. 221.95 Crore which has been actually paid by GVK during FY 2016-17. The balance amount of interest i.e. Rs. 39.74 (261.69 – 221.95) Crore will be considered in the year in which it will be paid by GVK.”

3.3 GVK stated that this Commission in Order dated 17.01.2020 has worked out average long-term loan as Rs. 2070.22 Crores based on normative parameters in terms of PSERC Tariff Regulations 2005. It is submitted that once normative approach has been adopted by this Commission, there cannot be any further adjustments on the basis of actual expenses on account of it being less. This position of law has been upheld by the Hon’ble Tribunal in **Haryana Power Generation Co. Ltd. v. Haryana Electricity Regulatory Commission**, Judgment dated 31.07.2009 in Appeal

No. 42 & 43 of 2008. The relevant portion is reproduced hereunder:

*“34. ... In our opinion, once the State Commission adopts normative approach, it is neither in the interest of the long term development of the electricity industry in the State nor is a fair play to the appellant to deny the benefits of the normative approach to the appellant. The very purpose of normative approach is that the parties are informed of the benchmarks beforehand and that if they are in a position to better the benchmarks, they are entitled to the benefits unless there is some unhealthy practice adopted by them. In the case before us, if the appellant is able to raise resources below the benchmark rates, it indicates efficiency on the part of the appellant for which it should be allowed benefit in terms of the norms. Otherwise, the purpose of normative approach would get defeated and the appellant may not remain adequately motivated to work with the desired efficiency. It is true that the consumers should not be burdened with unnecessary costs, but the same is equally applicable to the appellant when it is denied recovery of costs incurred by it if the same is not in line with the norms.”*

GVK stated that as the average long-term loan has been calculated on normative basis, the interest paid by GVK ought to be considered on normative basis. Accordingly, computation of interest on actuals instead of normative loan amount as claimed by GVK, is contrary to the PSERC Tariff Regulations 2005, as well as the settled position of law as laid down by the Hon'ble Tribunal. The interest on loan approved in the Order under Review is based on actuals, the same is an error apparent, as the same ought to have been considered and allowed on normative parameters.

- 3.4 GVK submitted that this Commission had allowed interest on loan amounts computed on normative average loan and not on actuals in Order dated 03.09.2019 passed by this Hon'ble Commission in ***Everest Power Pvt. Ltd. v. Punjab State Power Corporation Ltd. & Anr.***, Petition No. 23 of 2017, as under:

*“5.9 The Closing loan balance of Rs. 395.84 crore was determined by the Commission in True-Up of FY 2016-17, which is considered as the*

opening loan balance for FY 2017-18. Asset addition of Rs.2.65 crore for FY 2017-18, Rs.1.51 crore for FY 2018-19 and Rs.4.31 crore for FY 2019- 20 has been approved in this Order. 70% of asset addition has been considered to be sourced from debt i.e. Rs.1.86 crore (2.65\*70%) for FY 2017-18, Rs.1.06 crore (1.51\*70%) for FY 2018-19 and Rs.3.02 crore(4.31\*70%) for FY 2019-20 as normative loan. Repayment of loan equal to depreciation allowed has been considered on normative basis as per Regulation 24.3 of PSERC MYT Regulations, 2014. The Petitioner claimed the weighted average rate of interest 13.35% for FY 2017-18. The weighted average rate of interest projected as @13.18% and @13.24% for FY 2018-19 and FY 2019-20 respectively. The interest on long term loans is calculated in the Table-2.18.

<b>Particulars</b>		<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>
1.	Opening balance of loan	395.84	356.43	316.11
2.	(+)Loan addition during year	1.86	1.06	3.02
3.	(-): Repayment(normative) during the year	41.27	41.38	41.53
4.	Closing balance of loan	356.43	316.11	277.60
5.	Average Loan	376.14	336.27	296.86
6.	Weighted Average Rate interest on Loan (%)	13.35%	13.18%	13.24%
7.	<b>Interest on Loan</b>	<b>50.21</b>	<b>44.32</b>	<b>39.30</b>

3.5 GVK further submitted that the Commission has taken the opening loan balance as Rs 1999.59 Crore for FY 2017-18, Rs 1866.16 Crore for FY 2018-19 which is the normative loan amount determined by this Commission in Petition No. 54 of 2017. Once this Commission has computed a normative outstanding loan amount, the interest payable ought to also be considered on normative basis and allowed to GVK.

3.6 GVK stated that accordingly, the interest (excluding finance charges) on long term loans that ought to be allowed by this Commission is as under:

**Table No.1: Interest on long term loans claimed by GVK**

**(Rs. Crore)**

S.No	Particulars	2016-17
1	Gross Normative Loan - Opening	2,140.86
2	Cumulative Repayment up to Previous Year (equal to Cumulative Depreciation up to previous year)	-
3	Net Loan Opening	2,140.86
5	Addition of loan due to Additional Capitalization during the year	-
4	Less: Repayment During the Year (Normative; equal to Depreciation claimed for the year)	139.41
6	Net Loan Closing	2,001.45
7	Average Normative Loan	2,071.15
8	Actual Weighted Average Rate of Interest on Loan (from Format 15)	13.22%
9	Interest on Normative Loan (Annualized)	273.82
10	Interest on Normative Loan (pro-rata)	261.81

3.7 GVK in its rejoinder dated 27.01.2021 submitted that the contentions of PSPCL are misplaced and denied. GVK submitted that the the actual average loan as per the Audited Accounts of GVK, which was originally claimed in Petition No. 54 of 2017, was Rs. 3307.63 Crores and interest on the same was Rs. 451.91 Crores. The Commission by way of Order dated 17.01.2020 has worked out average long term loan as Rs. 2070.22 Crores based on normative parameters in terms of PSERC Tariff Regulations 2005. It is submitted that once normative approach has been adopted by the Commission for fixing the capital cost of the Project, all the components of AFC including interest on loan

amounts would also have to be determined on normative basis. There cannot be any further adjustments on the basis of actual expenses on account of it being less.

- 3.8 GVK further submitted that the submission qua capital cost and debt component being calculated on normative basis is without prejudice to its contentions in Appeal No. 41 of 2020 wherein it has challenged the computation of the completed capital cost as determined under Petition No. 54 of 2017. Therefore, pending outcome of Appeal No. 41 of 2020, the basis for determination of capital cost ought to be applied to for components of tariff including interest on loans.
- 3.9 GVK further submitted that PSPCL's contention that determination of normative loan by the Commission vide Order dated 17.01.2020 has no bearing on computation of interest on loan is misplaced and denied. It is submitted that the PSERC Tariff Regulations 2005 ought to be read as a whole and not in a dissected manner, as averred by PSPCL. The said position of law has been upheld by the Hon'ble Supreme Court in:

(a) ***Philips India Ltd. v. Labour Court: (1985) 3 SCC 103:***

***"15. No canon of statutory construction is more firmly established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction ex visceribus actus. This rule of statutory construction is so firmly established that it is variously styled as "elementary rule" (see Attorney General v. Bastow [(1957) 1 All ER 497] ) and as a "settled rule" (see Poppat Lal Shah v. State of Madras [AIR 1953 SC 274 : 1953 SCR 667] ). The only recognised exception to this well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lord Coke laid down that: "it is the most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best express eth meaning of the makers" (Quoted with approval in Punjab***

*Beverages Pvt. Ltd. v. Suresh Chand [(1978) 2 SCC 144 : 1978 SCC (L&S) 165 : (1978) 3 SCR 370]*

- (b) ***Energy Watchdog vs. Central Electricity Regulatory Commission & Ors.: (2017) 14 SCC 80:***

*“20. ...The first rule of statutory interpretation is that the statute must be read as a whole. As a concomitant of that rule, it is also clear that all the discordant notes struck by the various Sections must be harmonized.”*

- 3.10 GVK stated that there cannot be different treatment for computation of outstanding loans and interest amounts payable i.e. one for the purpose of calculation of capital cost and the other for the calculation of interest on loan. Once the average long-term loan has been determined by this Commission on normative basis, the interest component on the said 'long term loan' also ought to be considered on normative basis.
- 3.11 GVK submitted that as the average long-term loan has been calculated on normative basis, the interest paid by GVK ought to be considered on normative basis. Accordingly, computation of interest on actuals instead of normative loan amount as claimed by GVK, is contrary to the PSERC Tariff Regulations 2005. The interest on loan approved by the Commission is based on actuals, the same is an error apparent as the same ought to have been considered and allowed on normative parameters.
- 3.12 GVK further submitted that PSPCL's contention that it is raising an identical plea and the same shall not be considered is misplaced and denied. In the present petition, GVK is placing on record the settled position of law qua payment of Interest on Loan. Further, Hon'ble Supreme Court in ***Daman Singh & Ors v. State of Punjab and Others: (1985) 2 SCC 670***, has held that any ground which was argued but was not considered should brought to the

attention of the court making the order by filing a proper application for review or clarification, as under:

*“13. The final submission of Shri Ramamurthi was that several other questions were raised in the writ petition before the High Court but they were not considered. We attach no significance to this submission. It is not unusual for parties and Counsel to raise innumerable grounds in the petitions and memoranda of appeal etc. but, later, confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable. No party or Counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. **If indeed, any ground which was argued was not considered it should be open to the party aggrieved to draw the attention of the court making the order to it by filing a proper application for review or clarification. The time of the superior courts is not to be wasted in enquiring into the question whether a certain ground to which no reference is found in the judgment of the subordinate court was argued before that court or not?**”*

#### **PSPCL's submission**

3.13 PSPCL in its reply dated 01.01.2021 submitted that the plea of the Petitioner thus that this Commission ought to have applied the normative parameters while determining the interest on loan for the Petitioner and should not have taken the actual interest on loan, which is also the position in law upheld by the Hon'ble Tribunal and that in doing so, the Commission has acted contrary to the PSERC Tariff Regulations, 2005. In other words, the contention raised is that the Commission should 'substitute' its view of allowing the interest on loan on actuals with that on the normative. The relief claimed by the Petitioner does not fall within the scope of review as is clear from the decisions of the Hon'ble Supreme Court and the Hon'ble Appellate Tribunal. Therefore, the Petitioner's prayer for review of the Tariff Order on the aspect of interest on loan is not maintainable and as such, is liable to be rejected by the Commission.

3.14 PSPCL submitted in its reply dated 18.01.2021 that the plea raised by GVK is not maintainable and the contention raised is misplaced and untenable for the following reasons:

- i. As per Regulation 26 of the Tariff Regulations, 2005, interest and finance charges on existing loan capital is to be computed on the 'outstanding loans' at the actual rate or the State Bank of India Advance Rate as on April 1 of the relevant year, whichever is less. Thus, the clear regulatory prescription is that interest is required to be computed on the 'outstanding loan' meaning thereby the actual loan to the extent outstanding in the relevant year. As such, the permissible interest on loan capital is necessarily to be the actual interest paid by the Petitioner on its outstanding loans. Under the said regulatory mandate, this Commission has passed its Order dated 17.1.2020 in Petition No.54/12017 where under, while adjudicating the permissible interest on loan.

PSPCL further submitted that this Commission while passing the Order dated 17.01.2020 in Petition No.54 of 2017 has also considered the 'actual interest paid' by the Petitioner instead of the computing interest on loan on the normative loan as determined for the Petitioner. In line with its previous approach, this Commission while passing the True-up Order has considered the actual interest paid by the Petitioner to be Rs.221.95 Crore As such, the approach of this Commission being in accordance with the applicable Regulations, does not suffer from any error on face of its record warranting any review;

- ii. the contention of the Petitioner that in terms of the judgements of the Hon'ble Tribunal, once this Commission adopts a normative approach the same ought to not be diverted from by looking at the actuals, is wholly misplaced and untenable. It is submitted that in its Order dated 17.01.2020, this Commission has determined the normative

loan amount for the Petitioner's project for FY 2016-17. The said determination of the normative loan can have no bearing whatsoever on the computation of the interest on loan, procedure of computation of which has expressly been provided under Regulation 26, which provides actual interest paid to be the relevant consideration. As such, if the contention of the Petitioner is to be accepted, it would mean that for the computation of interest on loan, this Commission ought to only consider the applicable interest rate and apply the same on the average gross loans of the Petitioner and is to render Regulation 26 of the Tariff Regulations, 2005 wholly otiose;

- iii. insofar as the reliance placed by the Petitioner on the Judgement dated 31.07.2009 in Appeal No.42 & 43/2008 passed by the Hon'ble Appellate Tribunal is concerned, it is submitted that the same is based upon a complete misreading thereof. In the said decision, the Hon'ble Appellate Tribunal was facing a situation where a State Commission had computed interest on working capital (not on long term loans) at a rate even lower than the PLR rate of nationalised banks on the ground that in other Petitions, it was observed that the Appellant therein was able to obtain short term loans at lower rate of interest. It was in this context that the Hon'ble Appellate Tribunal had given its observation. However, in the present case, the grant of interest on long term loan has been prescribed in the applicable Regulations to be actual interest paid. As such, the above decisions of the Appellate Tribunal is not applicable to the present controversy before this Commission; and
- iv. even otherwise, the plea raised by the Petitioner in the present Petition is an identical plea as raised by it at the time of adjudication of the above Petition which is evident from a bare perusal of the True-Up Order wherein this Commission has recorded as under:

**“6.0 Interest & Finance charges  
GVK’s Submission**

.....

6.6 GVK in its revised submission dated 21.08.2020 has submitted that in the petition no. 54 of 2017 it had originally claimed interest of Rs 451.91 Crore on actual average loan of Rs 3307.63 Crore as per Annual Audited Accounts. However, this Commission in Order dated 17.01.2020 has worked out average long term loan as Rs. 2070.22 Crore based on normative parameters in terms of PSERC Tariff Regulations 2005. GVK further submitted that once normative approach has been adopted by the Commission there cannot be any further adjustments on the basis of actual expenses on account of it being less, the said position of law has been upheld by the Hon’ble Tribunal in Haryana Power Generation Co. Ltd v. Haryana Electricity Regulatory Commission judgement dated 31.07.2009 in Appeal no.42 & 43 of 2008.”

It is therefore evident that even at the time of the original proceedings, the Petitioner has raised identical plea as raised in the present Review Petition, which has been duly considered by this Commission and accordingly rejected. As such, the Petitioner cannot be permitted by this Commission to re-agitate the same identical issue as the same is wholly impermissible under the limited review jurisdiction being exercised by this Commission.

## Commission's Analysis

3.15 The Commission has deliberated upon the issues raised by GVK regarding non allowance of interest on long term loans on normative basis instead of actual. Regulation 24 of PSERC MYT Regulations, 2014 provides for Interest on Loan Capital which is reproduced hereunder:

### ***"24. INTEREST ON LOAN CAPITAL***

*24.1. For existing loan capital, interest and finance charges on loan capital shall be computed on the outstanding loans, duly taking into account the actual rate of interest and the schedule of repayment as per the terms and conditions of relevant agreements. The rate of interest shall be the actual rate of interest paid/payable (other than working capital loans) on loans by the licensee or the State Bank of India Advance Rate as on April 1 of the relevant year, whichever is less.*

*24.2. Interest and finance charges on the actual loan capital for new investments shall be computed on the loans, duly taking into account the actual rate of interest and the schedule of repayment as per the terms and conditions of relevant agreements. The rate of interest shall be the actual rate of interest paid/payable (other than working capital loans) on loans by the licensee or the State Bank of India Advance Rate as on April 1 of the relevant year, whichever is less.*

3.16 The Commission vide its order dated 17.01.2020 in Petition no. 54 of 2017 has observed that the equity shown was of Rs. 1118.06 Crore in the capital cost of Rs. 3058.37 Crore which is more than the 30% of the approved capital cost. Accordingly, equity was determined by the Commission as Rs. 917.51(30% of 3058.37) Crore and the balance of Rs. 200.55(1118.06-917.51) Crore was considered as normative loan as on 16.04.2016. This normative loan of Rs.200.55 Crore was included in the total long term loans of Rs.2140.86 Crore for the purpose of calculation of interest.

3.17 The Commission had determined interest on long term loan including normative loan for FY 2016-17 as Rs 261.69 Crore . However commission limited the interest for FY 2016-17 to Rs.221.95 crore on the basis of actual interest paid as reflected in the annual audited accounts. There was a shortfall in payment of interest of Rs. 39.74 Crore for FY 2016-17. The Commission has not disallowed the interest but has only deferred it. The same will be allowable as and when actually paid by GVK. However, the Commission notes that since the Commission had considered equity in excess of 30% of the capital cost as normative loan, GVK was not required to pay any interest on normative loan. The interest on the normative loan ought not to have been restricted by the actual payment. Accordingly, the interest on normative loan is to be allowed for FY 2016-17. The repayment of normative loan has been considered from the depreciation allowed in the same proportion as the proportion of normative loan to total loan. Rate of interest has been taken as claimed by GVK.

3.18 The revised computation of interest on long term loan is given below:

**Table No.2: Revised interest on long term loans for  
FY 2016-17 (Rs. Crore)**

Sr no	Particulars	Normative Loan	Long term Loan	Total Long term Loan
1	Long Term Loans (16.04.2016)	200.55	1940.31	2140.86
2	Percentage of total loan	9.37%	90.63%	100.00%
3	Repayment equal to depreciation (141.27*9.37%/90.63%)	13.23	128.04	141.27
4	<b>Closing long term Loans as on 31.03.2017(1-3)</b>	<b>187.32</b>	<b>1812.27</b>	<b>1999.59</b>
5	Average long term loans	193.93	1876.29	2070.22
6	Rate of Interest	13.22%	13.22%	13.22%

7	Interest Charges for one year	25.64	248.04	273.68
8	Interest Charges for 349 days	24.51	237.18	261.69
9	Interest paid by GVK	0.00	221.95	221.95
10	<b>Interest deferred</b>	<b>24.51</b>	<b>15.23</b>	<b>39.74</b>
11	<b>Interest now allowed</b>	<b>24.51</b>	<b>0.00</b>	<b>24.51</b>
12	<b>Interest deferred till actually paid</b>	<b>0.00</b>	<b>15.23</b>	<b>15.23</b>

3.19 The impact thereof on interest on working capital loans is as under:

**Table No.3: Additional interest allowable on working capital loans  
(Rs. Crore)**

Sr.No	Particular	Allowed in Petition no.32 of 2019	Allowable in Review Petition
1	Fuel cost	9.48	9.48
2	Maintenance spares (@15% of O&M)	4.56	4.56
3	O&M Expenses for one month	2.61	2.61
4	Receivable for two months	102.24	106.55
5	Total Working Capital	<b>118.89</b>	<b>123.21</b>
6	Interest rate	12.25%	12.25%
7	<b>Interest on Working Capital loan</b>	<b>14.56</b>	<b>15.08</b>
8	<b>Additional interest allowable on working capital loan (proportionately)</b>	-	<b>0.52</b>

3.20. The Commission allows additional interest as below:

**Table No.4: Additional interest on long term loans and working capital allowed by the commission in FY 2016-2017**

<b>(Rs. Crore)</b>		
Sr.No	Particulars	FY 2016-17
1	Interest on Normative loan	24.51
2	Interest on working capital allowed	0.52
3	<b>Total Additional Interest allowed</b>	<b>25.03</b>

Therefore, the Commission allows additional interest on normative loans as well as interest on working capital loan amounting to Rs.25.03 Crore for FY 2016-17 over and above interest & finance charges and interest on working capital already allowed in order dated 07.09.2020 in Petition no 32 of 2019.

#### 4.0 Interest on Working Capital

4.1 GVK submitted that in terms of Regulation 30(3) of the PSERC Tariff Regulations 2005, the components of working capital for calculating the interest of working capital, as under:

- (a) Fuel Cost for 2 months
- (b) Operation and maintenance Expenses for 1 month;
- (c) Maintenance spares @ 15% of the O&M Expenses;
- (d) Receivables equivalent to 2 months.

4.2 GVK further submitted that in the Order under Review, this Commission has considered the actual energy charges paid by PSPCL for FY 2016-17 to compute the Interest on Working Capital, as under:

##### ***“Commission’s Analysis***

7.5 *The Commission had provisionally approved Interest on working capital of Rs.12.25 Crore for GVK for the period 17.04.2016 to 31.03.2017 in the order dated 17.01.2020.*

7.6 *As per the Annual Audited Accounts of GVK for FY 2016-17 the fuel cost was Rs 66.45 Crore. The energy charges paid by PSPCL during FY 2016-17 were originally Rs. 52.07 Crore which were later revised in terms of the Commission’s Order dated 06.03.2019 to Rs. 55.12 Crore including Rs. 3.05 Crore as arrears. Thus, fuel cost of Rs. 55.12 Crore has been considered for determination of receivables for FY 2016-17.*

*[...]*

7.8 *The Commission considers the weighted average rate of interest of 12.25% for working capital loans as claimed by the GVK in the revised submission dated 21.07.2020. The State Bank of India advance rate as on 01.04.2016 was 14.05%.*

7.9 The details of Working Capital requirement and allowable interest thereon is depicted in the following table:

**Table No.15: Working Capital and interest thereon allowed by the Commission for the period 17.04.2016 to 31.03.2017.(Rs. Crore)**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount</b>
1.	Maintenance spares @ 15% of O&M (15% of 30.41)	4.56
2.	Fuel Cost for 2 months (55.12*60/349)	9.48
3.	O & M expenses for 1 month (30.41*30/349)	2.61
4.	Receivables for 2 months	102.24
5.	Total Working capital	118.89
6.	Weighted Average Rate of Interest	12.25%
7.	<b>Interest on working capital for 17.04.2016 to 31.03.2017</b>	<b>14.56</b>

Accordingly, the Commission allows interest on Working Capital of Rs. 14.56 Crore for the period 17.04.2016 to 31.03.2017.”

4.3. GVK stated that accordingly, there is an error apparent on the face of the record in as much while computing Working Capital in the Order under Review, interest on working capital has been computed on the basis of the energy charges paid by PSPCL to GVK. Whereas in terms of the PSERC Tariff Regulations 2005, fuel cost for two months ought to have been considered. This computation has not only impacted Fuel Cost but also the component of ‘Receivables for 2 months’ as provided under Regulation 30(3)(iii).

4.4. GVK further stated that the Interest on Working Capital that ought to be allowed by this Commission is as under:

**Table No.5: Interest on working capital claimed by GVK for FY 2016-17**

(Rs.Crore)

Sr. No.	Particulars	Amount
1	2	3
1	Fuel Cost- (Cost of coal and oil for two months for generation corresponding to the normative annual plant availability factor)	11.08
2	Receivables equivalent to two months of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor	108.24
3	One month employees cost and administration & general expenses	2.57
4	One month R&M Cost	
5	Maintenance Spares	4.62
6	Total	126.50
7	Rate of Interest on Working Capital	12.25%
8	Interest on Working Capital	15.50

4.5 GVK in its rejoinder dated 27.01.2021 submitted that PSPCL's contention that it is seeking de-novo computation of interest on working capital is misplaced and denied. GVK submitted that as per Regulation 30(3) of the PSERC Tariff Regulations 2005, the interest on working capital is to be determined based on fuel cost for two months. However, this Commission has considered the actual energy charges paid by PSPCL for FY 2016-17.

#### **PSPCL's submission**

4.6 PSPCL vide its reply dated 01.01.2021 submitted that once again the contention raised by the Petitioner is that the findings of this Commission are wrong and erroneous and contrary to law and should be substituted with the calculations as provided by the Petitioner in the present Petition. PSPCL submitted that the Petitioner has once again sought to challenge the findings of this Commission which the Petitioner ought to do in an Appeal and not

under a Review Petition which is limited in its jurisdiction. The present Petition thus is an Appeal in disguise of a Review Petition and is liable to be rejected by this Commission.

4.7 PSPCL in its reply dated 18.01.2021 submitted that the Petitioner has submitted that while computing Working Capital in the True-Up Order, interest on working capital has been computed on the basis of the energy charges paid by the Respondent to the Petitioner. Whereas in terms of the PSERC Tariff Regulations 2005, fuel cost for two months ought to have been considered. The said approach has not only impacted Fuel Cost but also the component of 'Receivables for 2 months' as provided under Regulation 30(3) (iii). Thus, the Petitioner has sought a completely de-novo computation of interest on working capital and has sought to completely substitute the view taken by this Commission which is impermissible under a Review Petition. Notwithstanding the same, it is submitted that the contention of the Petitioner is based upon a complete misreading of the applicable Regulations wherein computation of working capital and interest thereon is to be done in accordance with Regulation 30 of the Tariff Regulation, 2005 which provides as under:

*"30. WORKING CAPITAL AND INTEREST RATE ON WORKING CAPITAL*

*.....*

*(3) Working capital for a generating company shall be the sum of the following:*

*(i) Fuel Cost for two months*

*(ii) Operation and Maintenance expenses for one month*

*(iii) Receivables equivalent to two months*

*(iv) Maintenance spares @15% of O&M expenses*

.....  
*(5) The rate of interest on working capital shall be equal to the actual rate of interest paid/ payable on loans by the licensee (s) or the State Bank of India Advance Rate as on April 1 of the relevant year, whichever is lower. The interest on working capital shall be payable on normative basis notwithstanding that the licensee (s) has not taken working capital loan from any outside agency or has exceeded the working capital loan amount worked out on the normative figures.”*

In strict accordance with the above Regulation, this Commission while passing the True-Up Order has observed that as per the annual audited accounts of the Petitioner for FY 2016-17, the fuel cost is Rs 66.45 Crore and the energy charges paid by the Respondent during FY 2016-17 have originally been Rs.52.07 Crore which have later been revised (in terms of Order dated 6.3.2019 passed in Petition No.68/2017) to Rs. 55.12 Crore including Rs. 3.05 Crore as arrears. As such, fuel cost of Rs.55.12 Crore has been considered by this Commission for determination of receivables for FY 2016-17. The approach of this Commission being strictly in accordance with the applicable Regulations, warrants no interference under the present Review Petition.

### **Commission’s Analysis**

**4.8 The Commission observes that the issue regarding computation of working capital loans and interest thereon for FY 2016-17 has been challenged by GVK before APTEL in Appeal No. 41 of 2020.**

**No new and important matter or evidence has been produced which was not within the knowledge of GVK at the time when the said decision/order was passed by the Commission nor is there any mistake or error apparent on the face of the record**

**or any sufficient reason for review. As such, the prayer for review of the said Order on this issue is not admissible.**

## **5.0 Depreciation**

5.1 GVK in its petition submitted that Regulation 27 of the PSERC Tariff Regulations 2005 provides for calculation of Depreciation in respect of coal based thermal generating plants. The Commission by way of the Order under Review has calculated the depreciation as under:

### **“Commission’s Analysis**

4.10 The Commission has in Petition no.54 of 2017 already carried out a detailed prudence check of the Capital Cost of the project. Depreciation is allowable on the approved Capital cost. 4.11 The Commission had provisionally approved Depreciation of Rs. 141.27 Crore for GVK for the period 17.04.2016 to 31.03.2017 in the order dated 17.01.2020...

4.13 As per the Annual Audited Accounts of GVK for FY 2016-17, depreciation of Rs. 201.37 Crore has been shown on Gross Fixed Asset of Rs. 4224.02 Crore (excluding land value). There has been no addition of assets from 17.04.2016 to 31.03.2017. As per table no 6 GVK has claimed weighted average rate of depreciation as 4.77% which is considered by the Commission for computing the depreciation for the period from 17.04.2016 to 31.03.2017.

4.14 The Commission has determined Gross Fixed Assets (GFA) of Rs. 3058.37 Crore vide its Order dated 17.01.2020. The Commission allows the depreciation for the period from 17.04.2016 to 31.03.2017 as under:

**Table No.8: Depreciation allowed by the Commission for the period 17.04.2016 to 31.03.2017. (Rs. Crore)**

<b>Sr.</b>	<b>Particulars</b>	<b>Amount</b>
1.	Opening value of GFA as on 17.04.2016	3058.37
2.	Value of Land	96.75
3.	Opening value of GFA (net of Land)	2961.62
4.	Addition /disposal during the year	0.00
5.	Closing value of GFA	2961.62
6.	Average value of GFA	2961.62
7.	Weighted Average Rate of Depreciation	4.77%
8.	Depreciation for FY 2016-17 (6 x 7)	141.27
<b>9.</b>	<b>Depreciation (141.27 x 349/365)</b>	<b>135.08</b>

Accordingly, the Commission allows the depreciation of Rs. 135.08 Crore for the period 17.04.2016 to 31.03.2017.”

5.2 GVK submitted that there is a calculation error in computing depreciation. GVK further submitted that the weighted average rate of depreciation that ought to be considered is 4.77%, which is worked out considering depreciation of freehold land as zero percent as under:

**Table No.5: Weighted Average rate of depreciation claimed by GVK**

Particulars	2016-17 Truing Up	
	Asset value as on Station COD	Rate of depreciation (as per CERC 2014-19 Tariff Regulations)
Land and land rights	96.75	0.00%
Buildings	486.29	3.34%
Plant and machinery	2447.66	5.28%
Vehicles	0.63	9.50%
Furniture and fixtures	1.23	6.33%
Office equipment	1.12	6.33%
Computers	0.63	15.00%
Computer software	0.12	15.00%
Right to Use Railway Line	23.94	0.00%
<b>Total</b>	<b>3058.27</b>	<b>Weighted avg. rate of depreciation: 4.77%</b>

5.3 GVK submitted that, the depreciation as calculated by GVK and which ought to be allowed by this Commission, is as under:

**Table No.6: Depreciation claimed by GVK for FY 2016-17 (Rs.Crore)**

Particulars		Estimated	Approved By this Commission	Amount
Opening Capital Cost as on Station COD	a		3058.37	3058.37
Less: Un discharged liabilities included in above	b			
Opening Capital Cost excluding un discharged liabilities	c = a – b		3058.37	3058.37

Particulars		Estimated	Approved By this Commission	Amount
Additional capitalization during the year	d			-
Less: Un discharged liabilities included in additional capitalization	e			-
Add: Liabilities discharged during the year	f			-
Closing Capital Cost	$g = d - e + f$		3058.37	3058.37
Average Capital Cost	$h = (c + g) / 2$		3058.37	3058.37
Freehold land	i		96.75	96.75
Weighted Average Rate of depreciation	j		4.77%	4.77%
Remaining depreciable value	$k = 90\% \times (h - i)$			2665.46
Depreciation (annualised)	$l = \min (j \times h, k)$	<b>202.59</b>	141.27	145.80
<b>Depreciation (for the period)</b>	<b><math>m = l \times (349/365)</math></b>	<b>202.59</b>	<b>141.27</b>	<b>139.41</b>
Cumulative depreciation at the beginning of the period	n			-
Cumulative depreciation at the end of the period	$o = m + n$	<b>202.59</b>	141.27	139.41

5.4. GVK further submitted that once the weighted average rate has been arrived at by considering the Freehold land at 0% depreciation, there should not be further deductions of Freehold land from the Average Capital Cost. Therefore, there has been a double deduction of the value of land in the computation of depreciation and the same constitutes an error apparent and mistake in the calculation of depreciation.

5.5 GVK in its rejoinder dated 27.01.2021 submitted that PSPCL has misconstrued its submissions. It has not been contended that depreciation rate ought to be changed. GVK has sought review on the ground that there is an error in the computation of depreciation,

in as much a double adjustment on account of free hold land in computing the depreciation has been done. While arriving at the weighted average rate of depreciation as 4.77%, the rate of depreciation on free hold land was considered as 0%, However, in computing the depreciation, the value of land from the Average Gross Fixed Asset (“GFA”) has been deducted, which has led to a double deduction and is error apparent on the face of record. Therefore, it is prayed that the same may be rectified.

### **PSPCL’s submission**

- 5.6 PSPCL vide its reply dated 01.01.2021 and 18.01.2021 submitted that it is clear that since there has been no addition of assets by the Petitioner from 17.04.2016 to 31.03.2017, this Commission rather than re-computing the deprecation for FY 2016-17 has simply extrapolated the depreciation allowed to the Petitioner in the Order dated 17.01.2020 passed by this Commission in Petition No.54 of 2017 for a complete 365 days of the FY 2-16-17. Further, GVK has already filed an Appeal [being Appeal No.41/2020] against the above said Order dated 17.01.2020 which is pending adjudication before the Hon’ble Appellate Tribunal where under the Petitioner has not raised any challenge to the computation of depreciation by this Commission. As such, having not challenged the computation of depreciation by this Commissions in its Order dated 17.01.2020, the Petitioner cannot be allowed to agitate the same in the present Review Petition seeking review of the True-Up Order which has merely carried forward the said computation and extrapolated the depreciation for the entire FY 2016-17. Even otherwise, the plea is of substituting the views on depreciation

computation given in the True-up Order, which, for the reasons set out hereinabove, is inadmissible.

### **Commission's Analysis**

**5.7 The Commission in its order in Petition No. 32 of 2019 has taken weighted average rate of depreciation as claimed by GVK and has determined depreciation after deducting land from the Gross fixed assets as per Regulation-27 of PSERC (Terms and Conditions for determination of Tariff), Regulations-2005. GVK has not deducted land from Gross Fixed assets according to the Regulations while computing depreciation.**

**No new and important matter or evidence has been produced which was not within the knowledge of GVK at the time when the said decision/order was passed by the Commission nor is there any mistake or error apparent on the face of the record or any sufficient reason for review. As such, the prayer for review of the said Order on this issue is not admissible.**

### **6. Interest on under-recovered or over-recovered fixed charges**

**6.1. The Commission notes that the applicability of Regulation 9 of PSERC Regulations, 2005 would be on the distribution companies or generating cum distribution companies and cannot be applied as it is to the standalone generating companies. The Commission observes that Regulation 8 (13) of CERC (Terms and Conditions of Tariff) Regulation, 2014 are squarely applicable to under recovery or over recovery of fixed charges in case of generating companies.**

**6.2. The Regulation 8 (13) of CERC (Terms and Conditions of Tariff) Regulation, 2014 is re-produced below for reference: -**

*“The amount under-recovered or over-recovered, along with simple interest at the rate equal to the bank rate on 1st April of the respective year, shall be recovered or refunded by the generating company or the transmission licensee, as the case may be, in six equal monthly instalments starting within three months from the date of the tariff order issued by the Commission”.*

- 6.3. The Commission decides to adopt the CERC Regulations for determining interest equivalent to bank rate on under recovery or over recovery of fixed charges.

**Accordingly, interest shall be allowable or recoverable as per Regulation 8 (13) of CERC (Terms and Conditions of Tariff) Regulation, 2014 on under-recovered or over-recovered Annual Fixed Charges (AFC) determined by the Commission.**

**The review Petition stands disposed off accordingly.**

**Sd/-**

**(Paramjeet Singh)  
Member**

**Sd/-**

**(Anjuli Chandra)  
Member**

**Sd/-**

**(Kusumjit Sidhu)  
Chairperson**

Place: Chandigarh  
Dated : 07.04.2021