BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA

Case No. HERC/ Petition No. – 12 of 2016

Date of Hearing	:	**01.03.2023**
Date of Order	:	**07.03.2023**

IN THE MATTER OF:
Judgement dated 15.11.2022 passed by Hon'ble APTEL in Appeal No. 5 of 2017 (Star wire vs. HERC & Anr.)

In the matter of

Application seeking clarification on the order issued by Hon'ble Commission in Suo-Moto Case No. PRO-15 of 2013 dated 20.11.2013 for determination of Generic Tariff for Renewable Energy Projects to be commissioned during FY 2013-14 under the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Renewable Energy, Renewable Purchase Obligations and Renewable Energy Certificates) Regulations, 2010 read with amendments issued from time to time.

Petitioner
Star Wire (India) Vidyut Pvt. Ltd. (SWIVPL)

Respondent
Haryana Power Purchase Centre, Panchkula (HPPC)

Present on behalf of the Petitioner
1. Shri Buddy A. Ranganadhan, Advocate
2. Shri Varun Todi, Director, M/s. Star Wire (India) Vidyut Pvt. Ltd.

Present On behalf of the Respondent
1. Smt. Sonia Madan, Advocate
2. Shri Gaurav Gupta, Xen, HPPC

Quorum

Shri R.K. Pachnanda	**Chairman**
Shri Naresh Sardana	**Member**

ORDER

1. The case was heard on 01.03.2023, as scheduled, in the court room of the Commission.

2. Shri Buddy A. Ranganadhan, the learned counsel appearing for M/s. Star Wire (India) Vidyut Pvt. Ltd. submitted that the present proceedings have been initiated pursuant to the judgement of the Hon'ble Appellate Tribunal for Electricity (APTEL) dated 15.11.2022 (Appeal No. 5/2017) against the order of this Commission dated 18.10.2016 (Petition No. 12 of 2016), wherein the Hon'ble APTEL has observed as under:-

"7. Having heard the learned counsel on both sides, we are of the view that the opinion expressed by the learned Chairperson, which has become the order of the Commission on

account of casting vote, is wholly erroneous. The clear norms set out in the relevant regulations show that the approach is incorrect. The PLF for first year cannot be taken as 70% on account of the Regulation 35 itself stipulating that it would be 60% for the stabilization period i.e. six months of the first year. This view was accepted by the same Commission for its subsequent generic tariff order dated 13.08.2014, showing inconsistency.

8. Similar is the position vis-à-vis the computation of depreciation. Regulation 14 does not envisage the computation for 10 years of the project to be at 7% of the 90% value of the asset. The rule has to be applied as it stands. It has been correctly followed in the subsequent tariff order dated 13.08.2014.

9. There is no occasion to invoke "Doctrine of Promissory Estoppel". At any rate, rule of estoppel does not apply against the law. The regulations have been misread by the Chairperson and this has resulted in a fallacious approach being adopted.

10. For above reasons, the appeal is allowed. The impugned order is set aside. The State Commission is directed to pass consequential orders, bearing in mind the observations recorded above."

3. The counsel brought to the notice of the Commission that a statutory appeal was preferred by the respondent herein i.e. HPPC in the Hon'ble Supreme Court. The Hon'ble Supreme Court was pleased to dismiss the said appeal vide its judgement dated 20.02.2023 in Civil Appeal (CA) bearing diary no. 3371 of 2023. Hence, the APTEL's judgment was upheld. The counsel further averred that appeal has been decided on two issues, namely, (I) erroneous computation of PLF and (II) erroneous computation of depreciation, as detailed hereunder:-

3.1 Erroneous computation of PLF:

a) The norms under the HERC Tariff Regulations 2010 (Regulation 35) provide for computation of PLF @ 60% for the stabilization period of the 1st year (i.e. of 6 months) and, 70% for the balance 6 months of the 1st year. Hence the average PLF for the entire 1st year ought to be @ 65%;

b) The Generic Tariff order of 20.11.2013 (applicable to plants commissioned in FY 2013-14) erroneously computed the tariff for the 1st year at a PLF of 70%; This error was also sought to be corrected by the petitioner before the Commission.

c) Under the same norms of the same HERC Tariff Regulations 2010, the Commission correctly determined the Generic Tariff order dated 13.08.2014 for plants commissioned in the FY 2014-15 for the 1st year of operation @65%.

3.2 Erroneous computation of Depreciation:

a) The norms under the HERC Regulations 2010 (Regulation 14) provides that the value base for the purpose of depreciation shall be the capital cost of the asset. The salvage value shall be 10% and depreciation shall be allowed upto 90% of the value of the asset. The depreciation rate for the 1st 10 years of the project shall be @ 7% p.a. and the remaining depreciation shall be spread over the balance life of the asset from the 11th year onwards.

b) The Generic Tariff Order of 20.11.2013 (applicable to plants commissioned in FY 2013-14, like the Generator's) erroneously computed the depreciation for the first 10 years of the project @ 7% of 90% of the value of the asset and not 7% of 100% as it ought to have been.

c) Under the same norms of the same HERC Tariff Regulations 2010, the Commission corrected the Generic Tariff order dated 13.08.2014 for plants commissioned in the FY 2014-15 by way of a corrigendum dated 29.05.2015 and correctly computed the depreciation for the 1st 10 years of operation @ 7% on 100% of the value of the asset.

3.3 That on both the above issues the Generic Tariff order dated 20.11.2013 (applicable to the Generator) had wrongly applied the norms under the HERC 2010 Regulations. Whereas in the Generic Tariff order dated 13.08.2014 for FY 2014-15, on both those issues the HERC had issued corrigendum dated 29.05.2015 to correct the application of the above-mentioned norms.

3.4 That the Hon'ble APTEL had, vide its judgment dated 15-11-2022 had allowed the appeal on both the above issues. As a consequence of the said Judgment, the tariff for the petitioner's generating plant has to be recalculated using:-

a) PLF of 65% for the first year, i.e. FY 2013-14; and

b) Depreciation at the rate of 7% on 100% of the value of the Asset.

3.5 That the Generator is entitled to a carrying cost @ the rate of LPSC as per the PPA dated 22.06.2012:-

a) Whenever a cost has been denied to the generator, the full impact of the same has to be allowed with carrying cost. Reference may be made to the following judgments:-

i) North Delhi Power Ltd. vs. DERC, APL No. 153 of 2009 [Para 45]

ii) Tata Power Co. Ltd. vs. MERC, APL 173 of 2009 [Para 41,43]

iii) Reliance Infrastructure Ltd. vs. MERC RP No. 13 of 2012 [Para 11-12]

iv) Tata Power Co. Ltd. vs. MERC, APL No. 104,105 and 106 of 2012 [Para 71 and 94]

b) The rate of Late Payment Surcharge (LPSC) given in clause no 3.6 (b) PPA dated 22.06.2012 is a proper measure of the loss that the Generator has suffered and hence, the Carrying Cost has to be granted to it at that rate. Reference may be taken from MSEDCL Vs MERC, (2022) 4 SCC 657.

c) That this Hon'ble Commission has itself held on the importance of grant of carrying cost in favor of HPPC at the LPSC Rate in its order dated 27th January 2021 in HERO/PRO -51 of 2020.

d) That the petitioner has been put through financial hardship due to insufficient tariff paid to the generator which was a result of the calculation error in PLF and depreciation calculation. This has resulted in the petitioner receiving lower cost realization.

In conclusion on the issue of rate of interest/carrying cost, it was averred that in a matter involving the petitioner herein, where the petitioner was directed by this Hon'ble Commission to refund certain amount of money to the respondent on account of excess income tax reimbursement, the same was done along with the LPSC at the rate specified in the PPA. Hence, the petitioner herein ought not be treated any differently.

3.6 That the Respondent, HPPC argued during hearing held on 8th February 2023 that the Hon'ble APTEL has not dealt with the two year limitation clause mentioned in the order. Firstly, it is submitted that this Hon'ble Commission could not go beyond the Judgment of the APTEL. The said judgment is binding as it is and needs to be implemented. The Hon'ble APTEL in its judgment has clearly dealt with all submissions of the HERC order in PRO 12 of 2016 and has clearly spelt out their findings. They have also clearly said that the same Regulations cannot be applied to similarly placed Generators differently. HPPC has not raised any objection/appeal to the corrigendum dated 29.05.2015 issued by the Commission for rectification of tariff for the plants commissioned in the FY 2014-15.

4. Per-contra, HPPC has averred that since the error in the order of the Commission was pointed out by the generator very late (error in order dated 20.11.2013 was first noticed on 29.05.2015/09.10.2015), therefore, carrying cost is not admissible. Additionally, HPPC has pointed out error in the calculation of interest on term loan and sought to be corrected in the revised tariff sheet. It has been further submitted that the claim of the petitioner for carrying cost is untenable and bereft of any merits. In this regard, HPPC has submitted as under:-

4.1 That it was the responsibility of the petitioner to approach the State Commission with all the relevant facts and supporting documentation for its purported claim within the limitation period. There has been an unexplained and unjustified delay in filing of the petition. Moreover, the respondent had been paying the tariff determined by this Hon'ble Commission. There is no default on the part of the respondent.

4.2 That Section 34 of the Civil Procedure Code deals with the provision of granting interest. As per the said provision, where and in so far as a decree for the payment of money, the court may in the decree, order interest at such rate as the court deems reasonable to be paid on the principle sum adjudged. It is well settled that the use of the word '**may'** in Section 34, CPC confers a discretion on the Court to award or not to award interest or to

award interest at such rate as it deems fit. Such discretion is expected to be exercised judiciously and reasonably considering the peculiar facts and circumstances of the case.

4.3 That in the instant case, the delay caused in raking up the issue of alleged computational error has consequent repercussions on various actions and involves interest of larger consumers without their being any default on their part. When there are delays or laches on behalf of the party approaching the court, they cannot seek benefit of the carrying cost. Otherwise, it would be open for any generator or entity to unnecessarily delay the claim qua re-determination of tariff and consequential reliefs. The tariff is the important factors to consider in merit order dispatch. The Generators are scheduled on the basis of lower tariff and if the higher tariff is claimed subsequently, the merit order dispatch scheduling may turn faultier thereby adversely affecting other generators and the consumers of the State. Thus, delay in claiming revision **in tariff shall be discouraged**. Allowing carrying cost for the same would be unfair and inequitable. Reliance in this regard is placed upon the following judgments of the Hon'ble Courts, where the use of discretionary power of the court was exercised in view of the peculiar facts of the case:-

ASJS Rice Mills Owners v. State of Punjab AIR 2004 P&H 320 (DB) (Enclosure R-2): It was observed that the court must balance the equities between the claim of the petitioners and the liability of the respondents to pay interest. Award of such interest is not based upon the principle of enrichment of a kind of compensation which is awarded to the petitioners against the state functionaries for their delayed action, particularly unsupported by any plausible cause. The relevant excerpt of the said judgment is reproduced herein below for the ready reference-

*"10.....**The Court must balance the equities between the claim of the petitioners and the liability of the respondents to pay interest. Award of such interest is not based upon the principle of enrichment of a kind of compensation which is awarded to the petitioners against the State functionaries for their delayed action particularly unsupported by any plausible cause**. Keeping in view the current bank rates, the facts and circumstances of the present case, we are of the considered view that the petitioners could be awarded interest for the period in excess of one week from the date the amounts were paid by the Food Corporation of India to the State of Punjab, till that payments were actually made to the petitioners, at the simple rate of 6 per cent per annum. We make it clear that this payment of interest shall be disbursed to the petitioners within one month from the date of pronouncement of the order and without fall."*

Narendrabhai S. Joshi v. Post Master General, Gujarat Circle AIR 2002 Guj 180 (Decided on 08.11.2001) (Enclosure R-3) The court held that the post office could not be saddled with the liability to pay interest, especially when they were technically justified in withholding payment. The relevant excerpt of the said judgment is reproduced herein below for the ready reference-

"11 .As the petition has remained pending for all these years, the respondents cannot be saddled with the liability to pay interest, especially when technically they are justified in withholding the payment. Therefore, in my opinion, the claim of interest at the rate of 15% per annum as made by the petitioner is not justifiable. Hence, the said prayer is rejected. Rule is made absolute with costs."

In light of the foregoing decisions, the Hon'ble Commission may consider the peculiar facts of present case referred above and may therefore, kindly reject the prayer of the Petitioner for award of carrying cost/LPS summarily.

4.4 That without prejudice to foregoing submission, it is submitted that for the period of delay by the petitioner, there cannot be award of any carrying cost in the favour of the petitioner. The underlying principle under Section 61 of the Electricity Act, 2003 is to compensate the generator for reasonable cost and allowing carrying cost for the period where the petitioner itself has delayed the claim cannot be considered reasonable or prudent. Even under equity, there cannot be any interest or carrying cost for the delay caused by a party.

4.5 That the principle that the delays in filing the Appeal/Petition or information thereof would result in denial of carrying cost has been settled in a catena of cases. Reliance in this regard is placed upon judgment of the Hon'ble APTEL in ***Maharashtra State Electricity Distribution Co. Ltd -vs- Maharashtra Electricity Regulatory Commission dated 19.09.2007 in Appeal No. 70 of 2007(Enclosure R-4),*** the relevant extract of which is reproduced hereunder -

"7……..However, if the under-recovery caused by increase in tariff is recovered in the rest of the MYT period a carrying cost will be involved. This carrying cost will be an additional burden which, in all fairness, should not be imposed on the consumer and has to be on account of the licensee.

*8**. In the present case the gap between the beginning of the FY and the date when the new MYT becomes effective is nearly a month. The loss of revenue in this given situation is Rs.88Crores. This loss could be much higher if the delay in tariff fixation had been longer. In a given situation, if the licensee is unable to file the ARR petition due to some reasons will it be proper to say that tariff policy requires such difference to be denied to the licensee forever? The answer clearly is 'NO'. All that***

can be denied to a licensee in this situation is the carrying cost and not the legitimate claim towards revenue*.*

*9…..**It is not the case of the MERC that the tariff has gone up because of late filing. Only the determination of tariff is delayed because of late filing. The financial implication of the delay is nothing but the carrying cost. The consumer cannot be burdened with this resulting carrying cost because the delay has not been caused on account of their default**."*

The above referred judgment had also been relied upon in the following subsequent decisions:

a) **Torrent Power Ltd -v- Gujarat Electricity Regulatory Commission dated 30.05.2014 in Appeal No. 147, 148 and150 of 2013 *(Enclosure R-5)*:**
"17. The findings of the Tribunal in Appeal no. 70 of 2007will squarely apply to the present case. Accordingly, the revenue gap for FY 2011-12 and 2013-14 has to be allowed to the Appellant. However, carrying cost, if any, for the period of delay in filing the ARR/Tariff petition shall not be allowed."

b) **Paschim Gujarat Vij Company Ltd and Ors -v- Gujarat Electricity Regulatory Commission dated 04.12.2014 in Appeal No. 45 of 2014 *(Enclosure R-6)*:**
*"10. The issue regarding disallowance of revenue gap for delay in filing of the tariff petition is covered by this Tribunal's judgments dated 19.9.2007 in Appeal No. 70 of2007, dated 18.12.2008 in Appeal No. 209 of 2006 and in a recent judgment dated 30.5.2014 in Appeal Nos. 147, 148and 150 of 2013 **in the matter of Torrent Power Ltd. Vs.Gujarat Electricity Regulatory Commission where it was decided that the distribution licensee is entitled to claim the revenue gap but the carrying cost for the period of delay in filing of the petition should not be allowed**. The finding of the Tribunal in the above judgments will squarely apply to the present case. Accordingly, this issue is decided in favour of the Appellants."*

4.6 That there cannot be any dispute when a party causes the delay, it cannot claim interest for such period. Reliance in this regard is placed upon following judgments :

(a) Kanwar Singh and Ors. -v- Union of India (UOI), 2005 (82) DRJ 397, 120 (2005) DLT 348 *(Enclosure R-7)*:
"12. In the present case, in spite of such delays and long lapse of time, a liberal view has been taken to allow such amendment to the claimants primarily on the

*ground that there is determination of the land value in other proceedings. In most of the matters, the claimants really wake up only when such determination takes place in other matters and it is on that basis that the amendment is sought**. The claimants not having claimed the amount originally cannot, thus, claim to recover interest from the Government for this period of delay**."*

(Emphasis Supplied)

(b) Budh Ram v Union of India (UOI) and Ors. 2011 SCC Online Del 1192:

*"18. In view of the above stated discussion**, the Petitioners cannot be granted the interest for the period of which they had not approached the court** for being substituted in place of Budh Ram as their LRs."*

(Emphasis Supplied)

4.7 Considering the aforesaid, reliance is also placed upon the ***Order of the Hon'ble Appellate Tribunal dated 24.07.2014 in Appeal No. 239 of 2013 titled Biomass Energy Developers Association v Andhra Pradesh Electricity Regulatory Commission***, wherein the Hon'ble Tribunal held that no power generating company or distribution licensee is entitled to any interest over any differential amount when the tariff remains in dispute in litigation before the Hon'ble Appellate Tribunal; Hon'ble High Court or Hon'ble Supreme Court. The relevant excerpt of the said order is reproduced herein below for ready reference-

"4. The instant Appeals raise significant issues and questions of law with regard to the payment of interest on the differential amounts payable by the Respondents-Distribution Licensees to the Appellant Generating Companies, consequent to the revision of the variable cost component of tariff for the period 2009-10 to 2013-14.

5 (a) xxxx

(b)The Commission had determined the tariff comprising fixed cost component for the 1st 10 years of operation based on the nth year of operation of a biomass power plant and a variable cost component for each financial year common to all biomass power plants. Aggrieved by the said order, dated 20.3.2004, of the State Commission, appeals were eventually filed before this Appellate Tribunal and this Appellate Tribunal, vide judgment, dated 2.6.2006, in Appeal No 1/2005 & batch, allowed the appeal setting-aside the State Commission's order, dated 20.3.2004, stating that the price, immediately before the order of the State Commission, would continue to apply until the State Government determines some other price which is then to be approved by the State Commission….

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18. After a litigation from pillar to post, the State Commission, finally succeeded in determining the tariff vide its order, dated 22.6.2013, as stated above. The impugned order, dated 6.8.2013, has been passed to give consequential relief to the State Commission's order, dated 31.3.2009.

19. We are unable to accept the Appellants' contention for payment of interest on differential amounts payable, in pursuance to the impugned order, dated 6.8.2013, because the amount payable to the Appellants, has been determined for the first time by the State Commission in its order, dated 22.6.2013. Therefore, when there was no amount determined payable to the non-conventional developers, the amount of interest for the past period on the ground that they are entitled to the said amount from the back date, is wholly unsustainable.

20. We may further note that during the pendency of the cases, the APDISCOMS have paid an amount of about Rs.233 crores to nonconventional developers/Appellants, as per the interim orders passed by the Hon'ble High Court, this Appellate Tribunal and Hon'ble Supreme Court. These additional amounts are over and above the amounts paid as per State Commission's order, dated 20.3.2004. Although, the Hon'ble Supreme Court, vide its judgment, dated 8.7.2010, set-aside the order of this Appellate Tribunal and remanded the matter back to the State Commission for determination/fixation of tariff, the additional amount paid by the APDISCOMS as per interim orders had been retained by the developers/Appellants.

22. In view of the matter before us, we do not find any force or merits in the Appellants' contention that the State Commission, in the impugned order, ought to have allowed the interest on the differential amounts payable by the Respondents-Distribution Licensees to the Appellants-Generating Companies, consequent to the revision of the variable cost component of the tariff for the period 2009-2014, vide State Commission's tariff order, dated 31.3.2009.

23. Since, the State Commission has made final determination of tariff vide its tariff order, dated 22.6.2013, the Appellants are not entitled to any interest over the differential amount, if any, payable by the APDISCOMS to the Appellants, who are Biomass energy developers in the State of Andhra Pradesh. On the basis of above discussions, we do not find any merit in the contentions raised on behalf of the Appellants, and we agree to all the findings recorded by the learned State Commission in the impugned order and we approve the same. The only issue is decided against the Appellants. The instant Appeals do not have any merits and are liable to be dismissed.

*24**. If the tariff remains in dispute in litigation before this Appellate Tribunal, Hon'ble High Court or Hon'ble Supreme Court, and the tariff is finally determined by the respective State Commission or Central Commission, no power generating company***

or distribution licensee is entitled to any interest over any differential amount, if any, payable in that regard because as a result of the judgment of the Higher Forums or Higher Courts, State Commission or Central Commission is bound to give effect to the same and fix or determine tariff accordingly, in which case no interest can be said to be payable on any differential amount, if any, payable by the generating company or the distribution licensee. We are fortified in holding this view in the light of M/s NTPC v M.P. State Electricity Board & Ors. (2011) 11 S.C.R. 651.

25. Consequently, the instant Appeals being Appeal Nos. 239 of 2013 and 246 of 2013 are dismissed as they have no merits and the impugned order, dated 6.8.2013, passed by the Andhra Pradesh Electricity Regulatory Commission is hereby affirmed. No order as to costs."

(Emphasis Supplied)

In view of the foregoing, it is prayed that no carrying cost shall be allowed to the petitioner. However, if the Hon'ble Commission is inclined to grant any interest, the same shall be reasonable interest i.e. lowest of interest specified in Regulations, actual carrying cost or prevailing market rate as against the exorbitant LPS claimed by the Petitioner.

4.8 That the judgements cited by the petitioner, are not applicable in the present case, as explained hereunder:-

a) Reliance Infrastructure Limited v The Maharashtra Electricity Regulatory Commission, Review Petition no. 13 of 2012 in Appeal No. 203 of 2010.

b) Tata Power Company Limited v Mahrashtra Electricity Regulatory Commission Appeal No. 173/09 (Decided on 15.02.2011)

In these judgments of the Hon'ble Tribunal, it has been categorically held that the party is entitled to carrying cost on the acceptance of legitimate expenditure. However, in the present case, the petitioner has failed to lead any evidence regarding expenditure incurred by them owing to which they are entitled for carrying cost on the differential amount of tariff. The said judgments do not apply to the facts of the instant case wherein the revision of tariff is necessitated on account of computation error which has been pointed belatedly. The Respondent herein is not in default in any manner.

c) The Tata Power Company Limited (Transmission) v Maharashtra Electricity Regulatory State Commission APPEAL NO.104 of 2012

In the case of Tata Power Company Ltd., the State Commission has consciously not allowed RoE on assets whereas in the instant case the revision in tariff is admittedly on account of computation, errors allegedly discovered belatedly. Further, in the case of Tata Power Company Ltd., carrying cost has been granted considering the actual expenses at

the end of the year and anticipated expenses in the beginning of the year; which is not the issue involved in the instant case.

d) North Delhi Power Ltd v Delhi Electricity Regulatory Commission Appeal No. 153 of 2009 (Decided on 30.07.2010)

In the present case, there is no question with regard to wrong methodology adopted by the Commission in calculating the carrying cost. Thus, the issue involved in the said judgment is clearly distinguishable and therefore, cannot be applied.

5. The Commission has considered the submissions of the parties and observe that appeal filed by HPPC before the Hon'ble Supreme Court being Civil Appeal (CA) bearing diary no 3371 of 2023, against the judgment of the Hon'ble APTEL dated 15.11.2022, has been dismissed on 20.02.2023. Hence, the order of the Hon'ble APTEL dated 15.11.2022, has attained finality. Further, the alleged error in calculation of interest on term loan, as claimed by HPPC, is not the subject matter of the present proceedings, which are limited to the passing of the consequential order pursuant to the directions of the Hon'ble APTEL. As a matter of fact, since all these years, the HPPC never agitated the issue. Hence, they cannot raise such issues as a counter claim in a reply filed against the relief sought by the petitioner. It is the duty of the respondent herein to thoroughly examine each and every tariff order and bills raised by all the generators from whom power is being purchased. If found erroneous, it must take-up the issue with the authority concerned. Accordingly, the Commission approves the revised Generic Tariff for water cooled condenser with travelling grate boiler based biomass generators, commissioned in the FY 2013-14, as per annexure "A" attached to the present order.

6. The only question to be answered is the entitlement of the generator towards carrying cost on the demand to be raised and its rate thereto. The generator has contended that carrying cost equivalent to Late Payment Surcharge provided in clause no 3.6 (b) PPA dated 22.06.2012, may be granted. In this regard, the Commission has examined clause no 3.6 (b) PPA dated 22.06.2012, reproduced here under:-

"3.6 b) In case the payments of bills of the Company are made through LC or RTGS on presentation, rebate of 2% shall be allowed. Where payments are made other than through letter of credit within a period of one month of presentation of bills by the company, a rebate of 1% shall be allowed. In case the payment of any bill is delayed beyond 60 days from the date of billing, a late payment surcharge at the rate of 1.25% per month shall be payable to the Company by HPPC/Discoms for the actual period of delay."

A plain reading of the abovementioned clause of the PPA referred by M/s. SWIVPL would give an understanding that the same is applicable in case the payment for the bill

presented by the generator is delayed beyond 60 days. However, in the present case, the generator has not raised any bill. Hence, clause 3.6 b of the PPA dated 22.06.2012, is clearly not applicable.

Further, the rate of interest allowed by this Commission in its order dated 27th January 2021 (HERO/PRO -51 of 2020), is also not applicable in the present case, as in that case the generator was in willful default of claiming excess reimbursement of MAT/Income Tax.
The Commission has observed that the factual matrix in the case laws cited by the petitioner are clearly distinguishable in the present case, as has been highlighted by HPPC. The same are not reproduced again for the sake of brevity. In the instant case, certain amount may become due to the petitioner, on account of differential tariff due to differences in the tariff design approach of this Commission and the Hon'ble APTEL. In both the tariff designs, the petitioner is entitled to full depreciation over the period of life of the project. In the methodology approved by the Hon'ble APTEL, the quantum of depreciation amount is higher in the initial years and lower in the end years. Whereas, in the methodology approved by this Commission in its generic tariff order for the FY 2013-14, the quantum of depreciation amount is lower in the initial years and higher in the end years. Further, the differential amount of tariff has arisen on account of the judgement of the Hon'ble APTEL only. It has nothing to do with the act or omission or default on the part of the respondent (HPPC). HPPC has not withheld the dues of the generator nor has disallowed the legitimate expenses due to the generator. In this regard, the Commission has also considered the judgement of the Hon'ble APTEL dated 24.07.2014 (Appeal No. 239 of 2013) in the case titled Biomass Energy Developers Association v Andhra Pradesh Electricity Regulatory Commission (APERC), pointed out by HPPC, wherein the Hon'ble APTEL has held that no power generating company or distribution licensee is entitled to any interest over any differential amount when the tariff remains in dispute in litigation before the Hon'ble Appellate Tribunal; Hon'ble High Court or Hon'ble Supreme Court. The operative part of the said judgement has been reproduced in the preceding para in this order. The Commission has also considered the arguments of Shri Ranganadhan that in the case law cited by HPPC, the interest on the differential amount payable was not allowed because the amount payable to the appellants was determined for the first time by the State Commission in its order, dated 22.6.2013, which is not the case in the present petition. The operative part of the ibid judgement cited by HPPC, is reproduced hereunder:-
"19. We are unable to accept the Appellants' contention for payment of interest on differential amounts payable, in pursuance to the impugned order, dated 6.8.2013, because the amount payable to the Appellants, has been determined for the first time by the State Commission in its order, dated 22.6.2013. Therefore, when there was no amount

determined payable to the non-conventional developers, the amount of interest for the past period on the ground that they are entitled to the said amount from the back date, is wholly unsustainable."

The Commission has examined the ibid judgement of the Hon'ble APTEL in greater details. The APERC had passed an order, dated 20.6.2001, in O.P. No. 1075/2000 holding that the non-conventional energy generators in Andhra Pradesh shall sell the power generated by them only to the APTRANSCO which was the bulk supply and distribution and retail supply licensee at that time. The Commission determined the price to be paid as Rs 2.25 per unit with 1994-95 as the base year and with 5% increase year-on-year for the period immediately following its order up to 31.3.2004, and stating that it would thereafter review the incentives to be given to the nonconventional energy generators w.e.f. 01.04.2004. Accordingly, the APERC vide its order dated 20.03.2004, determined the tariff for biomass power plants, for 10 years w.e.f. 01.04.2004, whereby the tariff/purchase price was drastically reduced payable for the electricity generated by non-conventional energy projects with effect from 1.4.2004. The Hon'ble APTEL, vide its judgement dated 02.06.2006 set aside the order of APERC dated 20.03.2004, stating that the price, immediately before the order of the APERC, would continue to apply until some other price is approved by the State Commission. Meanwhile, APERC, vide its order dated 31.03.2009, revised the fuel cost and retained the other parameters determined in its order dated 20.3.2004. The APERC, on the directions of the Hon'ble Supreme Court, heard the parties afresh and passed an order dated 12.09.2011. The order of APERC dated 12.09.2011 was again challenged before the Hon'ble APTEL, which was dismissed. The State Commission re-determined the tariff vide order dated 22.6.2013. Further, APERC passed an order dated 06.08.2013, to give consequential effect to the State Commission's order, dated 31.03.2009. The ibid order of APERC dated 06.08.2013 was challenged before the Hon'ble APTEL pleading that the State Commission has failed and omitted to allow interest on the differential amount payable from 01.04.2009 to 31.03.2014, in consequences in the impugned order, dated 06.08.2013 and the State Commission, while re-determining the variable cost to be paid for the period from 01.04.2009, in consequence of the APTEL's judgment, dated 20.12.2012, ought to have consequentially allowed interest on the arrears amount as carrying cost. It was in this context that the Hon'ble APTEL has held that no power generating company or distribution licensee is entitled to any interest over any differential amount when the tariff remains in dispute in litigation before the Hon'ble Appellate Tribunal; Hon'ble High Court or Hon'ble Supreme Court. It is not the case that the tariff was decided for the first time in the order dated 22.06.2013/06.08.2013. In fact, the tariff for biomass generators was existing since 1994-95 to 01.04.2004 and thereafter. The same has been re-determined w.e.f. 01.04.2009.

The said judgement is squarely applicable in the present case. Admittedly, the order impugned herein was passed by the HERC in 2013, while the petitioner pointed out some error in tariff computation in the year 2016. Further, the matter remained under litigation before the Commission, APTEL and Apex Court, till the remand order dated 15.11.2022, for re-determination of tariff was issued. Hence, interest on the differential amount is clearly not applicable.

In view of the above, the petitioner may raise bill for the differential amount of tariff, so arisen, within 15 days from the date of this order. HPPC shall pay the bill so raised within 15 days from the date of receipt of bill from the petitioner, failing which HPPC shall be liable to pay interest @ 1.25% p.m. or part thereof from the date of such default till the date of actual payment.

7. The present petition is disposed of in terms of the above order.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 07.03.2023.

Date: 07.03.2023	(Naresh Sardana)	(R.K. Pachnanda)
Place: Panchkula	Member	Chairman

HERC TARIFF (Rs / kWh) FOR FY 2013-14

ANNEXURE - A

Biomass generic tariff (Water Cooled)

Table of Parameters	
Capital cost (Rs. in Million / MW)	46.78
Residual value (10%)	4.68
Total depreciation (Rs in Million / MW)	42.10
Loan component (Rs in Million / MW)	32.74
Equity component (Rs in Million / MW)	14.03
CUF (stablisation)	60%
CUF 1st year (Including Stabilisation)	70%
CUF 1st year (after factoring in Stabilisation)	65%
CUF 2nd year onwards	80%
O&M (Rs Million / MW)	2.390
O&M escalation	5.72%
Depreication (first 10 years)	7.00%
ROE (1st 10 years)	19%
ROE (11th year onwards)	24%
Income tax (MAT) **pass through**	0.00%
Income tax (Corporate Tax) **pass through**	0.00%
Interest on term loan	13.75%
Interest on working capital	14.00%
Auxiliary consumption (1st year)	10.00%
Auxiliary consumption (2nd year onwards)	10%
Fuel cost (Rs. / MT)	2789
Fuel cost (Rs. / MT)	2928.45
Fuel price escalation	5.00%
Heat rate (Kcal/kWh)	3800
GCV (Kcal/kg)	3458
Discount rate WACC	10.95%
Levellised tariff	7.01

Year		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Fuel cost with escalation		2789	2928	3075	3229	3390	3560	3738	3924	4121	4327	4543	4770	5009	5259	5522	5798	6088	6392	6712	7048
O&M escalation		2.39	2.53	2.67	2.82	2.99	3.16	3.34	3.53	3.73	3.94	4.17	4.41	4.66	4.93	5.21	5.50	5.82	6.15	6.50	6.88
Outstanding Loan amount		32.74	29.47	26.20	22.92	19.65	16.37	13.10	9.82	6.55	3.27	0.00	0.00	0.00							
Loan repayment		3.27	3.27	3.27	3.27	3.27	3.27	3.27	3.27	3.27	3.27										
Interest on loan		4.50	4.05	3.60	3.15	2.70	2.25	1.80	1.35	0.90	0.45	0.00	0.00	0.00							
Working Capital																					
Fuel cost for 4 months		5.82	7.52	7.89	8.29	8.70	9.14	9.59	10.07	10.58	11.11	11.66	12.25	12.86	13.50	14.18	14.88	15.63	16.41	17.23	18.09
One month O&M		0.20	0.21	0.22	0.24	0.25	0.26	0.28	0.29	0.31	0.33	0.35	0.37	0.39	0.41	0.43	0.46	0.48	0.51	0.54	0.57
2 Months receivables		5.32	6.18	6.33	6.49	6.66	6.85	7.05	7.26	7.49	7.74	7.72	8.07	8.44	8.84	9.25	9.68	10.13	10.61	11.11	11.64
Maintenance spares15% of O&M		0.36	0.38	0.40	0.42	0.45	0.47	0.50	0.53	0.56	0.59	0.63	0.66	0.70	0.74	0.78	0.83	0.87	0.92	0.98	1.03
Total		11.70	14.29	14.85	15.44	16.06	16.72	17.42	18.16	18.94	19.76	20.35	21.35	22.39	23.49	24.64	25.85	27.12	28.46	29.86	31.34
Interest on working capital		1.64	2.00	2.08	2.16	2.25	2.34	2.44	2.54	2.65	2.77	2.85	2.99	3.13	3.29	3.45	3.62	3.80	3.98	4.18	4.39
Variable Costs																					
Parameters	**Derivation**	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**
Capacity (MW)	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**
Generation (Million Units)	A	5.69	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01
Auxiliary Cons (%)		10.00%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
Generation (Ex-bus Million Units)	A1	5.12	6.31	6.31	6.31	6.31	6.31	6.31	6.31	6.31	6.31	6.31	6.31	6.31	6.31	6.31	6.31	6.31	6.31	6.31	6.31
Station Heat Rate (Kcal/kWh)	B	3800	3800	3800	3800	3800	3800	3800	3800	3800	3800	3800	3800	3800	3800	3800	3800	3800	3800	3800	3800
Calorific Value of fuel(Kcal/Kg)	C	3458	3458	3458	3458	3458	3458	3458	3458	3458	3458	3458	3458	3458	3458	3458	3458	3458	3458	3458	3458
Overall Heat (Gcal)	D= (A*B)	21637	26630	26630	26630	26630	26630	26630	26630	26630	26630	26630	26630	26630	26630	26630	26630	26630	26630	26630	26630
Fuel Consumption (MT)	E=(D*1000/C)	6257	7701	7701	7701	7701	7701	7701	7701	7701	7701	7701	7701	7701	7701	7701	7701	7701	7701	7701	7701
Cost of fuel per MT `	F	2789	2928	3075	3229	3390	3560	3738	3924	4121	4327	4543	4770	5009	5259	5522	5798	6088	6392	6712	7048
Total Cost of fuel (Rs Million)	G=E*F/10^6	17.45	22.55	23.68	24.86	26.11	27.41	28.78	30.22	31.73	33.32	34.99	36.74	38.57	40.50	42.53	44.65	46.88	49.23	51.69	54.27
Fuel Cost (Rs/kWh)	H=G/A1	3.41	3.58	3.75	3.94	4.14	4.35	4.56	4.79	5.03	5.28	5.55	5.82	6.12	6.42	6.74	7.08	7.43	7.81	8.20	8.61
Fixed Costs																					
O&M Expenses		2.39	2.53	2.67	2.82	2.99	3.16	3.34	3.53	3.73	3.94	4.17	4.41	4.66	4.93	5.21	5.50	5.82	6.15	6.50	6.88
Depreciation		3.27	3.27	3.27	3.27	3.27	3.27	3.27	3.27	3.27	3.27	0.94	0.94	0.94	0.94	0.94	0.94	0.94	0.94	0.94	0.94
Interest on Term Loan		4.50	4.05	3.60	3.15	2.70	2.25	1.80	1.35	0.90	0.45	0.00	0.00	0.00							
Interest on Working Capital		1.64	2.00	2.08	2.16	2.25	2.34	2.44	2.54	2.65	2.77	2.85	2.99	3.13	3.29	3.45	3.62	3.80	3.98	4.18	4.39
Return on Equity		2.67	2.67	2.67	2.67	2.67	2.67	2.67	2.67	2.67	2.67	3.37	3.37	3.37	3.37	3.37	3.37	3.37	3.37	3.37	3.37
Income tax on ROE		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Fixed Cost		14.47	14.52	14.29	14.08	13.88	13.69	13.52	13.36	13.22	13.10	11.32	11.70	12.10	12.52	12.96	13.43	13.92	14.44	14.99	15.57
Fixed cost (Rs/kWh)		2.82	2.30	2.27	2.23	2.20	2.17	2.14	2.12	2.10	2.08	1.79	1.85	1.92	1.98	2.05	2.13	2.21	2.29	2.38	2.47
Total cost (Fixed+variable)		31.92	37.07	37.97	38.94	39.98	41.10	42.30	43.58	44.96	46.42	46.31	48.43	50.67	53.02	55.49	58.08	60.80	63.67	66.68	69.84
Tariff (Rs/kWh)		6.23	5.88	6.02	6.17	6.34	6.52	6.71	6.91	7.13	7.36	7.34	7.68	8.03	8.41	8.80	9.21	9.64	10.09	10.57	11.07
Per unit tariff components																					
Per unit O&M Expenses		0.47	0.40	0.42	0.45	0.47	0.50	0.53	0.56	0.59	0.63	0.66	0.70	0.74	0.78	0.83	0.87	0.92	0.98	1.03	1.09
Per Unit Depreciation		0.64	0.52	0.52	0.52	0.52	0.52	0.52	0.52	0.52	0.52	0.15	0.15	0.15	0.15	0.15	0.15	0.15	0.15	0.15	0.15
Per Unit Interest on term loan		0.88	0.64	0.57	0.50	0.43	0.36	0.29	0.21	0.14	0.07	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Per Unit Interest on working capital		0.32	0.32	0.33	0.34	0.36	0.37	0.39	0.40	0.42	0.44	0.45	0.47	0.50	0.52	0.55	0.57	0.60	0.63	0.66	0.70
Per Unit Return on equity		0.52	0.42	0.42	0.42	0.42	0.42	0.42	0.42	0.42	0.42	0.53	0.53	0.53	0.53	0.53	0.53	0.53	0.53	0.53	0.53
Per unit income tax		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Levellised tariff																					
Discount factor		1.00	0.901	0.812	0.73	0.66	0.59	0.54	0.48	0.44	0.39	0.35	0.32	0.29	0.26	0.23	0.21	0.19	0.17	0.15	0.14
Discounted tariff components(variable)	4.78	3.41	3.22	3.05	2.89	2.73	2.59	2.45	2.32	2.19	2.07	1.96	1.86	1.76	1.66	1.57	1.49	1.41	1.33	1.26	1.19
Discounted tariff components(fixed)	2.23	2.82	2.07	1.84	1.63	1.45	1.29	1.15	1.02	0.91	0.82	0.64	0.59	0.55	0.51	0.48	0.45	0.42	0.39	0.37	0.34
Discounted tariff components (Total)		6.23	5.30	4.89	4.52	4.18	3.88	3.60	3.34	3.10	2.89	2.60	2.45	2.31	2.18	2.05	1.94	1.83	1.73	1.63	1.54
Levelised Fuel (Variable Cost) Rs/kWh		4.78	4.78	4.78	4.78	4.78	4.78	4.78	4.78	4.78	4.78	4.78	4.78	4.78	4.78	4.78	4.78	4.78	4.78	4.78	4.78
Levellised Fixed Cost (Rs/kWh)		2.23	2.23	2.23	2.23	2.23	2.23	2.23	2.23	2.23	2.23	2.23	2.23	2.23	2.23	2.23	2.23	2.23	2.23	2.23	2.23
Levellised Tariff (Rs/kWh)		7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01	7.01