

**ODISHA ELECTRICITY REGULATORY COMMISSION  
BIDYUT NIYAMAK BHAWAN,  
PLOT NO. 4, CHUNOKOLI, SHAILASHREE VIHAR,  
BHUBANESWAR – 751021**

\*\*\* \*\*

**Present:       Shri U. N. Behera, Chairperson  
                  Shri A. K. Das, Member  
                  Shri S. K. Parhi, Member**

**CASE NO. 33/2018**

**IN THE MATTER OF:   Application for Re-determination of Tariff of Odisha Power Generation Corporation (OPGC) Ltd. for FY 2016-17, FY 2017-18 and FY 2018-19 pursuant to the judgment of the Hon'ble Supreme Court of India dated 19.04.2018 in Civil Appeal No. 9485 of 2017.**

**DATE OF HEARING: 08.01.2019**

**DATE OF ORDER: 28.03.2019**

**ORDER**

The Petitioner, M/s. Odisha Power Generation Corporation (OPGC) Ltd. has filed this application before the Commission for Re-determination of its Generation Tariff for FY 2016-17, FY 2017-18 and FY 2018-19 pursuant to the judgment of the Hon'ble Supreme court of India dated 19.04.2018 in Civil Appeal No. 9485 of 2017.

2. Background of the case is that OPGC Ltd. a generating company having a thermal power station of 420 MW (2 x 210 MW) capacity at Banaharpali, Odisha had entered into a Power Purchase Agreement (PPA) with GRIDCO Ltd on 13.08.1996 for sale of its entire generation to GRIDCO, which was approved by the Govt. of Odisha u/S. 43A of Electricity (Supply) Act, 1948 and came into force retrospectively w.e.f. 01.01.1995. Thereafter, GRIDCO approached OERC for approval of that PPA. When the approval of the PPA was under consideration of the Commission M/s. OPGC Ltd. challenged the jurisdiction of the Commission before the Hon'ble High Court of Orissa. However, Hon'ble High Court did not accept the contention of OPGC. Being aggrieved by the above decision of the Hon'ble High Court, OPGC filed Special Leave Petition Nos. 6812-13/2005 before the Hon'ble Supreme Court of India. The Hon'ble Apex Court vide their interim order dated April 29, 2005 stayed the proceeding of the case pending before OERC. While the matter was pending before the Apex Court, GRIDCO, OPGC Ltd. and the Government of Odisha entered into a discussion to resolve the issue consequent upon which the State Government constituted a task force for settling the issue of tariff and other related matters concerning the above mentioned Power Purchase Agreement (PPA). The task force constituted by the Government

made recommendation for overall settlement of the disputes and accordingly the Government issued a notification on 21.06.2008 resolving all such disputes. Pursuant to the above, GRIDCO and OPGC amended the existing PPA on 19.12.2012 mainly on the issues of PLF, incentive etc. which were retrospectively brought into effect from 01.04.2007. The parties also agreed that on execution of amended agreement, OPGC shall withdraw the SLP bearing No. 6812-6813 of 2005 pending before Hon'ble Supreme Court of India.

3. The Hon'ble Apex Court vide their judgement dated 14.02.2013 dismissed the appeals as withdrawn by OPGC and directed it to file amended PPA before OERC for consideration. OERC in its order dated 27.04.2015 approved the amended PPA and directed that the power purchase process should be settled by OPGC and GRIDCO as per original PPA and the supplement PPA as approved by the Commission for the period prior to the implementation of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014. OERC directed OPGC in the same order to file an application for determination of generation tariff as per the approved PPA each year starting from FY 2016-17 since tariff for FY 2014-15 and 2015-16 have already been approved by the Commission in the ARR of GRIDCO.
4. Accordingly, for the first time, OPGC filed its generation tariff application before OERC for FY 2016-17. In this application OPGC had selectively proposed the tariff parameters from the PPA & OERC Generation Tariff Regulation, 2014. However, OERC disposed of the said application vide its order dated 21.03.2016 in Case No. 53/2015 by determining the tariff of OPGC for FY 2016-17 basing only on the OERC Generation Tariff Regulation, 2014. This tariff order was challenged by OPGC before the Hon'ble APTEL in Appeal No. 126/2016 stating that the OERC has erred mainly by applying OERC Generation Regulation, 2014 norms for determination of tariff of OPGC for FY 2016-17. During the pendency of the said Appeal before the Hon'ble APTEL, on the application of the Petitioner, OERC determined the generation tariff of OPGC for FY 2017-18 vide its Order dated March 23, 2017 in Case No. 62 of 2016 in line with its earlier approach adopted in tariff order for FY 2016-17. Thereafter, Hon'ble APTEL vide their judgment dated April 6, 2017 in the Appeal No. 126/2016 upheld the OERC Tariff Order for FY 2016-17 validating the principle adopted by OERC. Aggrieved by this Judgment of Hon'ble APTEL, OPGC approached the Hon'ble Supreme Court of India vide Civil Appeal No. 9485 of 2017.
5. During the pendency of the said Appeal before the Hon'ble Supreme Court, OERC determined the generation tariff of OPGC for FY 2018-19 vide its Order dated March 22, 2018 in Case No. 75 of 2017 in line with the approach adopted earlier. The Hon'ble

Supreme Court vide their Judgment dated April 19, 2018 in the Civil Appeal No. 9485 of 2017 set aside the OERC Tariff Order of OPGC dated 21.03.2016 for FY 2016-17 which was upheld by the Hon'ble APTEL and remanded the matter to the OERC for a fresh decision. The relevant extract of the Judgment of the Hon'ble Supreme Court is reproduced below:

- “6. *We are of the view that the Commission vide Order dated 27.04.2015 on the joint application of the parties dated 26.02.2014 rightly fixed the tariff but the view taken in subsequent order dated 21.03.2016 which has been upheld on appeal is unsustainable.*
  7. *Accordingly, we set aside the impugned order and remand the matter to the State Commission for fresh decision. The State Commission may take into account the Notification dated 21.06.2008 for the fixed costs, the PPA for the variable costs specified therein and for other costs not reflected in the PPA, statutory Regulations may be applied.*
  8. *The appeal shall stand disposed of as indicated above.*
  9. *The parties may appear before the State Commission for further proceedings on 2.07.2018.”*
6. Accordingly, the Petitioner had filed this fresh petition before OERC with a prayer for redetermination of generation tariff of its generating stations for FY 2016-17, FY 2017-18 and FY 2018-19 basing on the decision of Hon'ble Apex Court. Public Notice for such hearing was also issued for inviting suggestions/objections as per OERC Conduct of Business Regulation.

## **OPGC PROPOSAL FOR RE-DETERMINATION OF GENERATION TARIFF FOR THE FY 2016-17, FY 2017-18 AND FY 2018-19**

### **Computation of Annual Fixed Cost**

7. OPGC submitted that, as per Clause 3.0 of Schedule II of the Amended PPA, the Annual Fixed Cost of its generating station comprises of the following components:
  - a) Depreciation;
  - b) Return on Equity;
  - c) Interest on loan;
  - d) Operation and maintenance expenses;
  - e) Interest on working capital.

### **Capital Cost**

8. OPGC has considered the capital cost of the Project as Rs. 1060 Crore for FY 2016-17, FY 2017-18 & FY 2018-19 as per the Amended PPA signed between OPGC and GRIDCO and

approved by the OERC vide its order dated 27.04.2015.

### **Additional capitalization**

9. OPGC has not considered the additional capitalization in the present application for re-determination of generation tariff for FY 2016-17, FY 2017-18 & FY 2018-19. However, they have submitted that a separate petition has been filed for approval additional capitalization as per direction of the OERC in the tariff order dated 22.03.2018 and prayed the Commission to allow the impact of the additional capitalisation as per the judgement of Hon'ble Apex Court.

### **Debt – Equity Ratio**

10. OPGC has considered the equity of Rs.450 crore and debt of Rs.610 crore of the original project cost of Rs.1060 crore as approved by the OERC earlier.

### **Depreciation**

11. OPGC has not considered any amount towards depreciation as the assets of the generating Stations are fully depreciated by the financial year ending March 31, 2009.

### **Return on Equity (RoE)**

12. Considering the equity capital of Rs.450 crore, OPGC has claimed the RoE of Rs.72 crore @16% for re-determination of generation tariff for FY 2016-17, FY 2017-18 & FY 2018-19 as approved by the OERC in the respective tariff orders.

### **Interest on Loan Capital**

13. OPGC has not considered any amount towards Interest on loan capital for re-determination of generation tariff for FY 2016-17, FY 2017-18 & FY 2018-19 as the loan amount of Rs.610 crore has been fully repaid by financial year ending 2011-12.

### **O&M Expenses**

14. OPGC has submitted that as per clause 3 (d) & (e) of Schedule-II of the amended PPA, for the purpose of O&M expenses capital cost to be taken as Rs.1030 crore and accordingly O &M Expense for the first year of operation shall be @ 2.5% and it shall be escalated by @ 8% each year from 01.04.1996. Considering the above methodology it has proposed Rs.120.02 crore, Rs.129.62 crore and Rs.139.99 crore towards O&M expenses for re-determination of generation tariff for FY 2016-17, FY 2017-18 & FY 2018-19 respectively as against the OERC approval of Rs 115.50 crore, Rs.123.27 crore & Rs.130.87 crore in respective tariff orders.

### Interest on Working Capital

15. OPGC has considered the components of working capital requirement as per the Clause 3.0 (f) of Schedule II of the Amended PPA. OPGC has further submitted that above working capital requirement has been managed from internal accruals and the rate of interest on working capital has been considered as per Regulation 4.26 of the OERC Generation Tariff Regulation, 2014 in line with Hon'ble APEX Court judgment dated 19.04.2018. The detail calculation of working capital requirement and interest on working capital is given below

#### Proposed interest on working capital for FY 2016-17, 2017-18 and 2018-19 (Rs. Crs.)

Particulars	Norms	FY 2016-17	FY 2017-18	FY 2018-19
Cost of Coal	1.5 Months	45.29	42.47	42.47
Cost of Secondary Fuel Oil	2 Month	4.13	5.04	5.04
O&M expenses	1 Month	10.00	10.80	11.67
Receivables	2 Month	99.78	98.14	99.90
<b>Total Working Capital Requirements</b>		<b>159.21</b>	<b>156.45</b>	<b>159.08</b>
Rate of Interest	(%)	12.30	11.00	10.95
<b>Interest on working capital</b>		<b>19.58</b>	<b>17.21</b>	<b>17.42</b>

Accordingly OPGC proposed Rs.19.58 crore, Rs.17.21 crore and Rs.17.42 crore towards interest on working capital for re-determination of generation tariff for FY 2016-17, FY 2017-18 & FY 2018-19 respectively as against the OERC approval of Rs 13.13 crore, Rs.12.25 crore & Rs.12.92 crore in respective tariff orders.

### Summary of Annual Fixed Cost

16. Based on the above, OPGC has proposed Annual Fixed Cost of Rs.211.60 crore, Rs.218.83 crore and Rs.229.41 crore for FY 2016-17, FY 2017-18 & FY 2018-19 respectively for re-determination of generation tariff as against the OERC approval of Rs 200.63 crore, Rs.207.52 crore & Rs.215.79 crore in respective tariff orders. The details are given in the table below:

#### OPGC Proposed Annual Fixed Cost for FY 2016-17, 2017-18 and 2018-19 (Rs. Crs.)

Particulars	FY 2016-17	FY 2017-18	FY 2018-19
Depreciation	0.00	0.00	0.00
Return on Equity	72.00	72.00	72.00
Interest on Loan Capital	0.00	0.00	0.00
O&M Expenses	120.02	129.62	139.99
Interest on working capital	19.58	17.21	17.42
<b>Total Annual Fixed Cost</b>	<b>211.60</b>	<b>218.83</b>	<b>229.41</b>

### Norms of Operation

17. For calculation of energy charges OPGC has proposed the operational performance

parameter as per Clause 8 of Schedule-II of the amended PPA. Accordingly OPGC considered following operational norms for re-determination of energy charges of FY 2016-17, FY 2017-18 & FY 2018-19. Details of these norms are given in table below.

**OPGC Proposed operational norms for FY 2016-17, 2017-18 and 2018-19**

Particulars	FY 2016-17		FY 2017-18		FY 2018-19	
	OERC Earlier Approval	OPGC Revised Proposal	OERC Earlier Approval	OPGC Revised Proposal	OERC Earlier Approval	OPGC Revised Proposal
Auxiliary consumption (%)	8.50	9.50	8.50	9.50	9.00	9.50
Gross Station Heat Rate (Kcal/Kwh)	2450	2500	2450	2500	2450	2500
Secondary fuel oil consumption (ml/Kwh)	1.00	3.50	1.00	3.50	0.42	3.50

**Price & GCV of Coal and Secondary fuel oil**

18. For Price & GCV of Coal and Secondary fuel oil, OPGC has considered the provisions as per Clause 7 of Schedule-II of the amended PPA. Accordingly OPGC proposed the following fuel cost parameters (price and GCV) of both coal and secondary fuel oil for re-determination of energy charge for FY 2016-17, FY 2017-18 & FY 2018-19. Details of these norms are given in table below.

**OPGC Proposed price and GCV of Coal & Oil for FY 2016-17, 2017-18 and 2018-19**

Particulars	FY 2016-17		FY 2017-18		FY 2018-19	
	OERC Earlier Approval	OPGC Revised Proposal	OERC Earlier Approval	OPGC Revised Proposal	OERC Earlier Approval	OPGC Revised Proposal
Price of Coal (Rs./MT)	1186.62	1565.60	1539.00	1482.19	1491.00	1482.19
Price of LDO (Rs./KL)	33338.76	39456.04	27730.00	42621.55	41390.00	42621.55
Price of HFO (Rs./KL)		26861.90		33380.33	-	33380.33
GCV of Coal (Kcal/Kg)	2716.00	2684.00	3400.00	2710.00	3100.00	2710.00
GCV of Oil (Kcal/Kg)	10000	10000	10000	10000	10000	10000
Consumption of Coal (Kg/kwh)	0.90	0.92	0.72	0.91	0.79	0.91
Consumption of LDO (ml/kwh)	1.00	0.35	1.00	0.35	0.42	0.35
Consumption of HFO (ml/kwh)		3.15		3.15	-	3.15

**Energy Charges**

19. Considering the above operational norms and parameters as per clause 7 & 8 of Schedule II of the amended PPA, OPGC has claimed energy charges @ 169.74 paisa/kwh, 162.24 paisa/kwh and 162.24 paisa/kwh respectively for re-determination of generation tariff for FY 2016-17, FY 2017-18 & FY 2018-19 as against the OERC approval of 120.15

Paise/kwh, 123.74 Paise/kwh and 131.18 Paise/kwh in respective tariff orders.

**Summary of OPGC proposal for Re-Determination of Generation Tariff for FY 2016-17, FY 2017-18 & FY 2018-19**

20. The Generation Tariff proposed by OPGC for FY 2016-17, FY 2017-18 & FY 2018-19 is summarized hereunder:

<b>Proposed revised Tariff of OPGC for FY 2016-17, 2017-18 and 2018-19</b>						
<b>Particulars</b>	<b>FY 2016-17</b>		<b>FY 2017-18</b>		<b>FY 2018-19</b>	
	<b>OERC Earlier Approval</b>	<b>OPGC Revised Proposal</b>	<b>OERC Earlier Approval</b>	<b>OPGC Revised Proposal</b>	<b>OERC Earlier Approval</b>	<b>OPGC Revised Proposal</b>
Annual Fixed Cost (Rs. Crore)	200.63	211.60	207.52	218.83	215.79	229.41
Energy Charges (Paise/kwh)	120.15	169.74	123.74	162.24	131.18	162.24

**Reimbursement of Other Charges**

21. Apart from the Annual Fixed cost and Energy Charges, OPGC has claimed the differential incentives for higher PLF only in the present petition. Regarding other charges such as Electricity duty, water cess and charges, tax and cess on land, SOC and MOC for SLDC, EPRC charges, Income tax and recovery of ARR and tariff petition fees and publication expenses etc, OPGC has not claimed anything in the present petition for redetermination of generation tariff for FY 2016-17, FY 2017-18 and FY 2018-19 as the same was provisionally approved by the Commission in the respective tariff order.
22. Now, we shall discuss the public objections and suggestions with response to the present petition of OPGC.
- (a) The Respondent, Shri P K Pradhan submitted that the Commission at Serial No. 9, 10 & 11 of their order dated 27.04.2015 passed in Case No. 13/2002 had clarified about the necessity of approval of amended PPA and has approved the PPA closing the issues prior to FY 2014-15 and to determine the tariff for FY 2015-16 onwards as per the OERC (Terms and Conditions of Determination of Generation Tariff) Regulations, 2014. He mentioned that in the letter and spirit the Govt. Notification dated 21.06.2008 was approved by the Commission in the said order till FY 2015-16 which has lost its relevance thereafter. He submitted that since the Apex Court has remanded the matter to the State Commission for a fresh decision, the Commission has to critically examine and decide whether approval of PPA in Case No. 13/2002 is to be re-opened for review or not, because of the fact that as per clause H of the

amended PPA, any transaction made on or after 01.04.2007 can be reopened. In that case record notes at Clause 5 of discussion held on 13.08.1996 between OPGC and GRIDCO may also be considered. He submitted that the specific oil consumption and station heat rate should be as per actual. The actual specific oil consumption is less than 0.5ml/KWH where as PPA provides for 3.5ml/KWh which is at much higher side. Therefore, based on the Clause 12.4 of the existing PPA and Clause E of the amended PPA, GRIDCO should take up such matters with OPGC for amendment of PPA specifically in case of station heat rate, specific oil consumption and plant load factor for calculation of fixed cost with OPGC or else it will be an unjust burden on the consumers of the State.

He further stated that if the PPA is to be followed for determination of tariff then it should be done in totality and no cherry picking should be allowed. The GCV of coal should also be determined by the method prescribed by the PPA. He emphatically pointed out clause 4.7 of coal supply agreement between MCL and OPGC which states as follows:

***“4.7.1 Sample collection:***

*Samples of coal shall be collected jointly by manual method during each of the shifts and each of the delivery points for determining the quality of coal provided that in case of loading through silo the Seller shall install AMS within a period of 24 months of signing of this agreement at all such Silo loading points which are not having AMS at present. The AMS existing at the Silo loading point shall be made operational by the seller within a period of 6 months from the date of signing of this agreement. In the event of AMS at Silo loading point not being operational beyond the above specific period, the sample shall be collected jointly through the AMS at the purchasers unloading point till such time the loading and AMS becomes operational. The seller shall also ensure that AMS at the Silo loading point shall be operational for 90% of the period in a year. Also if for any reason, the AMS at seller's Silo loading point remain non operational for a continuous period for more than 10 days then the samples shall be collected jointly through the AMS at the purchasers unloading point till such time the loading and AMS becomes operational.*

He submitted that as per the Coal Supply Agreement (CSA), as MCL has failed to install Automatic Mechanical Sampler (AMS) at their end since 2011, OPGC had to install AMS at its end. But OPGC has neither asked MCL to install AMS at their end nor made any effort for installing AMS in their end. Therefore, the inefficiency on the part of OPGC such as paying higher charges for low GCV coal and not raising the issue before M/s. MCL cannot be passed on to the consumers. Since, the GCV of the coal has not been measured by OPGC at powerhouse end and there is a negligible loss in GCV between the MCL and OPGC end during the transportation of the coal



from the pithead of MCL to OPGC because of a very small distance, the Commission should consider the GCV on 'As Billed' basis while computing the energy charges. He stated that as per the PPA the GCV of coal is to be taken "as delivered" to the power station. Therefore, till an Automatic Mechanical Auger is installed at the power station for taking samples for computation of GCV by equilibrated method, GCV "as billed" should be considered for calculating the variable cost.

Regarding additional capital investment he stated that it is required by power station to keep the efficiency level such that their fixed cost is totally recovered. In case of OPGC, fixed cost is recovered at 68.49% PLF as per PPA but OPGC is operating at the PLF of more than 80%. Hence, there is no need to allow any additional capital investment unless the PLF of OPGC plant goes below 68.49%.

- (b) The Respondent, Shri R. P. Mahapatra has submitted that the Hon'ble Supreme Court of India has not considered in detail the provisions/stipulations in the various notifications, agreements, orders and regulations applicable for determination of tariff for the IB Thermal power Station, because the contesting parties have not properly placed the matter before the Apex Court in the present case.

He further submitted that the provision in the Supplementary Power Purchase Agreement dated 19.12.2012 providing for determination of tariff basing on State Govt. Notification dated 21.06.2008 is not applicable here as the Electricity Act, 2003 does not authorize the State Govt. to approve or freeze the parameters for determination of tariff. The original PPA dated 13.08.1996 provides for determination of tariff in the interval of 'three years' in addition to other occurrences. The Electricity Act, 2003 does not authorize the State Government to approve or freeze the parameters for determination of tariff. The tariff fixed under a PPA is not sacrosanct and inviolable and beyond review and correction by the Commission, which is the statutory Authority for fixation of tariff under the Electricity Act, 2003. The Govt. of Odisha is the majority share holder of 51% and has ownership right. Therefore, the Notifications and directions of the Govt. of Odisha, relating to fixation of tariff for Units I & II of OPGC has raised the issue of conflict of interest. He submitted that SERC has exclusive authority as per the Act to determine tariff of a generation station, hence, the Commission may reiterate the tariff determined for the existing thermal generating station of OPGC for the FY 2016-17, 2017-18 & 2018-19 and reject the additional amount claimed in the present petition.

Regarding GCV of coal he further submitted that the Hon'ble CERC in paras 34.24 to 34.27 of the "Statement of Reasons" to the CERC (Terms and Conditions of Tariff) Regulations, 2014 have elaborated the reasons for shifting the GCV measurement to "as received basis" for the purpose of energy charges computation in the Tariff Regulations.

Mr. Mohapatra further, submitted that the Commission may direct GRIDCO to submit all the bills served by the petitioner towards the supply of electricity from 01.04.2007 onwards indicating the GCV of coal taken for determination of generation tariff and also, implead MCL as a respondent and conduct a comprehensive hearing on industry wide practices relating to the determination GCV of the coal and other parameters like PLF, auxiliary consumption, O&M expenses, interest on working capital, station heat rate, secondary fuel oil consumption and cost of primary and secondary fuel consumed etc. for determination of generation tariff. He pointed out reference made by CERC to CEA studies on this matter which states as follows:

*"34.36: All three studies are relevant to understand the issue of deterioration of coal during storage period prior to use in bunker after receipt at the generating station coal yard. The findings of all the three studies mentioned above are analogous. It provides that loss of calorific value of coal during stacking period is not significant even if it is stored for one year period. Considering the findings of the studies mentioned above, it could be inferred that there will be negligible loss attributed to the generating stations on account of stacking of coal for 8-10 days."*

Further, he submitted that there is no direction in para 7 of the order dt.19.04.2018 of the Hon'ble Supreme Court that the generation tariff shall be determined based on the PPA for the variable cost. The Commission has been empowered by statute to determine the tariff. Therefore, the Commission may determine the tariff based on applicable provisions in the statute as submitted earlier in the interest of the consumers of the state who will otherwise be put to severe financial strain.

- (c) The Respondent, Shri Aditya Kumar Mishra has submitted that the Commission may determine the tariff of OPGC by adopting the norms of the OERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2014 in compliance to the Electricity Act, 2003. The determination of tariff of OPGC by following the Notification dated 21.6.2008 of GoO, is legally unsustainable as it has been issued by the Govt. of Odisha arbitrarily without consultation with the Commission specifically when the Electricity Act, 2003 has distanced the Government from all forms of regulations namely, Licensing, Tariff Regulation etc. as held in the judgment of

Hon'ble Supreme Court in Power Trading Corporation of India Ltd. Vrs. CERC. The Govt. of Odisha being 51% owner of OPGC, this act of Govt. tantamounts to fixing of the tariff norms by the owner of a power plant. It will be a precedent for other generating companies including CGPs and IPPs to demand such privilege of fixing tariff norms. The Commission has to determine tariff of OPGC for the period from 1996-97 to 2015-16 as per the applicable tariff notification of GOI as well as by the CERC norm (from 2001 onwards) as per the original PPA dtd.13.08.1996 which stipulates that tariff shall be determined basing on the norms of GoI from time to time. Commission may direct OPGC to refund the differential amount recovered from GRIDCO during the period along with applicable interest. This may be carried out for the reasons that GRIDCO was making payment of energy dues to OPGC on protest during that period.

He further submitted that determination of tariff of OPGC for the FY 2016-17, FY 2017-18 and FY 2018-19 by adopting the norms mentioned under tariff Regulations, 2014 is compliance to the Electricity Act, 2003 and is justified because of the judgments of the Hon'ble Supreme Court passed in different similar Cases. He reproduced the relevant extracts as below:

**(i) Hon'ble Supreme Court in Transmission Cor. of A. P. Ltd. & another Vrs. Sai Renewable Power Pvt. Ltd. & others**

*"17. XXXXXX The functions assigned to the Regulatory Commission are wide enough to specifically impose an obligation on the Regulatory Commission to determine the tariff. The specialized performance of the function that are assigned to Regulatory Commission can hardly be assumed by any other authority and particularly, the courts in exercise of their judicial discretion. The Tribunal constituted under the provisions of the Electricity Act, 2003, again being a specialised body, is expected to examine such issues, but this court in exercise of its power under article 136 of the Constitution would not sit as an appellate authority over the formation of opinion and determination of tariff by the specialized bodies. XXXXX Determination tariff is a function assigned legislatively to a competent forum /authority. Whether it is by exercise of legislative or subordinate legislative power or a policy decision, if the Act so requires, but it generally falls in the domain of legislative activity and the courts refrain from averting into this arena.*

*18. XXXX This court has consistently taken the view that it would not be proper for the court to examine the fixation of tariff rates or its revision as these matters are policy matter outside the preview of the judicial intervention.*

*27. XXXXXX Thus, the scheme of these provisions is to grant supremacy to the Regulatory Commission and the State is not expected to take any policy decision or planning which would adversely affect the functioning of the Regulatory Commission or interfere with its functions. This provision also clearly implies that fixation of tariff is the function of the Regulatory Commission and the State Govt. has a minimum role in that regard.*

46. *The main emphasis of the judgment of the Tribunal is that the Government had framed the policy under which, incentives were given and as such, the Regulatory Commission had no power and authority to fix or amend or alter the policy decision of the State.*

*XXXX It appears that Tribunal has taken a narrower view of the jurisdiction vested in the Regulatory Commission which is discharging its statutory functions under all the three Acts in accordance with law. XXXXX*

*XXXX The power available to the Government to issue policy directions has two restrictions. Firstly, the policy direction has to be on the matters related to electricity in State including overall planning and coordination. Secondly, all such policy directions have to be issued by the State Government in consonance with the object sought to be achieved by this Act and accordingly shall not adversely affect or interfere with the functions and powers of the Regulatory Commission including, but not limited to, determination of the structure of tariff for supply of electricity to the consumers. XXXXXXX*

47. *XXXXXX The court clearly held that after creation of Regulatory Commissions under the provisions of Electricity Regulatory Commission Act, 1998, the Commission has clear power and jurisdiction to fix tariff. The court should not adopt an interpretation which should neither be strict nor narrower so as to oust the jurisdiction of the Regulatory Commission as it would defeat the very object of enacting the said Act."*

**(ii) Hon'ble Supreme Court in PTC India Ltd. Vrs CERC (Civil Appeal No.3902 of 2006 dt.15.03.2010)**

*"9. XXXXXXX The 2003 Act has distanced the Government from all forms of Regulation namely licensing, tariff Regulation, specifying Grid Code, facilitating competition through open access etc."*

**(iii) Hon'ble Supreme Court in WBERC and others Vrs Calcutta Electricity Supply Company (2002) 8SCC715.**

*"58. XXXXXXXX It is the Commission concerned and in the instant case the State Commission of West Bengal, which is the sole authority to determine the tariff of course as per the procedure in the said Act."*

**(iv) Hon'ble Supreme Court in BSES Ltd.Vrs. Tata Power Co. Ltd. & others (17.10.2003)**

*"16. XXXX Charging of a tariff which has not been approved by the Commission is an offence which is punishable under Section 45 of the Act. The provision of the Act and Regulations show that the Commission has the exclusive power to determine the tariff. XXXXXXXX*

*17. XXXX In order to guard against such an eventuality, provision has been made that while granting a licence, conditions may be imposed and further no tariff can be implemented unless the same has been approved by the Commission."*

- (d) The respondent, Shri Ananda Kumar Mahapatra submitted when the PPA between OPGC and GRIDCO was approved, the OERC Generation Tariff Regulations, 2014 was in force, which established that the said PPA is under the Regulations. The judgment of Hon'ble Supreme Court passed in CA No. 9485 of 2017 in favor of OPGC appears to be ex-parte in absence of proper counter to the case by the

respondents, which needs review in accordance to Tariff Policy 2016 and the Electricity Act 2003. OPGC power station is running at more than 85% PLF. Allowing very low PLF as per PPA is nothing but to allow their inefficiencies and non-performances. The operational norms of OPGC claimed in PPA is detrimental to the State, hence the prayers of OPGC should not be accepted by the Commission.

- (e) The respondent, Shri Ramesh Satpathy submitted that OPGC has not improved its efficiency even though Govt. has approved special salary package for its employees with the conditions for efficiency improvement. GRIDCO & DoE, GoO are not protecting the interest of the consumer by not representing properly before the Hon'ble Apex Court. He further stated that the Commission should make further appeal before the Hon'ble Apex Court challenging the order dated 19.04.2018 passed in C.A. No. 9485 of 2017.
- (f) The respondent, GRIDCO has submitted that the petitioner had relied mainly on clause 1.7 of Gazette Notification dated 30.03.1992 of Ministry of Power, Government of India along with old orders of CERC/OERC to justify their stand in various case matters prior to FY 2016-17. As per the direction of Hon'ble Supreme Court of India, the Commission shall take fresh decision on tariff determination in respect of OPGC with effect from FY:2016-17 onwards and not for the previous periods. There was no such established industry-wide practice, as claimed by OPGC, for measurement of GCV of coal and computation of energy charges, other than the relevant Indian Standard/CERC Regulations in effect from time to time. The petitioner OPGC was not supplying power to respondent GRIDCO based on any such Regulations but the terms and conditions of PPA dated 13.08.1996. Moreover, onus lies entirely on OPGC to follow scrupulously the mutually agreed and signed Bulk Power Supply Agreement (BPSA) dt.13<sup>th</sup> August, 1996 for measurement of GCV of coal and computation of energy charges. In case of any deviation from the agreed BPSA by OPGC, the respondent GRIDCO ought to be appropriately compensated. Further, as per sub-clause 7.0(d) of Schedule II of Bulk Power Supply Agreement (BPSA), it is clear that GCV of coal for computation of tariff is the GCV of coal "as delivered" to the Power Station and there is no "as fired" concept in the BPSA. If the practice followed by the OPGC for measurement of GCV is not in consonance with the agreed BPSA, it ought to be treated as a breach of the agreement.

GRIDCO has submitted that, clause 12.4 of the PPA dt.13.08.1996 provided as under

*“Notwithstanding anything contained in this agreement, any amendment or modification regarding any clause before or after execution of this agreement can be made by mutual agreement. If both parties fail to reach an agreement, the matter shall be referred to the State Government whose decision shall be final and binding. The tariff calculation pertaining to this Agreement is based on the principles and norms stipulated in the notification dt.30<sup>th</sup> March, 1992 (as amended from time to time) of Ministry of Power, Govt. of India in the norms and principles of the said Notification from time to time will be applicable to this agreement.”*

GRIDCO has further submitted that, the BPSA dt.13.08.1996 was duly amended on 19.12.2012 pursuant to Notification of Govt. of Odisha dt.21.06.2008. The provision of amended PPA dt.19.12.2012 debars the petitioner from referring to Gazette Notification dt.30.03.1992 by Ministry of Power Govt. of India. Relevant para 3(C) of the amended PPA is reproduced below:

*“In order to avoid any ambiguity with regard to tariff norms and parameters for Units 1&2, the provisions for calculation of incentive in the existing PPA shall stand amended to enhance the Plant Load Factor (PLF) from 68.49% to 80%. All other terms and parameters for determination of tariff for Units 1&2 shall be as per the existing PPA. Suitable amendments will be made in the PPA accordingly including deletion of reference to change in tariff parameters in future. In other words, all tariff parameters will stand frozen till validity of amended PPA notwithstanding modification in tariff norms by CERC from time to time.*

Further, it is submitted that under clause 1.1 the note on “Explanation” mentioned in the Gazette Notification dt.30.03.1992 by Ministry of Power, Government of India stipulates as follows:

*“For removal of doubts, it is clarified that the norms laid down by the authority are the ceiling norms only and this shall not preclude the Board and Generating Companies from agreeing to accept improved norms. For the purpose of calculating the Tariff the operating parameters i.e. Station Heat Rate, Secondary Fuel Oil consumption and Auxiliary Consumption shall be determined on the basis of actual or norms, whichever is lower.”*

In view of the above, GRIDCO submitted that, the said notification of the GoI was in vogue during the signing of the BPSA and the same was taken as a reference for the preparation of the BPSA. Tariff clauses of the BPSA were fixed considering all these aspects. Hence, there is no further requirement to revisit the notification dt.30<sup>th</sup> March 1992 for the subject matter. Therefore any reference to Gazette Notification dt.30.03.1992 of Ministry of Power, Government of India ought not to be considered by the Commission.

GRIDCO submitted that if at all any reference is made by Commission to justify the consideration of GCV on “As fired” basis by the petitioner, OPGC under the shelter/guise of clause 1.7 of the Gazette Notification dt.30.03.1992 of Ministry of Power, Govt. of India, then the said Government Notification may be considered in

its entirety to give the consequential benefits of improved operational parameters achieved over the years in respect of Unit #1 and #2 to the consumers of the state as mentioned above.

GRIDCO submitted that the petitioner's application in the present case is specifically for re-determination of tariff i.e. Annual Fixed Charges for the past financial years as per the judgment dated 19.04.2018 of the Hon'ble Supreme Court of India passed in Civil Appeal No. 9485/2017, according to which the monthly energy bills and supplementary energy bills (if any) shall be raised by the petitioner OPGC and duly scrutinized by GRIDCO for necessary payment/adjustment. Therefore, GRIDCO has prayed the Commission to decide the principle of tariff determination in respect of energy charges and direct the petitioner to provide required documents including the detailed documents in respect of up-gradation and slippage of grade of GCV of coal based on which the credit/debit notes have been raised by MCL and which in turn have been claimed by the petitioner on GRIDCO.

M/s. GRIDCO stated that the carrying cost on differential amount (if any) payable by the Respondent GRIDCO due to tariff redetermination of OPGC may not be allowed. GRIDCO stated that profitability of an Utility is measured through RoE (%) and when RoE is 16% as per Regulation and PPA the loss of the Utility business does not arise. GRIDCO has requested the Commission to direct the Petitioner to provide the RoE (%) for FY 2016-17 and FY 2017-18 respectively.

- (g) The Govt. of Odisha, in their submission have stated that the concerns of GRIDCO particularly regarding the computation of variable costs, basis of GCV of coal, operational parameters,, return on equity, additional capitalization etc submitted before the Commission may be taken into consideration. The notification of government dt.21.06.2008 was within its competency and for settlement of disputes between these two of its Corporations for the benefit of public at large. Amended PPA dated 19.12.2012 executed thereof between both the parties has been duly approved by the Commission on 27.04.2015. Therefore, the Commission being the appropriate authority for determination of generation tariff of OPGC may take a prudent decision after making proper scrutiny of all relevant issues and may determine the tariff taking into account the PPA executed between GRIDCO and OPGC, and the Notification of Government dt.21.06.2008.

23. OPGC in its reply to the objections submitted that the present case for re-determination of generation tariff of its Unit-I & II of the IB Thermal power Station for FY 2016-17, 2017-18 & 2018-19 should be disposed of as per the judgment dated 19.04.2018 of the Hon'ble Supreme Court passed in Civil Appeal No.9485 of 2017 as the review application of GRIDCO on this matter has been dismissed by Hon'ble Apex Court vide Review Petition(C) No. 2528/2018.
24. OPGC further submitted that, the stakeholders relied on the word 'may' used by the Hon'ble Supreme Court to contend that the tariff determination for OPGC has to be done adopting the norms under the Tariff regulation, 2014. The stakeholders also contend that OPGC is interpreting order of Hon'ble Supreme Court erroneously. From the Hon'ble Supreme Court order, it is clear that Commission's order dt.21.03.2016 was set aside wherein the norms under the OERC Tariff Regulations, 2014 were adopted by the Commission in tariff determination for OPGC for FY 2016-17. The contention of the stakeholders to again do the same exercise which was held unsustainable by the Hon'ble Apex Court is without any merit and deserves outright rejection.
25. The Petitioner, OPGC submitted that the established industry-wide practice for measurement of GCV of coal and computation of energy charges rely on "as fired" basis of coal. GRIDCO had been paying energy charges on "as fired" basis of coal. No other standards can be applied now while interpreting PPA of OPGC to determine the tariff. Further, OPGC Ltd. stated that they have taken steps for measurement of GCV of coal and computation of energy charges on the basis of "as fired" mentioned in the OERC Regulations.
26. OPGC clarified that, the requirement of AMS sampling is triggered only when the loading end (MCL's end) has a Silo installed. The AMS sampling requirement at OPGC's unloading end is not applicable since it is a moving stream as there is no Silo installed at MCL's end. Therefore the argument of the objectors that OPGC should have installed an AMS is misconceived.
27. Regarding sample collection for assessment of Quality of coal, OPGC has emphasized the judgments of Hon'ble APEX Court in case of Tribhovandas Haribhai Tamboli Vrs. Gujrat Revenue Tribunal (1991) 3SCC 442 and A N Sehgal Vrs. Raje Ram Sheoram 1992 SUPP (1) SCC 304. OPGC stated that on perusal of the aforesaid pronouncements of the Hon'ble Supreme Court it is evident that Clause 4.7.1 of the Coal Supply Agreement (CSA) allows for joint manual sampling as a general rule. There is no mandatory requirement of sampling by AMS at the loading or unloading end. The CSA clearly allows for manual sampling at the loading end when loading is not done through Silos and this is the understanding of both



MCL and OPGC who are the contracting parties to the agreement. The only exception to the general rule allowing joint manual sampling is required when there is a Silo installed at MCL's loading end. The said exception carved out in the proviso cannot be used to obliterate the main provision, i.e., Clause 4.7.1 of the CSA which allows joint manual sampling. Therefore, OPGC submitted that the views of objectors regarding the installation of AMS are a mere red herring, and ought to be rejected outright and the issues regarding enforcement of provisions of the CSA between OPGC and MCL cannot be agitated at all before this Commission, especially by a non-party to the CSA in view of settled principles of privacy of contracts and otherwise.

28. As regards the norms for Gross Calorific Value (GCV) of coal for tariff determination, OPGC submitted that it had made its detailed submissions during the hearing held on August, 21, 2018. Clause 7.0 of Schedule II of the PPA are relevant for the purpose of determination of GCV which in turn should be utilised for the purpose of computing OPGC's variable charges. Clause 7.0(d) of Schedule II of the PPA refers to "the gross calorific value of coal as delivered to the power station" and in clause 9.0 of Schedule II of the PPA, it is represented as "weighted average gross calorific value of coal received during the month in Kcal/Kg". OPGC further submitted that since the inception of its power project, the GCV of coal has been measured at the firing end i.e. before the coal is fed into the ball mill and just after the bunker. GRIDCO and OPGC have not used any other point for the purpose of measuring the GCV of coal since the inception of the PPA. OPGC stated that an interpretive aid to understand the prevalent industry practice at the time when the PPA was executed is the Ministry of Power and Non-Conventional Energy Sources, Department of Power Gazette Notification S.O. No. 251(E) dt.30.03.1992, which laid down the tariff principles and norms for thermal power plants in the country.
29. OPGC has submitted that Department of Energy, Govt. of Odisha, in their submission, have specifically submitted that the notification of government dt.21.06.2008 was issued to settle disputes between two of its corporations for the benefit of public at large. Thus, GoO has recognized OPGC as one of its corporate and hence the freezing of the tariff norms in the PPA is in the public interest. Further OPGC submitted that the amended PPA executed between GRIDCO and OPGC has already been approved by the Commission on 27.04.2015. Therefore taking into account the terms and conditions of PPA and the notification dt.21.06.2008 of the Govt. of Odisha, the Government of Odisha has requested the Commission to re-determination the tariff as per the judgment of the Hon'ble APEX Court.

### **The Commission observations and directions**

30. That the present petition for redetermination of generation tariff for FY 2016-17, FY 2017-18 and FY 2018-19 has been filed by OPGC in pursuant to the judgment of the Hon'ble Supreme court of India dated 19.04.2018 in Civil Appeal No. 9485 of 2017 which is explained earlier in this order.
31. Accordingly, the Commission conducted public hearings on 02.07.2018, 21.08.2018, 25.09.2018, 23.10.2018, 20.11.2018, 11.12.2018 and 08.01.2019 and heard the Applicant, Objectors and the Representative of the Dept. of Energy, Government of Odisha at length. The Commission has carefully examined the submission of the Petitioner and oral and written submission of the objectors regarding the judgment of the Hon'ble Apex Court as mentioned earlier in this order. The responses of OPGC on the points raised by objectors have also been considered by the Commission.
32. The present application of OPGC is the outcome of judgement of Hon'ble Supreme Court dated 19.04.2018 in Civil Appeal No. 9485 of 2017. Hon'ble Court had heard the matter basing on the appeal on the judgement of Hon'ble APTEL. Though Hon'ble APTEL had upheld the principle of tariff determination adopted by the Commission, the Hon'ble Apex Court has not accepted it. The suggestions and objections of the public appearing in this case are basically plea for adopting norms of Regulation instead norms of PPA. Those pleas are nothing new but the most of the principles basing on which the Commission in the past had determined tariff of OPGC for last three years. The matter was again heard and discussed by Hon'ble APTEL. But Hon'ble Supreme Court after hearing all the parties has not accepted the same. Further, the review petition filed by GRIDCO has also been rejected. Therefore, there is little scope for this Commission to reopen the tariff determination principle when it has reached its finality in the Apex Court. In obedience to the decision of the Hon'ble Supreme Court we decide to take into consideration the PPA norms for determination of tariff and Regulatory norms for the cost which are not reflected in the PPA while re-determining the generation tariff of OPGC for the FY 2016-17, FY 2017-18 and FY 2018-19 in the present petition. The issue of methodology of determination of GCV which was raised by the petitioner now was neither before Hon'ble APTEL nor before Hon'ble Supreme Court. Hon'ble Courts have also not given any observation regarding this. The issue of methodology of determination of GCV relates to bill dispute between GRIDCO and OPGC and is the subject matter of Case No. 43/2017 which is pending before the Commission for adjudication. Therefore that matter shall be dealt with in that case.

### **Computation of Annual Fixed Cost**

- (i) The Commission approves the Annual Fixed Cost as per Clause 3.0 of Schedule II of the PPA. Accordingly the component wise annual fixed cost of OPGC for redetermination of generation tariff for FY 2016-17 to FY 2018-19 are as under :
- (ii) **Capital Cost:** The capital cost of the project is Rs. 1060 Crore for FY 2016-17, FY 2017-18 and FY 2018-19 as per the Amended PPA signed between OPGC and GRIDCO and approved by the OERC vide its order dated 27.04.2015.
- (iii) **Additional capitalization:** OPGC has filed a separate application for additional capitalization before the Commission and which is pending for disposal. Therefore the Commission has not considered the same for redetermination of generation tariff for FY 2016-17, FY 2017-18 and FY 2018-19.
- (iv) **Debt – Equity Ratio:** OPGC had proposed the capital cost of Rs.1060 of the project consisting of equity of Rs.450 crore and debt of Rs.610 crore as per Clause 8.0 of Schedule II of the PPA. Accordingly the Commission has approved the same for redetermination of generation tariff for FY 2016-17, FY 2017-18 and FY2018-19 this was also approved by the OERC earlier in the respective tariff orders.
- (v) **Depreciation:** OPGC has not considered any amount towards depreciation as the assets of the generating Stations are fully depreciated. Accordingly the Commission has not considered the same for redetermination of generation tariff for FY 2016-17, FY 2017-18 and FY 2018-19 similar to the decision of the Commission in the earlier tariff orders.
- (vi) **Return on Equity (RoE):** Considering the equity capital of Rs.450 crore, OPGC has claimed the RoE of Rs.72 crore @16% per annum. Accordingly the same amount is approved now for re-determination of generation tariff for FY 2016-17, FY 2017-18 and FY 2018-19 similar to the decision of the Commission in the earlier tariff orders.
- (vii) **Interest on Loan Capital:** OPGC has not considered any amount towards Interest on loan capital for re-determination of generation tariff for FY 2016-17, FY 2017-18 & FY 2018-19 as the loan amount of Rs.610 crore has been fully repaid by financial year ending 2011-12. Accordingly the Commission has not considered the same for redetermination of generation tariff for FY 2016-17, FY 2017-18 and FY 2018-19 similar to the decision of the Commission in the earlier tariff orders.

- (viii) **O&M Expenses:** As per clause 3 (d) & (e) of Schedule-II of the amended PPA, for the purpose of O&M expenses capital cost is to be taken as Rs.1030 crore and accordingly O & Expense for the first year of operation shall be @ 2.5% of capital cost and it shall be escalated by @ 8% each year from 01.04.1996 and the first escalation factor becoming applicable on 01.04.1997. Based on the above methodology OPGC had claimed and the Commission has approved the same amounts of Rs.120.02 crore  $\{Rs.1030 \text{ cr} \times 2.5\% \times (1.08)^{20}\}$ , Rs.129.62 crore  $\{Rs.1030 \text{ cr} \times 2.5\% \times (1.08)^{21}\}$  and Rs.139.99 crore  $\{Rs.1030 \text{ cr} \times 2.5\% \times (1.08)^{22}\}$  towards O&M expenses for re-determination of generation tariff for FY 2016-17, FY 2017-18 & FY 2018-19 respectively as against the earlier approval of Rs.115.50 crore, Rs.123.27 crore and Rs.130.87 crore.
- (ix) **Interest on Working Capital:** As per the Clause 3.0 (f) of Schedule II of the PPA working capital requirement is to be worked out by considering coal cost for 1.5 months, Oil cost for 2 months, O & M expenses for one month and Receivable for 2 months on the normative level of generation and interest rate applicable to working capital facility as on the fixed charges computation date. OPGC has submitted that it has been managing working capital requirement from internal accruals sources therefore it has considered the rate of interest on working capital as per Regulation 4.26 of the OERC Generation Tariff Regulation, 2014 in line with Hon'ble APEX Court judgment dated 19.04.2018. Considering judgement of Hon'ble APEX Court and the PPA norms of normative level of generation @ 68.49%, the Commission has estimated working capital requirement and interest on working capital. The detailed calculation of working capital requirement and interest on working capital approved by commission against OPGC proposal for redetermination of generation tariff for FY 2016-17, FY 2017-18 and FY 2018-19 are given below:

**Interest on working capital Approved by Commission for redetermination of Generation Tariff for FY 2016-17, 2017-18 and 2018-19**

Particulars	Norms	FY 2016-17		FY 2017-18		FY 2018-19	
		OPGC Revised Proposal	OERC Approval	OPGC Revised Proposal	OERC Approval	OPGC Revised Proposal	OERC Approval
Cost of Coal	1.5 Months	45.29	39.21	42.47	37.12	42.47	37.12
Cost of Secondary Fuel Oil	2 Month	4.13	4.14	5.04	5.04	5.04	5.04
O&M expenses	1 Month	10.00	10.00	10.80	10.80	11.67	11.67
Receivables	2 Month	99.78	91.39	98.14	90.78	99.90	92.55
<b>Working Capital</b>	<b>Rs.Cr</b>	<b>159.21</b>	<b>144.74</b>	<b>156.45</b>	<b>143.74</b>	<b>159.08</b>	<b>146.38</b>

Particulars	Norms	FY 2016-17		FY 2017-18		FY 2018-19	
		OPGC Revised Proposal	OERC Approval	OPGC Revised Proposal	OERC Approval	OPGC Revised Proposal	OERC Approval
<b>Requirements</b>							
Rate of Interest	(%)	12.30	12.30	11.00	11.00	10.95	10.95
<b>Interest on working capital</b>	Rs Cr	<b>19.58</b>	<b>17.80</b>	<b>17.21</b>	<b>15.81</b>	<b>17.42</b>	<b>16.03</b>

Accordingly the Commission is approving Rs.17.80 crore, Rs.15.81 crore and Rs.16.03 crore towards interest on working capital for re-determination of generation tariff for FY 2016-17, FY 2017-18 and FY 2018-19 respectively as against the OERC earlier approval of Rs 13.13 crore, Rs.12.25 crore & Rs.12.92 crore respectively in the respective tariff orders.

### Summary of Annual Fixed Cost

33. Based on the above component wise approval, the summarised total Annual fixed cost approved by the Commission for re-determination of generation tariff of FY 2016-17, FY 2017-18 and FY 2018-19 are Rs.209.82 crore, Rs.217.43 crore and Rs.228.02 crore respectively as against OPGC proposal of Rs.211.60 crore, Rs.218.83 crore and Rs.229.41 crore. Earlier the Commission had approved Rs.200.63 crore, Rs.207.52 crore and Rs.215.79 crore in the respective tariff orders as per the norms of OERC tariff Regulations, 2014. The year wise details are given in the table below:

#### Total Annual Fixed Cost Approved by Commission for redetermination of Generation Tariff for FY 2016-17, 2017-18 and 2018-19

Particulars	Approved In Tariff Order	OPGC Revised Proposal	OERC Revised Approval
<b>FINANCIAL YEAR 2016-17</b>			
Depreciation	-	-	-
Return on Equity	72.00	72.00	72.00
Interest on Loan Capital	-	-	-
O&M Expenses	115.50	120.02	120.02
Interest on working capital	13.13	19.58	17.80
<b>Total</b>	<b>200.63</b>	<b>211.60</b>	<b>209.82</b>
<b>FINANCIAL YEAR 2017-18</b>			
Depreciation	-	-	-
Return on Equity	72.00	72.00	72.00
Interest on Loan Capital	-	-	-
O&M Expenses	123.27	129.62	129.62
Interest on working capital	12.25	17.21	15.81
<b>Total</b>	<b>207.52</b>	<b>218.83</b>	<b>217.43</b>
<b>FINANCIAL YEAR 2018-19</b>			
Depreciation	-	-	-
Return on Equity	72.00	72.00	72.00
Interest on Loan Capital	-	-	-

<b>Particulars</b>	<b>Approved In Tariff Order</b>	<b>OPGC Revised Proposal</b>	<b>OERC Revised Approval</b>
O&M Expenses	130.87	139.99	139.99
Interest on working capital	12.92	17.42	16.03
<b>Total</b>	<b>215.79</b>	<b>229.41</b>	<b>228.02</b>

#### **Computation of Energy Charges:**

#### **Operational Norms:**

34. In line with the judgement of Hon'ble APEX Court the Commission approves the operational norm like Auxiliary Consumption, Gross Station Heat Rate, and Consumption of Oil as indicated as per Clause 8 of Schedule-II of the PPA for re-determination of energy charges of FY 2016-17, FY 2017-18 and FY 2018-19. Details of these norms are given in table below.

#### **Operational norms approved by OERC for Redetermination of Generation Tariff of OPGC for FY 2016-17, 2017-18 and 2018-19**

<b>Particulars</b>	<b>FY 2016-17</b>		<b>FY 2017-18</b>		<b>FY 2018-19</b>	
	<b>OPGC Revised Proposal</b>	<b>OERC Revised Approval</b>	<b>OPGC Revised Proposal</b>	<b>OERC Revised Approval</b>	<b>OPGC Revised Proposal</b>	<b>OERC Revised Approval</b>
Auxiliary consumption (%)	9.50	9.50	9.50	9.50	9.50	9.50
Gross Station Heat Rate (Kcal/Kwh)	2500	2500	2500	2500	2500	2500
Secondary fuel oil consumption (ml/Kwh)	3.50	3.50	3.50	3.50	3.50	3.50

#### **Price & GCV of Coal and Secondary fuel oil**

35. As per Clause 7 of Schedule-II of the PPA, it is mentioned that Gross Calorific Value (GCV) of secondary Oil and Gross Calorific Value (GCV) of Coal are to be considered as delivered to the power station. Similarly the price of Oil and Coal are to be considered as delivered to the power station. Further as per Clause 8 (19) & (20) of Schedule-II of the PPA, Oil and Coal cost will be as per administered price notified by Govt of India. Considering the above operational norms and parameters of the PPA, the Commission has taken GCV of Oil and Coal as per the present grade classification and the price of Oil and Coal as proposed by OPGC for the respective years. GRIDCO should verify the price before payment.
36. Accordingly, the Commission has calculated the Energy charges @ 148.44 paisa/kwh, 143.50 paisa/kwh and 143.50 paisa/kwh of OPGC as against its proposal of @ 169.74 paisa/kwh, 162.24 paisa/kwh and 162.24 paisa/kwh for re-determination of generation tariff for FY 2016-17, FY 2017-18 and FY 2018-19 respectively. Details of these operational norms and parameters and energy charges are given in table below.

**Computation of Energy Charges for Redetermination of Generation  
Tariff of OPGC for FY 2016-17, 2017-18 and 2018-19**

Particulars	FY 2016-17		FY 2017-18		FY 2018-19	
	OPGC Revised Proposal	OERC Approval	OPGC Revised Proposal	OERC Approval	OPGC Revised Proposal	OERC Approval
Price of Coal (Rs./MT)	1565.60	1565.60	1482.19	1482.19	1482.19	1482.19
Price of LDO (Rs./KL)	39456.04	39456.04	42621.55	42621.55	42621.55	42621.55
Price of HFO (Rs./KL)	26861.90	26861.90	33380.33	33380.33	33380.33	33380.33
GCV of Coal (Kcal/Kg)	2684.00	3100.00	2710.00	3100.00	2710.00	3100.00
GCV of Oil (Kcal/Kg)	10000	10000	10000	10000	10000	10000
Consumption of Coal (Kg/kwh)	0.92	0.80	0.91	0.80	0.91	0.80
Consumption of Oil-LDO (ml/kwh) (10%)	0.35	0.35	0.35	0.35	0.35	0.35
Consumption of Oil - HFO (ml/kwh) (90%)	3.15	3.15	3.15	3.15	3.15	3.15
<b>Energy Charges (Paisa/Kwh)</b>	<b>169.76</b>	<b>148.44</b>	<b>162.24</b>	<b>143.50</b>	<b>162.24</b>	<b>143.50</b>

37. Further the Commission directs that, since the FY 2016-17 and FY 2017-18 have already been completed, basing on the clause 9 of Schedule-II of the PPA, the bill of OPGC should be settled with GRIDCO by considering the actual audited price and GCV as delivered to the power station during the period. Similarly for FY 2018-19, Energy charges bill is to be raised as per clause 9 of Schedule-II of the PPA by considering the actual audited price and GCV as delivered to the power station.

**Summary of Approved Re-Determined Generation Tariff of OPGC for FY 2016-17, FY 2017-18 & FY 2018-19**

38. The Generation Tariff re-determined by the Commission for OPGC for FY 2016-17, FY 2017-18 & FY 2018-19 is summarized hereunder:

**Re-Determination of Generation Tariff of OPGC  
for FY 2016-17, FY 2017-18 & FY 2018-19**

Particulars	OERC earlier Order	OPGC Revised Proposal	OERC Revised Approval
<b>FINANCIAL YEAR 2016-17</b>			
Annual Fixed Cost (Rs. Crore)	200.63	211.60	209.82
Energy Charges (Paisa/kwh)	120.15	169.74	148.44
<b>FINANCIAL YEAR 2017-18</b>			
Annual Fixed Cost (Rs. Crore)	207.52	218.83	217.43
Energy Charges (Paisa/kwh)	123.74	162.24	143.50
<b>FINANCIAL YEAR 2018-19</b>			
Annual Fixed Cost (Rs. Crore)	215.79	229.41	228.02
Energy Charges (Paisa/kwh)	131.18	162.24	143.50

### **Reimbursement of Other Charges**

39. Regarding Incentive, OPGC may reimburse the same from GRIDCO as per clause 4.0 of Schedule II of PPA norms. Apart from the Annual Fixed cost and Energy Charges, other charges such as levies, taxes, duties, cess, etc and supplementary bills if any as per Clause 10, 11 (vii) of Schedule II of PPA are to be recovered by OPGC from GRIDCO on production of documentary evidence.

### **Directives of the Commission:**

40. The recovery of monthly Capacity Charges as approved by the Commission here shall be made as per the methodology stipulated in the PPA and GRIDCO Ltd. shall make payment after prudence check.
41. The operational norms like Auxiliary Consumption, Gross Station Heat Rate, and Consumption of Oil as indicated in Clause 8 of Schedule-II of the PPA and Price and GCV of Oil and Coal actually delivered to the power station as per Clause 7 of Schedule-II of the PPA shall be considered. Accordingly claims of monthly Energy Charges shall be made by OPGC and GRIDCO Ltd. shall make payment after prudence check of all parameters of energy charges like GCV and price of Coal & Oil etc.
42. Incentives/Disincentives, other charges, supplementary bills etc. are to be recovered by OPGC from GRIDCO on production of documentary evidence as per Clause 10 and 11(vii) of the PPA.
43. Rebate and late payment surcharge if any will be applicable as per the clause 8.24 & 8.25 of the PPA.
44. The application of OPGC in Case No. 33 of 2018 for redetermination of Generation tariff of IBTPS I & II units for the FY 2016-17, FY 2017-18 and FY 2018-19 are accordingly disposed of.

Sd/-

**(S. K. PARHI)**  
**MEMBER**

Sd/-

**(U. N. BEHERA)**  
**CHAIRPERSON**



**Views of Member Shri A K Das**

I agree with the above order. However, the following paras shall be incorporated after para 32 and para 35.

**After Para - 32**

Concerns of objectors must have been placed before Hon'ble Apex Court and before Hon'ble APTEL by GRIDCO, since GRIDCO works in the interest of consumers of the State. The decision of Hon'ble Apex Court has been based on materials placed by GRIDCO before them. The objectors, to satisfy themselves on the issues raised herein, may obtain a copy of submission of GRIDCO before Apex Court on payment of Xerox charges in which GRIDCO shall cooperate. The Commission has least scope to interfere in the matter except abiding by the direction of Hon'ble Apex Court.

**After Para - 35**

The GCV issue of OPGC, is settled in the PPA, on "as delivered" basis. OPGC pleaded before Hon'ble Apex Court to be considered on the basis of PPA. Hon'ble Apex Court accepted their petition and directed Commission to re-determine the tariff on this basis. Therefore, the GCV issue for the purpose of tariff is settled and sealed.

As per PPA, the GCV is 3400 Kcal/Kg. As per MCL Notice No. MCL /SBP /GM (S&M) / 2017-18 dt.07.04.2017, there is slippage of grade of coal from G13 to G14 with effect from 01.04.2017. All the energy charges shall be at the rate corresponding to this value. OPGC has to take up the matter with coal suppliers if any issue survives at delivery point. Since the regulations have been framed on 'as fired' basis, these issues are not related. The present tariff shall only be on the basis of coal 'as delivered' without any issue. All payments shall be settled on this basis.

Sd/-

**(A. K. DAS)**  
**MEMBER**