Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 78 of 2021

Case of The Tata Power Company Limited - Generation Business to recall the Commission's letter dated 19 April, 2021 on returning the scheme of TPC-G and approval of the DPR for replacement of electrical equipments at its various Hydro Power Generating Stations

Coram
Sanjay Kumar, Chairperson
I.M. Bohari, Member
Mukesh Khullar, Member

The Tata Power Company Limited- Generation (TPC-G) ---Petitioner

Appearance

For TPC-G .....Shri Venkatesh (Adv.)

ORDER

Dated: 6 January, 2022

1. The Tata Power Company Limited -Generation (**TPC-G**) has filed a Case as per the Section 62 of the Electricity Act, 2003 (**EA,2003**) read with Regulation 25.2 Proviso (a) to (c) of the MERC (Multi Year Tariff) Regulations, 2019 (**MYT Regulations**) to recall the Commission's letter dated 19 April, 2021 on returning TPC-G's capex scheme for execution under O&M expenditure. TPC-G also sought approval of the scheme for replacement of various electrical equipment in TPC-G's Hydro Power Generating Stations (**HPGS**).

2. **TPC-G prayers are as follows:**

   a) To recall its decision communicated vide Letter No. MERC/AEML-T/CAPEX/2020-21/E-Letter dated 19.04.2021.

   b) To approve the submitted DPR for Replacement of Various Electrical Equipment in Hydro Generating Stations of the Petitioner under Capital Expenditure Scheme.---"

3. **TPC-G's Petition states as follows:**

3.1 TPC-G owns and operates three HPGS viz. Khopoli (72 MW), Bhira (300 MW) and Bhivpuri (75 MW) with a total installed capacity of 447 MW. The Hydro Generating

Capacity is tied up with the Distribution Licensees i.e. TPC-D (48.33%) and BEST (51.17%) capacity.

3.2 TPC-G had submitted Detailed Project Reports (**DPR**) for in-principle approval of the Commission under capital expenditure for replacement of various electrical equipment in TPC-G's HPGS. The Commission has approved the DPR under Repair and Maintenance (**R&M**) expenditure instead of capital expenses as sought by TPC-G. Aggrieved by the approval of the schemes under O&M expenditure instead of Capital expenditure, TPC-G has filed the present Petition seeking following reliefs:

a) Recall the letter in-principle approval letter dated 19.04.2021(returning the DPR to execute under O&M instead of Capex) and

b) Grant in-principle approval to the aforsaid DPR under capital expenditure.

3.3 The basis and ground of filing the Petition, submission and arguments of TPC-G, issue wise Analysis and Rulings of the Commission are discussed in the subsequent paras of the Order to avoid the repetition.

4. **At the E-hearing through video conferencing held on 1 September, 2021:**

4.1 The Advocate of TPC-G reiterated the submission as made out in the Petition. He further stated that the Commission has approved DPR for replacement of the equipment at various HPGS and directed to execute the work under O&M budget instead of capital expenditure. The Commission has also directed not to claim the Return on Equity (**RoE**).

4.2 He further stated that the scheme proposed for approval of the Commission is capital expenditure as per the provisions of the:

a) MERC Capex Approval Guidelines,2005;

b) MERC MYT Regulations, 2019;

c) CERC MYT Regulations, 2019 etc.

4.3 In justification of its claim of the capitalisation, following grounds were referred:

a) Provisions of the Indian Accounting Standards 16 (**Ind AS16**);

b) Capital Expenditure criteria as per CEA Guidelines for Renovation and Modernization/Life Extension Works of Coal/Lignite Based Thermal Power Plants;

c) Past 'In-principle' approvals of similar nature of the works granted by the Commission;

d) Master Circular dated 11.08.2005 issued by the RBI on Management Advances.

Commission's Analysis and Rulings:

5. TPC-G through present Petition is seeking to recall the letter issued by the Commission dated 19.04.2021 directing TPC-G for execution of the clubbed DPR refereed in the present Petition under O&M expenditure. The argument of TPC-G is that the assets proposed for replacement have outlived their regulated life. Hence, the scheme needs to be approved as capital expenditure as per the regulatory provisions of the Capex Approval Guidelines, MERC MYT Regulations,2019 and CERC MYT Regulations, 2019 etc. However, the Commission has directed to execute the scheme under O&M budget without considering these regulatory provisions. Hence, TPC-G prayed to recall the decision communicated vide letter 19.04.2021 and approve the DPR as Capital Expenditure Scheme.

6. At the outset, the Commission notes that Generation Business of TPC-G is regulated business and it has filed the Petition seeking in-principle approval of the scheme as per Section 62 of the EA instead of incurring these expenses under O&M expense head which is also a pass through element in the ARR. It is the settled principle that expenses incurred on establishment of the new assets, augmentation of the existing assets, improvement of the capacity/efficiency of the existing system etc., replacement of the existing assets after they have outlived useful regulated life and if the equipment has reached a stage which is beyond repair, are all covered as capital expenditure. Also, Renovation and Modernisation expenses are categorised as capital expense when same is incurred for capacity upgradation and extension of life over and above the design life. The Capital expenses incurred on equipment/plant/machinery/IT equipment etc., are expected to be available for the designed/expected Regulatory Life. Further, expenses incurred for day to day maintenance of the assets, service charges, replacement of parts of the working assets, maintaining the asset at its same capacity etc., are to be treated under Repair and Maintenance (**R&M**) expenses under Operation and Maintenance (**O&M**) head. The Commission also approves the separate budget for O&M as part of Aggregate Revenue Requirement (**ARR**) as per the provisions of the MYT Regulations, 2019.

7. The Commission notes that TPC-G, has relied on the provisions of the following for justifying its claim:

   a) Criteria as per the MERC Capex Guidelines, 2005.

   b) Criteria provided in the MERC MYT Regulations, 2019.

   c) Capital Expenditure criteria as per CEA's Guidelines for Renovation and Modernization /Life Extension Works of Coal/Lignite Based Thermal Power Plants (for scheme of replacement of 110 kV switchyard equipments).

   d) Criteria as per Accounting Standards 16 (Ind AS 16).

   e) In-consistent Approach from the Past 'In-principle' approval granted by the Commission.

   f) Compliance Requirement to Reserve Bank of India (RBI) Master Circular.

g) Obsolescence of Technology recognized as Capital Expenditure by other State Electricity Regulatory Commissions.

8. In view of the contentions and averments of TPC-G, it is necessary to evaluate TPC-G's submission, provisions of the Regulations/Orders/CEA Guidelines etc., on which TPC-G has relied justifying its claim. Further, it is necessary to recite the basis and justification provided while approving the scheme under O&M budget by the Commission and further analysis based on the additional submission in the Petition by TPC-G. Accordingly, issue wise analysis based on the TPC-G's submission, provisions of the MYT Regulations, 2019, Capex Approval Guidelines, Commission's analysis and rulings etc. are elaborated in the subsequent paras of the Order.

9. ***Criteria as per the MERC Capex Guidelines, 2005:***

TPC-G's Submission

9.1 The Commission has notified Capex Approval Guidelines on 9.2.2005. Accordingly, Capital Investments through DPR schemes exceeding Rs.10 Crores need to be submitted for in-principle approval of the Commission. The objectives of the capex approval Guidelines are as follows:

i. Lay down the approach and methodology for ex-ante assessment of major investment schemes for considering in-principle clearance;

ii. To spell-out the evaluation criteria for such ex-ante assessment; and

iii. Lay down guidelines for the submission of Feasibility Reports (**FRs**)/ Detailed Project Report (**DPR**) so as to facilitate easy evaluation and monitoring of proposed investment schemes against benchmark figures.

9.2 The Commission's Capex Guidelines provide that Capital Investment (exceeding an amount of Rs. 10 Crores) required to be incurred for the following purpose and needs prior approval of the Commission:

i. Creation of new infrastructure in order to meet the load growth;

ii. For meeting the statutory requirements;

iii. Strengthening and increasing the efficiency of the existing assets; and

iv. Replace old/obsolete assets.

9.3 Further, the Commission's Capex Guidelines provide the methodology to be adopted by the Commission while granting 'In-principle' approval of the Proposed Investment Schemes. The relevant extract of the Capex Guidelines is as follows:

"***III] METHODOLOGY***

The following is the methodology adopted by the Commission:

B) Capital Investment Schemes:

- *For the purpose of these guidelines,* ***a Capital Investment Scheme means any non-recurring capital expenditure programme for the acquisition, construction, or improvement of a permanent facility in a particular sector (i.e., Generation, Transmission, Distribution, General, etc.) or a geographical region****.*

- *The scope of investments included in each Scheme shall be any of the following:*

a. *Works of a similar or related nature*

   i. *For example:* ***New Receiving Stations proposed at different locations within the licence area must be clubbed together and presented as a Scheme for New Receiving Stations, Schemes for modernization / augmentation of the Transmission cables must be presented together****, Information Technology Schemes, SCADA and Communication Equipment at the region/State level, Schemes for Major Replacement of Old Equipment etc.*

   ii. *Different types of Works within a geographical area, say in a District For example, all capital investments covered under a District Integrated Scheme can be presented together as a Scheme. ----*

   iii. *An independent identifiable project as would be submitted to a financial institution like REC, PFC, etc or for funding under APDRP."* -----------------*[Emphasis added]*

9.4 As per the Capex Approval Guidelines, it is evident that the methodology for approval of capital investment Schemes provides for the scope of investment included in the Scheme. Hence, the clubbed DPR seeking proposed investment towards replacement of existing equipment of HPGS was submitted by TPC-G in accordance with the Capex Guidelines, after completion of their Useful life.

9.5 The equipment proposed for replacement have been capitalised in the books of Gross Fixed Assets (**GFA**) of TPC-G as well as approved in ARR. O&M expenditure incurred towards Repair and Maintenance activities on these assets was never claimed under capital expenditure.

9.6 While rejecting proposed scheme, the Commission has neither provided any specific reason for considering the said scheme under R&M expenditure nor has specified the relevant clauses from the Capex Approval Guidelines according to which the said Scheme is not allowed under the Capital Expenditure. In fact, the TPC-G in its DPR as well as further correspondence had clearly explained that the various options were studied, and it was submitted that work under Capital expenditure is justified. However, the Commission has denied the proposed scheme under the Capital Expenditure by merely stating that the scope of work proposed and specified by TPC-G under the said DPR, is in the nature of Repair and Maintenance.

Commission's Analysis and Rulings:

9.7 TPC-G has relied on the provisions of the Capex Approval Guidelines to substantiate its claim of capital expenditure citing that the Guidelines has provisions for replacement of the existing old and obsolete assets.

9.8 TPC-G had submitted DPR for replacement of existing equipment at its various HPGS for in-principle approval as per Capex Investment Guidelines and MYT Regulations,2019. The brief scope of work proposed by TPC-G is as follows:

Sr. No.	Scope of the work	Location of HPGS
1	Replacement of 24 MW and 25 MW Generator Excitation Control Systems.	Bhira, Bhivpuri Khopoli
2	Replacement of Current Transformers (CTs,) Capacitive Voltage Transformers (CVTs) and Lightning Arresters (LA).	Bhira Bhivpuri Khopoli
3	Replacement of 110 kV Circuit Breakers	Bhira Bhivpuri Khopoli
4	Upgradation of Unit Protection Relays	Khopoli
5	RGMO and FGMO Implementation for Bhira Hydro Machines	Bhira
6	Upgradation of 220 kV Control & Protection Panels	Bhira
7	Upgradation of 110kV Control & Protection Panels	Bhivpuri
8	BPSU CO2 Protection System Replacement	Bhira
9	250 kVA DG Set Automatic Mains Failure (AMF) Panel replacement	Khopoli
10	Replacement of 250 kVA DG Set.	Bhira
11	Replacement of 220V, 48V & 24V battery banks and chargers.	Bhira Bhivpuri Khopoli
12	Replacement of 110 kV GODs	Khopoli Bhivpuri
13	Replacement of UPS for Bhira OPH and BPSU	Bhira
14	Replacement of ACDBs	Khopoli Bhivpuri

9.9 From the above Table it is clear that TPC-G has submitted fourteen types of clubbed works for three HPGS located at different locations. The Commission notes that Capex Approval Guidelines do provide replacement of old/obsolete assets, clubbing the similar nature of scope. However, it is worthwhile to note that such provisions of the Capex Approval Guidelines are subject to certain qualification criteria that needs to be fulfilled by the proposed scheme for execution under capital expenditure. The Capex Approval Guidelines specifically provides the approach, methodology, evaluation criteria and feasibility reports for ex-ante assessment of major investment schemes for in-principle clearance. Further, the Guidelines also provide that capital expenditure schemes should fulfil the important criteria such as creation of new infrastructure in order to meet the load growth, strengthening of existing system, increase in efficiency of the existing system, major replacement of old / obsolete assets, acquisition/construction, or improvement of a permanent facility etc.

9.10 On scrutiny of the DPR as per the provisions and objectives of the Capex Approval Guidelines and MYT Regulations,2019, the office of the Commission has raised the queries seeking justification of the schemes, such as benefits of the schemes, justification for capital expenditure, COD of the assets proposed for replacement, difficulties in execution of the scheme under O&M, rate reasonability, justification for quantity etc. **Accordingly, considering the submission in the DPR and replies submitted by TPC-G, the Commission vide its letter dated 19.4.2021 has approved the DPR for replacement of the equipment at HPGS under O&M budget as the scheme did not qualify the criteria of capital expenditure.**

9.11 The observations and the direction of the Commission in the aforesaid approval letter are summarised as follows:

> " ----
>
> ***2. The scope of work proposed by TPC-G is of R&M nature. Hence, TPC-G is directed to execute this work under R&M budget instead of capital and shall not claim RoE.----***
>
> ***6. The Regulation 24.7 of the MERC MYT Regulations, 2019 provides that the Generating Company or Licensee or MSLDC should ensure that O&M expenses should not be claimed as capital expenses.***
>
> ***7. Important criteria to treat the expenditure as capital is that such expenditure shall increase the transformation capacity / Augment the capacity / increase revenue from the assets/efficiency of the system / life of assets etc. However, in this case the work proposed by TPC-G does not fulfill the said criteria.-----"***
>
> *8. It is fact that the appropriate care to keep proper safety for existing equipments is necessary and thus required to execute modifications timely. It is also necessary in view of maintaining uninterrupted power supply. It does not mean that work shall be executed under capital expenditure. The purpose of the scheme could be sufficed even if executed under R&M budget.*
>
> *9. It is a fact that the execution of the O&M schemes as capital expenditure will increase financial burden on the consumers. Hence, it is directed not to submit/claim the O&M* nature scope of work under Capex expenditure (DPR and NDPR) in future.
>
> ***----------Emphasis added***

9.12 The plain reading of the Commission's letter dated 19.4.2021 clarifies that:

a) The Commission has given justification for approval of the clubbed DPR under O&M expenditure instead of capital expenditure as per the provisions and objectives as stated in the Capex Approval Guidelines and MYT Regulations, 2019.

b) Further, while directing TPC-G to execute the scheme under O&M budget as stated in the approval letter, the Commission has applied the test criteria, as provided under Capex Guidelines, to qualify those schemes as capital expenditure which results in addition of new capacity, augmentation of existing capacity, increase in efficiency of system, increase in life of the entire project, day to day work etc. However, based on the submission in the instant Petition and DPR, it is observed that the scope of the work proposed in the DPR was repair and maintenance nature and do not qualify the as capital expenditure. Further, most of the equipment proposed for replacement have not outlived their useful regulated life. Hence, the Commission after evaluation of the has approved the DPR as O&M expenditure.

c) The Commission has evaluated the scheme considering technical, regulatory as well as the financial aspects. If O&M scope of the work gets executed as capital expenditure, then it will impose financial burden on the consumers though the scheme is not fulfilling the criteria of capital expenditure.

d) TPC-G in the Petition has repeated the submission as made out in the DPR without any new facts on the record.

e) Hence, the contention of TPC-G that the Commission has returned the scheme without any reasons and merely stating that scheme is of O&M nature does not hold valid ground.

9.13 In view of the foregoing discussion and facts involved, the decision of the Commission to approve the schemes under O&M budget was a considered decision and no change is warranted as sought by TPC-G.

10. ***Criteria as per MERC MYT Regulations, 2019:***

TPC-G's Submission

10.1 The expenditure proposed is additional Capital expenditure as envisaged under Regulation 25.2 Proviso (a) to (c) of the MYT Regulations,2019. Hence, the expenditure ought to be allowed as additional Capital Expenditure within the scope of MYT Regulations,2019.

10.2 The MYT Regulations, 2019 has recognized expenditure for replacement of equipment of Generating Companies or Licensees as a capital expenditure. In this regard, the relevant extract of the MYT Regulations, 2019 is as follows:

"24. Capital Cost and Capital Structure

24.12 ***<u>Any expenditure on replacement, renovation and modernisation or extension of life of old fixed assets, as applicable to Generating Companies or Licensees,</u> shall be considered after writing off the net value of such replaced assets from the original capital cost, and shall be computed as follows:-------***

*25.2 …Provided that in case of replacement of asse****ts deployed under the original scope of the existing project after cut-off date, the additional capitalization may be admitted by the Commission, subject to prudence check on the following grounds:***

a) <u>The useful life of the assets is not commensurate with the useful life of the project and such assets have been fully depreciated in accordance with the provisions of these Regulations;</u>

b) The replacement of the asset or equipment is necessary on account of change in law or Force Majeure conditions;

c) *The replacement of such asset or equipment is necessary on account of obsolescence of technology; and*

d) *The replacement of such asset or equipment has otherwise been allowed by the Commission."*---------***[Emphasis added]***

10.3 Further, most of the specified equipments were commissioned together with the main Generating Station (whose useful life is 40 years as per MERC MYT Regulations, 2019) but their useful life is determined based on its technical/economical usage. Accordingly, MYT Regulations, 2019 has specified separate depreciation rates to recover depreciation on the value of such fixed assets used for the business. Accordingly, the TPC-G had also depreciated these assets as per rates as specified in MERC MYT Regulations, 2019.

10.4 From the perusal of the MYT Regulations, 2019, it emerges that the Scheme proposed by TPC-G falls within the ambit of replacement of old fixed asset. Further, as the MYT Regulations itself enable incurring of expenditure on account of obsolescence of technology and the replacement of equipment which have outlived their useful life. In all such scenarios admittedly, additional efficiency may or may not be passed on to beneficiaries. In fact, the Commission in its Statement of Reasons issued along with the MYT Regulations, 2019 has also recognized that certain expenditures are necessitated to maintain the asset.

10.5 Regulation 25.4 of the MYT Regulations, 2019 is for compliance of the Revised Emission Norms. Such compliance of Change in Law in no way adds to the efficiency of the generating station. However, the Commission, to maintain the asset and to ensure that it complies with Revised Emission Norms, has stipulated an entire mechanism for such expenditures.

10.6 Hence, the reasoning provided in the letter dated 19.04.2021 while returning the instant DPR stating that capital expenditure scheme needs to increase the capacity/efficiency of the existing system, does not do justice to the scope of the Commission's MYT Regulations.

10.7 In view of the foregoing submissions, the Commission may be pleased to allow the investments proposed by TPC-G as capital expenditure, in terms of Section 62 of the EA,2003 read with proviso to Regulation 25.2 of MYT Regulations, 2019**.**

Commission's Analysis and Rulings:

10.8 TPC-G has relied on the provisions of the MYT Regulations, 2019 in support of expenditure on account of obsolescence of technology and the replacement of existing equipment which have outlived their useful life. Further, TPC-G stated that on account of replacement of such assets, additional efficiency may or may not be passed on to beneficiaries. TPC-G further referred to the Statement of Reasons issued by the Commission along with the MYT Regulations, 2019 pointing out that certain expenditures are necessitated to maintain the asset.

10.9 In this regard, various provisions of the MYT Regulations, 2019 are summarized as follows:

a) Regulation 2.1(43) of the MYT Regulations, 2019 provides that Generating Station or a unit includes building, plants, step-up transformer, switchgear, switch yard, cables, penstocks, head and tail works, main and regulating reservoirs etc. Further, Regulation 2.1(88) provides that unit in relation to a Hydel Generating Station, means turbine-generator and its auxiliaries. While executing the new Generating station all above assets are treated as integral part of the Generating Station.

b) Regulation 2.1(71) of the MYT Regulations, 2019 provides for prudence check by the Commission in terms of the reasonableness of the expenditure incurred or proposed to be incurred by the Generating Companies, Transmission and Distribution Licensees, as case may be.

c) As per Regulation 2.1(89) of the MYT Regulations,2019 useful life of HPGS is 40 years. Further, life of the protection relays and communication system is 15 years. TPC-G's existing equipments at various Hydro Stations were commissioned between the year from 1993 to 2007 as detailed out in the Table below at Para 10.10.

d) Regulation 24 of the MYT Regulations,2019 provides that on replacement, renovation and modernization or extension of life of old fixed assets, as applicable to Generating Companies or Licensees, shall be considered after writing off the net value of such replaced assets from the original capital cost.

e) Regulation 24.7 of the MYT Regulations, 2019 provides that the Generating Company or Licensee or MSLDC should ensure that O&M expenses should not be claimed as capital expenses.

f) Regulation 25.2 of the MYT Regulations, 2019 provides for conditional claim of the additional capitalization.

g) Regulation 49.1 of the MYT Regulations, 2019 provides that the maintenance expenses for Hydro Generating Stations shall be derived on the basis of the average of the Trued-up O and M expenses after adding/deducting the share of efficiency gains/losses, for the three Years ending, 31March, 2019, excluding abnormal O and M expenses, if any, subject to prudence check by the Commission. Hydro Generating Stations may undertake Opex schemes for system automation, new technology and IT implementation, etc., and such expenses may be allowed over and above normative O&M Expenses, subject to prudence check by the Commission. However, inspite of the provisions of the Regulations, TPC-G has not explored the execution of the scheme as per the provisions of the Regulation 49.1.

10.10 The completed and balance regulatory life of the proposed equipment as per the submission in the DPR is as follows:

Sr. No.	**Scope of the work**	**HPGS Names**	**TPC-G's Proposed Cost (Rs. Lakhs)**	**COD Year**	**Service life in years**
1	Replacement of 24 MW and 25 MW Generator	Bhira Bhivpuri Khopoli	764.18	2003 2000 2003	18 21 18

	Excitation Control Systems.				
2	Replacement of Current Transformers (CTs,) Capacitive Voltage Transformers (CVTs) and Lightning Arresters (LA).	Bhira Bhivpuri Khopoli	493.37	1997 2000 1997	24 21 24
3	Replacement of 110 kV Circuit Breakers	Bhira Bhivpuri Khopoli	213.23	1995 1993 1993	26 28 28
4	Upgradation of Unit Protection Relays	Khopoli	102.97	2003	18
5	RGMO and FGMO Implementation for Bhira Hydro Machines	Bhira	40.00	new	-
6	Upgradation of 220 kV Control & Protection Panels	Bhira	334.06	1996	25
7	Upgradation of 110kV Control & Protection Panels	Bhivpuri	139.13	1996	25
8	BPSU CO2 Protection System Replacement	Bhira	49.06	1998	23
9	250 kVA DG Set Automatic Mains Failure (AMF) Panel replacement	Khopoli	9.49	2001	20
10	Replacement of 250 kVA DG Set.	Bhira	60.71	1997	24
11	Replacement of 220V, 48V & 24V battery Sets and chargers.	Bhira Bhivpuri Khopoli	138.93	2010 2008 2000	11 13 21
12	Replacement of 110 kV GODs	Khopoli Bhivpuri	157.36	1998 1998	23 23
13	Replacement of UPS for Bhira OPH and BPSU	Bhira	103.48	2007 2007	14 14
14	Replacement of ACDBs	Khopoli Bhivpuri	89.91	1981 2000	30 21

Note: As per Regulation 2.1 (89) of MYT Regulations, useful life for HPGS specified as 40 years.

10.11 The above Table clarifies that TPC-G has submitted the consolidated scope of fourteen types of clubbed works from its three different HPGS, wherein part replacements of small/part equipments are proposed (e.g., replacement of AMF panel for 250kVA DG Set, replacement of Battery Set, Protection System etc.,). Further, the nature of work is of O&M. The main reliance of the TPC-G is that the proposed assets have outlived 40 year regulated life. However, as per the information tabulated in the Table above it is clear that most of the equipment have not completed the regulated life of 40 years.

10.12 As mentioned above at Para 10.9 (c), the Regulation 2.1(89) of the MYT Regulations,2019 provides useful life of HPGS as 40 years and that of communication system as 15 years. The aforesaid Regulations do not provide specific useful regulated life for individual items of HPGS such as Battery Set, Battery Charger, Uninterrupted Power Supply, Protection and Relay Panels, SCADA system etc. Further, it is true that practically some such items may not be available throughout the useful regulated life of 40 years as defined in the MYT Regulations. Hence, these assets might need upgradation/replacement intermediately though useful regulated life of HPGS is not exhausted. Further, these items are a small part of the entire HPGS. Considering these practical aspects, the Commission is of the view that such part work of HPGS can be executed under Repair and Maintenance expense head.

10.13 It is worthwhile to note that TPC-G has accepted that as per the MYT Regulations, 2019, the regulated life of HPGS and protection & communication system is 40 years and 15 years respectively. However, to claim the replacement of the proposed equipments as capital expenditure, TPC-G is relied on the economic life of the equipments. TPC-G's argument is that the assets proposed for replacement are part of the GFA of TPC-G and fully depreciated as per the depreciation schedule provided in the MYT Regulations,2019. Hence the assets need to replace as capital expenditure. However, said argument of TPC-G is not justified. The Commission further notes that the Regulations 28.1(b) of the MYT Regulations, 2019 provides that Generating Company or Licensee or MSLDC shall ensure that once the individual asset is depreciated to the extent of seventy percent, remaining depreciable value as on 31st March of the year closing shall be spread over the balance Useful Life of the asset including the Extended Life (irrespective of rate of depreciation). Further, Generating Company or Licensee or SLDC shall submit all such details or documentary evidence as may be required, to substantiate its claim. The salvage value of the asset shall be considered at ten per cent of the allowable capital cost and depreciation shall be allowed upto a maximum of ninety per cent of the allowable capital cost of the asset. As per the provisions of the MYT Regulations, 2019 it is clear that any asset cannot be fully depreciated without completion of the useful regulated life as depreciation beyond seventy percent has to spread over balance useful life and useful life of the assets cannot be decided based on the depreciation schedule provided in the MYT Regulations, as sought by TPC-G. Hence, TPC-G's claim that the assets are depreciated without completion of the regulated life is differing to the provisions of the MYT Regulations,2019. If the assets get replaced without completion of regulated life then there would **not be any sanctity to the provisions of the regulated life of the assets in the MYT Regulations, 2019.**

10.14 Hence, premature replacement of the assets through capex is inconsistent with the Provisions of the Capex Approval Guidelines and the MYT Regulations 2019 and it will increase unjustified additional burden on the consumers in terms of increased ARR. Keeping these aspects in mind, in the MYT Regulations, 2019 minimum life of the regulatory assets has been defined.

10.15 Further, TPC-G's arguments is that its scheme is qualified as per the provisions of the Regulation 25.2 as Additional Capital Expenditure as per MYT Regulations, 2019 and Regulation 24(replacement of the fixed assets). In this regard, it is to note that the provisions of the Regulation 25 of the MYT Regulations, 2019 would be applicable to the capital expenditure scheme and not for O&M scope of work for premature replacement of the existing assets under pretext of capex. Further, the applicability of the Regulations 25.2 is conditional such as for fully depreciated assets, change in law etc. However, TPC-G's case is not a fit case as it is premature replacement of the existing working assets and the scope of work is of O&M nature.

10.16 Further, considering the financial aspects involved and additional O&M expenses required to execute the scheme, the Commission rules that TPC-G may approach the Commission in the Mid Term Review or the Multi Year Tariff Petition with justification for approval of additional amount, if allocation for Repair and Maintenance falls short because of execution of instant scheme.

10.17 Hence, based on the submission in the Petition and analysis carried out above, reliance of TPC-G on the provisions of MYT Regulations, 2019 for its claim of capital expenditure is not justified.

11. ***Capital Expenditure criteria as per CEA's Guidelines for Renovation and Modernization(R&M) /Life Extension (LE) Works of Coal/Lignite Based Thermal Power Plants (for scheme of replacement of 110 kV switchyard equipments)***

TPC-G's Submission

11.1 The Ministry of Power (MoP), Government of India through CEA in February 2020, issued Guidelines for R&M/LE Works of Coal/Lignite Based Thermal Power Plants. The said Guidelines specifically provides that the activities which are in repetitive nature and has frequency once in five years, falls under the category of operational expenditure. In this regard, the relevant extract of the said Guidelines is reproduced below.

> *4.1.2* ***However, R&M is not a substitute for regular annual or capital maintenance/overhaul which forms a part of operation and maintenance (O&M) activity****.* ***Middle life R&M come up preferably after 100,000 hrs. of operation. RLA study and R&M of thermal units which were designed for base load operation may be required even before due to participation in flexibilisation***
>
> *4.5 WORKS NOT RELATING TO R&M / LIFE EXTENSION:*
>
> *4.5.1 In general, works usually done under* ***routine maintenance and annual or capital maintenance do not fall under the purview of R&M Program****me.* ***The repetitive nature of activities having the frequency once in five year or less is covered under O&M."***
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> ***-----[Emphasis Supplied]***

11.2 Hence, various replacements sought by TPC-G in the respective DPR submitted before the Commission were not replaced at repeated intervals but, said replacement is proposed only after the completion of its Useful Life. Therefore, the equipment proposed for replacement are capital expenditure as per the CEA Guidelines as well as the Commission's Regulations.

Commission's Analysis and Rulings:

11.3 The basic objectives of the CEA's Guidelines for R&M /LE Works of Coal / Lignite Based Thermal Power Plants notified in the year 2020 are as follows:

i. To make operating units well equipped with modified/augmented equipment/components /systems, with a view to improve their operating performance, reliability and availability to the original design values, reduction in maintenance requirements, ease of maintenance and enhanced efficiency, meeting the latest emission levels and achieving flexibility in generation.

ii. To meet the emission norms such as SO2, NOx etc

iii. To bring down the variable cost of energy to the consumers etc.

11.4 Further, the said CEA's Guidelines specifically provides that the expenditure on O&M nature scope is to be met from O&M charges recovered through tariff for sale of electricity as notified by Regulatory Commission. O&M work ought to be attended on a regular basis lest the condition of the unit deteriorates to such an extent resulting in major breakdowns requiring huge expenditure.

11.5 The CEA's Guidelines further provides that following works should not be included as a part of Renovation and Modernisation and needs to be executed as O&M works:

a) General civil works within the plant ,

b) Procurement of spare equipments,

c) Routine repairs/replacements during annual /capital overhauls.

11.6 In view of the above, it is clear that the CEA's Guidelines specifies that Renovation and Modernisation scheme executed under capital expenditure should increase the operating performance, reliability and availability, reduction in maintenance requirements, enhanced efficiency etc. Further, it provides that O&M nature scope of work as a general civil works, spare equipments and replacement during annual/capital overhauls shall not be claimed as capital expenditure.

11.7 TPC-G has clubbed O&M nature scope and submitted the scheme as capital expenditure. Thus, reliance of TPC-G on capital expenditure criteria as per the CEA Guidelines for R&M/LE Works of Coal/Lignite Based Thermal Power Plants does not hold the ground as DPR under consideration belong to the Hydro Power Stations of TPC-G. In any case in terms of the CEA guidelines, TPC-G scheme is not for Renovation and Modernisation as the capacity and life of Hydro Power Stations is not getting enhanced. Proposed scheme is in the nature of routine maintenance and upkeep of the asset.

12. ***Criteria as per Accounting Standards 16 (Ind AS 16)***

TPC-G's Submissions:

12.1 As per Indian Accounting Standards 16 (Ind AS16), Property, Plant and Equipment are the tangible items that: (a) are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and (b) are expected to be used during more than one period. Thus, the assets proposed under the DPRs which have been referred back by the Commission are equipment used for the transmission of electricity and which will be in service for more than one year. Hence, these equipments squarely fall under capital expenditure.

12.2 Further, as per Ind AS 16, an item of property, plant and equipment that qualifies for recognition as an asset shall be measured at its cost.

12.3 In view of the above, the equipment proposed for replacement in DPRs are part of GFA of TPC-G. The benefits arising after replacement of these equipment will be accrued over their Useful life. Further the proposed equipment sought for replacement under the respective DPRs submitted will be capitalised in the books of accounts of TPC-G in line with Accounting Standard.

12.4 As per clause 12 of Ind AS 16, the cost of "day-to-day" services, in the form of costs of labour, consumables, and may include the cost of small parts are described as costs towards "repairs and maintenance" of the item of property, plant and equipment.

12.5 Further, items of property, plant and equipment may require replacement at regular intervals. The carrying amount of those parts being replaced is derecognised on disposal and/or when no future economic benefit are expected from its use. The recognised costs, due to the replacement, is set off as gain or loss.

Commission's Analysis and Rulings:

12.6 The Commission notes that in support of capital expenditure of the scheme, TPC-G has referred to the provisions of the Ind AS 16. The Ind AS 16 prescribes the accounting treatment for the property, plant, and equipment. The Ind AS 23 deals with the qualification of the capital assets and treatment of borrowing costs that are directly attributable to the assets.

12.7 The Provisions of the Ind As 16 are as follows:

"6.--------

Property, plant and equipment are tangible items that:

(a) are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and

(b) are expected to be used during more than one period. -----

Recoverable amount is the higher of an asset's fair value less costs to sell and its value in use.

The residual value of an asset is the estimated amount that an entity would currently obtain from disposal of the asset, after deducting the estimated costs of disposal, if the asset were already of the age and in the condition expected at the end of its useful life.

Useful life is:

(a) the period over which an asset is expected to be available for use by an entity; or

(b) the number of production or similar units expected to be obtained from the asset by an entity. ------

Recognition

7 The cost of an item of property, plant and equipment shall be recognized as an asset if, and only if:

(a) it is probable that future economic benefits associated with the item will flow to the entity; and

(b) the cost of the item can be measured reliably. -----

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9 This Standard does not prescribe the unit of measure for recognition, i..e what constitutes an item of property, plant and equipment. Thus, judgement is required in applying the recognition criteria to an entity's specific circumstances. -------

"12 Under the recognition principle ***in paragraph 7, an entity <u>does not recognize in the carrying amount of an item of property, plant and equipment the costs of the day to-day servicing of the item</u>. Rather, these costs are recognized in profit or loss as incurred. Costs <u>of day-to-day servicing are primarily the costs of labour and consumables and may include the cost of small parts. The purpose of these expenditures is often described as for the 'repairs and maintenance' of the</u> item of property, plant and equipment."***

"16 The cost of an item of property, plant and equipment comprises:

(a) its purchase price, including import duties and non-refundable purchase taxes, after deducting trade discounts and rebates.

(b) any costs directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management. ---

-----[Emphasis Supplied]

12.8 Further, the provisions of the Ind AS 23 are as follows:

<u>"---A qualifying asset is an asset that necessarily takes a substantial period of time to get ready for its intended use or sale</u>.

7. Depending on the circumstances, any of the following may be qualifying assets:

(a)inventories
(b)manufacturing plants
(c)power generation facilities
(d)intangible assets etc -----

Recognition

8 An entity shall capitalize borrowing costs that are directly attributable to the acquisition, construction or ***production of a qualifying asset as part*** *of the cost of that asset.* ***An entity shall recognize other borrowing costs as an expense in the period in which it incurs them.***

9 Borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset are included in the cost of that asset. Such borrowing costs are capitalised as part of the cost of the asset when it is probable that they will result in future economic benefits to the entity and the costs can be measured reliably.

12.9 From the above citations it is clear that the Ind AS 16 and AS 23 clarify the difference between capital expenditure and Repair and Maintenance expenses. Ind AS 16 also provides accounting method of qualified asset at the time of its disposal in the books of account. Clause 7 of the Ind AS 16 provides that cost of an item of property, plant and equipment shall be recognized as an asset, only if, there are future benefits to the entity and cost of the item can be measured reliably. Ind AS16 does not provide any criteria the property, plant and equipment for recognition as qualified assets for example completed and balance life of the asset, type of assets etc. Hence, criteria for recognition needs to be applied based on case to case basis. As per clause 12 of the Ind AS 16, costs of day-to-day servicing of the assets are primarily costs of labour and consumables and may include the cost of small parts and treated as repairs and maintenance expenses of the assets.

12.10 Further, Ind AS 16 does not provide provisions of useful life of the assets. Ind AS 16 does not address the specific provisions of the Regulated business and the Regulations governing the Regulated business where the expenses are a passthrough and Return on Equity is also guaranteed. Thus, the Regulatory life of the equipment proposed for replacement cannot be ignored. Also, regarding replacement of the parts of the assets no specific **cr**iteria is defined in Ind AS 16. It only provides that if the assets are recognized as per clause 7 then its cost of replacement needs to be considered as capital expenditure.

12.11 Principally, initial investment on machines and their accessories will be of capital expenditure, but the replacement of parts of an existing working machinery/plant for its upkeep for day to day working will be a Repair and Maintenance expenditure. Even if the replacement of the assets under consideration is expected to be used for more than one year, emphasis should be placed on whether there is increase in capacity of the existing system or the addition of capacity is done, or merely to operate the existing assets. Thus, improvements resulting in a better, more efficient or more productive asset, can be termed as capital asset addition. Further, the costs incurred to maintain the asset to its present condition needs to be treated as Repair and Maintenance cost.

12.12 In specific to the HPGS and the present case, if the assets are newly created such as construction of new HPGS, Renovation and Modernization of existing HPGS, major replacement of the asset with higher capacity etc which results in higher Generation Capacity , then such expenses can be treated as capital expenditure.

12.13 As elaborated previously in the present case, scope of work proposed by TPC-G is for replacement/repair of the existing working assets without any capacity addition or efficiency improvement of the existing system. Therefore, such O&M expenditure needs to be treated as part of repair and maintenance costs.

12.14 Further to the observations at Para 12.10 above, TPC's Generation Business is a regulated business. TPC-G has proposed execution of the schemes under Section 62 of the EA2003. The scope of work proposed for replacement is part of the exiting HPGS. TPC-G's ARR is determined as per the provisions of the MYT Regulations, 2019 as per defined criteria. The MYT Regulations, 2019 defines the life of the Generation Assets as 40 years and there is no specific schedule to replace the part assets. Further, capital expenditure for determination of the ARR needs to be considered as approved by the Commission. While discharging the said function under Section 62, the Commission is required to consider provisions including the provision of protecting the interest of the consumers.

12.15 It is worthwhile to note that in its DPR, TPC-G has referred to the provisions of the Ind AS 16 in support of its claim. However, as the scope of work proposed by TPC-G was under Repair and Maintenance nature and not under Capital Expenditure and accordingly the Commission has approved the DPR under O&M expense.

12.16 In view of the above, TPC-G's claim of capitalization for replacement of parts of the existing assets based on the provisions of Ind AS is not justified.

13. ***In-consistent Approach from the Past 'In-principle' approval granted by the Commission***:

TPC-G's Submission

13.1 TPC-G in the past has sought approval of Schemes of similar nature and the same were allowed by the Commission under Capital Expenditure.

13.2 The Commission vide its letter dated 09.03.2012 had approved the DPR for upgradation of protection at TPC-G's Bhivpuri, Khopoli and Bhira Hydro Generating Station. Further, the Commission vide its letter dated 2.2.2011 had also approved the DPR for replacement of the equipment at various Hydro Power Stations.

13.3 Thus, equipments which all these years were approved by the Commission under capital expenditure are now being treated as Repair and Maintenance that too without any amendment to existing MYT Regulations, 2019 or to the MERC Capex Approval Guidelines. Therefore, the letter dated 19.04.2021 has departed from the past practise of the Commission and needs to be reconsidered as capital expenditure.

Commission's Analysis and Rulings:

13.4 Regarding the reliance of TPC-G on past 'In-principle' approval granted for the similar nature of the schemes, the Commission notes that:

a) The Commission in the past has approved the capital expenditure schemes based on the extant MYT Regulations and evaluation framework applicable at that point of time. Further, regulatory development and improvement is a continuous process and based on the case studies, higher court Orders, relevant provisions need to be added/modified in terms of the Regulations and also are required to be scrutinised on case to case basis. Similar is the case regarding approval of the capital expenditure schemes.

b) The schemes mentioned by TPC-G were approved in the year, 2011 and 2012. Thereafter, the Commission has notified the MYT Regulations, 2019 wherein it is categorically specified that the R&M nature schemes shall not be claimed as capital expenditure scheme. The Commission also needs to be prudent while approving expenditure more so in a regulated environment. For this reason, the MYT Regulations,2019 provides for the prudence check for addition of the new capital asset / replacement of the existing capital asset. Accordingly, the Commission, as part of prudence check (which would be ever evolving) has scrutinised the schemes using improved yardsticks such as, nature of the work, life of the assets, benefits to the consumers, need of the system, increase in efficiency, augmentation of the existing capacity, put to use of the assets, etc., in the interests of the consumers and power system. Based on the provisions of the MYT Regulations,2019, the Commission has also directed to execute the schemes of different utilities, as tabulated below, under Repair and Maintenance instead of capital expenditure. This is done with the objective that O&M nature scheme shall be executed under Repair and Maintenance. Simultaneously, due care has been taken to protect the functional ability of the utilities for execution of their necessary activity in a timely manner to maintain power system and keep the associated supportive systems healthy. Accordingly, necessary expenses are allowed to be incurred over and above O&M limit which are found prudent, but the Commission cannot accept the replacement of assets and additional recovery from the consumers, which are expected to perform over longer life as defined in the MYT Regulations, 2019.The schemes of different utilities approved by the Commission under Repair and Maintenance are as follows:

S.N	Utility	Capex Name /Cost	Date
1	TPC-T	Rehabilitation of transmission lines for Life Enhancement & safety (Rs. 25.48 Crore).	30.1.2018
2	TPC-T	Replacement of the part conductors/ Insulators /towers of the different lines (Rs. 12.16 Crore)	24.7.2020
3	MSETCL	Procurement and Retrofit of Numerical Distance Protection Relays and Back-up Protection Relays along with Trip Relays for various EHV lines and substations of MSETCL. [Cost: Rs. 34.01 Cr]	7.9.2020
4	MSETCL	Up-gradation of existing HVDC Control & Protection System to suitable version MACH System of MSETCL's Chandrapur - Padghe HVDC Bipole link [Cost: Rs. 343.17 Cr]	2.11.2020

5	TPC-T	Replacement of 1 X 75 MVA, 110/22 kV Power T/Fs at Malad RSS [Cost: Rs. 12.47 Cr]	23.8.2020
6	TPC-T	Replacement of 1 X 75 MVA, 110/22 kV Power T/Fs at Saki RSS [Cost: Rs.12.12 Cr]	23.8.2020
7	AEML-G	Refurbishment and automation of systems and equipment. [Cost: Rs, 20.92 Crores]	24 .2.2021
8	AEML-G	Coal Handling Plant Refurbishment. Cost: 14.31 Cr	19.4.2021
9	AEML-G	Installation of electro chlorination system. Cost: 17.83 Cr	
10	AEML-G	Refurbishment of Coal mill. Cost: 13.57 Cr	
11	AEML-G	Refurbishment of Boiler:, Cost: 121.15 Crs.	
12	AEML-G	Security Automation. Cost: 20.79 Cr	
13	AEML-G	Installation of MOIS, Replacement of SADC, Replacement of flame scanners and system for both units, replacement of station battery sets & Raw water treatment system. Cost: 22.22 Cr	
14	AEML-T	Re-routing of the existing 220 kV Cables for facilitating the construction of MCGM bridge. [Cost: Rs. 17.23 Crore]	26.4.2021

c) From the above Table, it is clear that, from the recent past, the Commission as a part of the prudence check, has given uniform and similar treatment for all utilities in respect of the execution of the schemes under Repair and Maintenance .

d) Further, the past approval cannot be the only basis for all the future approvals. The past approvals of the schemes were based on the submission and facts applicable at that point of time and hence cannot be directly compared with recent approvals. Even if the past approval had different criteria from the current principles applied for approval, it does not mean that the same will be automatically applicable for future. The approvals granted by the Commission for schemes under consideration are based on the current scenario and facts involved in the scheme, provisions of the Capex Approval Guidelines and are consistent with the MYT Regulations, 2019.

e) The Commission also notes that the existing Capex Approval Guidelines were notified in the year 2005 and are more than 16 years old. Power Sector is very dynamic in nature and there have been significant changes in the business environment of power sector utilities since the notification of the Capex Guidelines in 2005. Other factors such as technology upgradation, commercial upliftment, increased level of power consumption, need for investments, introduction of competition, efficient utilization of resources has led to transformation in the scenario under which Capex Schemes are carried out by the entities over the years. Also, there are development/ transformation in the power sector scenario such as adoption of latest technologies viz GIS, Numerical protection, latest Communication and SCADA etc., under which Capex Schemes are carried out by the entities. Further, there is also a continuous learning on the scrutiny of these Capex Schemes and approach adopted in various MYT/MTR Orders. Hence, there is need to update the scheme evaluation criteria and streamline the filing and approval process of Capital Investment Schemes. That being the case and considering the clarity required between scope of capital expenditure and O&M expenditure in the existing Capex Approval Guidelines, particularly for replacement of the equipment of the existing scheme, the Commission has also initiated the process of review (in parallel) of its existing Capex Approval Guidelines.

f) In this respect it is worthwhile to note that in a Regulatory regime, the decisions should normally be consistent with the earlier decision of the same forum and in line with Regulations. This general rule is for bringing about parity of treatment amongst absolutely similarly placed cases. In practice, however, the cases need not be 100% similar and further the decisions are dynamic with passage of time and the changes in the scenario, technological or legal mandates, in which the cases are dealt. More important is to uniformly apply the decisions across all the similarly placed cases.

13.5 **Hence, claim of TPC-G to approve the schemes under consideration as capital expenditure on the basis of the Commission's past approval is not justified**.

14. ***Compliance Requirement to Reserve Bank of India (RBI) Master Circular*:**

TPC-G's Submission

14.1 The equipment sought for replacement in the present DPR are part of GFA of TPC-G. Earlier these assets were financed through long-term loans raised towards fixed asset procurement. Thus, the items which will be procured under present DPRs will create fixed assets which have economic life/useful life of over seven to ten years.

14.2 In this regard, the Master Circular dated 11.08.2005 issued by the RBI on Management Advances, updated up to 30.06.2005 denies the usage of working capital funds to acquire fixed assets. The DPRs submitted by TPC-G fall under the category of Capital Expenditure. Hence, acquiring the equipment proposed in the submitted DPRs under R&M will be contrary to the provisions of the said Master Circular issued by the RBI.

Commission's Analysis and Rulings:

14.3 The Commission notes that the objectives of the RBI's Master Circular referred by TPC-G are to monitor the usage of the loans granted by the banks to the borrowers. It also provides the yard stick to check the misuse of the funds by the borrowers, action to be taken by the banks in case of the defaults, violation of the terms and conditions of the approval etc.by the borrower.

14.4 The relevant provisions of the RBI Master Circular in respect of monitoring operations in loan accounts are as follows:

"4.6. Monitoring Operations in Loan Accounts

4.6.1 Diversion of Funds

*Some of the bank clients are known to be making large cash withdrawals. It is quite possible that such cash withdrawals ma**y be used by the account holders for undesirable or illegal activities. While cash withdrawals cannot be refused, b**anks should keep a proper vigil over requests of their clients for cash* withdrawals from their accounts for large amounts.

4.6.2 Post-Sanction Monitoring

*(i) It is the primary responsibility of banks to be vi**gilant and ensure proper end use of bank funds /monitor the funds flow. It is, there**fore, necessary for banks to evolve such arrangements as may be considered necessary to ensure th**at drawals from cash credit/overdraft accounts are strictly for the purpose for which the credit limits are sanctioned by them. There should be no diversion of working capital finance for acquisition of fixed assets,** investments in associate companies/subsidiaries, and acquisition of shares, debentures, units of Unit Trust of India and other mutual funds, and other investments in the capital market. This has to be so, even if there is sufficient drawing power/undrawn limit for the purpose of effecting drawals from the cash credit account. ----*

6.3 Diversion and siphoning of funds

6.3.1 Diversion of funds would be construed to include any one of the under-noted occurrences:

(a) utilisation of short-term working capital funds for long-term purposes not in conformity with the terms of sanctions;

(b) deploying borrowed funds for purposes / activities or creation of assets other than those for which the loan was sanctioned;

(c) transferring funds to the subsidiaries / group companies or other corporates by whatever modalities; --[Emphasis added]

14.5 The aforesaid provisions of the RBI Master circular proposes that the usage of the fund should only be for the purpose for which it is granted by the banks.

14.6 Further, it is a principle that the short term fund shall not be used for creation of long term assets. TPC-G in the present case is presuming that scheme proposed by it is in the nature of capital expenditure and if such scheme is executed under O&M budget then it will be violation of the RBI circular. However, to decide applicability of the RBI circular, first it is necessary to decide the nature and scope of the work of the scheme proposed by TPC-G. As long as TPC-G is executing O&M and capital nature scheme under respective head there will be no violation of the RBI circular.

14.7 The intent of provisions of the Capex Approval Guidelines, MYT Regulations,2019, CEA Guidelines on capital expenditure of thermal power plants etc, Ind AS 16 and 23, the Commission in- principle approvals, is that O&M nature and capital expenditure work should be executed under respective heads.

14.8 TPC-G has proposed the scheme under Section 62 of the Act and before execution of the scheme, the Commission's in-principle approval is required. Based on the approval of the Commission, the scope of the work and whether it is capital expenditure or O&M expenditure gets fixed and according TPC-G has to finalise the financial tie up with the lenders. If TPC-G uses the appropriate fund for execution of the scheme as per approval of the Commission, then there will be know any issue of violation of the RBI Circular.

14.9 RBI circular does not provide the criteria for the capital nature or O&M nature work. The present case is to decide whether the proposed expenditure is capital in nature or not. Further, the Commission approves the schemes as per the provisions of the Capex Approval Guidelines and MYT Regulations, 2019. TPC-G's argument is that its scheme qualifies the criteria of capital expenditure. However, as explained above, TPC-G's scheme has scope of work which is of O&M nature.

14.10 In this regard, in the past, MSEDCL vide Appeal No. 46 of 2007 (MSEDCL v/s MERC) had challenged the Commission's capex approvals before the Hon'ble APTEL. The Hon'ble APTEL vide its Judgement dated 21.5.2007 has ruled that provisions of the MYT Regulations specifically empowers the Commission to grant clearance with modifications and conditions as it may deem appropriate. The Hon'ble APTEL ruled that striking down the provisions of the Regulations is beyond the jurisdiction of the Tribunal. Accordingly, the Hon'ble APTEL has disposed of the Appeal and directed the Commission to allow a fresh opportunity to MSEDCL to explain technical and commercial impact of the project and decide the matter accordingly. Similarly, the Hon'ble APTEL vide its judgment dated 29.5.2019 in Appeal No.250 of 2016(ATIL v/s MERC) while deciding the issue of the O&M expenses agitated by ATIL, has ruled that State Commission is to follow Regulations on all aspects including O&M expenses and need not adopt divergent methodology on case-to-case basis. Accordingly, the Hon'ble APTEL has held that the Commission has taken just a right decision in accordance with law and its own Regulations. Therefore, this issue was decided against the Appellant ATIL.

14.11 The Commission has approved the scheme of TPC-G to be executed as per the provisions of the Capex Approval Guidelines and MYT Regulations, 2019. In view of the above discussion reliance of TPC-G on the RBI circular supporting its claim of capital expenditure is not justified.

15. ***Obsolescence of Technology recognized as Capital Expenditure by other State Electricity Regulatory Commissions*:**

TPC-G's Submission

15.1 The Andhra Pradesh Electricity Regulatory Commission (APERC) in February 2006, has also issued *'Guidelines for Investment Approvals'* which defines the clear criteria for incurring any expenditure under capital expenditure. APERC's Guidelines allows expenses incurred on account of system improvement, generation evacuation, system replacement as capital expenditure. The Schemes specified under *'System Replacement'* shall include such Schemes formulated for the purpose of replacing existing assets on account of obsolescence of technology or on expiry of its Useful life.

15.2 Further, the CERC has notified the similar provisions in its Tariff Regulations, 2019 (provisions of MERC MYT Regulations, 2019 are similar to the CERC MYT Regulations).

Commission's Analysis and Rulings:

15.3 The Commission notes that the provisions of the CERC MYT Regulations, 2019 and the APERC Guidelines for Investment Approvals are similar to the MERC MYT Regulations,2019 and Capex Approval Guidelines, respectively. The Commission, however, approves the schemes as per the provisions of its own Capex Approval Guidelines and the MERC MYT Regulations,2019 and based on its own prudence check.

15.4 Hence, reliance of TPC-G on the provisions of the CERC MYT Regulations,2019 and APERC Guidelines for Investment Approval is not justified and do not support the proposal of TPC-G.

16. The Commission while approving the subject DPR under O&M budget has carried out due-diligence in terms of technical as well as financial including cost benefit analysis. The Commission also needs to look into efficiency, economical use of the resources, improved performance and optimum investments while execution of the schemes in the interest of the consumers as well as system. Hence, the specific queries were raised by the office of the Commission, which were also replied by TPC-G. Further, TPC-G has also referred to the provisions of the Capex Approval Guidelines, MYT Regulations, Indian Accounting Standards, etc in the DPR and replies to the queries. Hence, it is clear that that the Commission has approved the DPR prudently following due process and giving opportunity to TPC-G to submit its say. However, TPC-G in its Petition has reiterated the grounds referred in the DPR without any new facts warranting its prayers.

17. The Commission further notes that it is a settled principle of law that after passing of the judgment, decree or order, the court or the tribunal becomes functus officio and is not entitled to vary the terms of the judgments, decrees and orders earlier passed. For the aggrieved party, the proper remedy for seeking any correction on the merits of the case is to file an appeal or review application. The Commission is not expected to sit as an Appellate Authority to reconsider the earlier Order passed by it and only review jurisdiction can be exercised by the Commission and that too under only limited circumstances. It is not the case of TPC-G that review is required on the approval granted to TPC-G for correcting some error on face of record or production of new material on record which was not available at the time of approval of DPR. Rather, TPC-G is seeking approval of the DPR as capital expenditure though DPR do not qualify the requisite criteria of capital expenditure. Hence, the Commission is of the view that there is no merit in the prayer of TPC-G and hence declined.

18. In view of the foregoing discussion, analysis of the scheme scope of work, various documents kept on record, provisions of the MYT Regulations, 2019, Capex Approval Guidelines, Hon'ble APTEL's Judgments and the Commission's past approval, it is clear that the scope of the work proposed by TPC-G is O&M nature. Further, the Commission's decision to approve TPC-G's scheme for replacement of HPGS equipment as O&M expenses was a conscious and considered decision as per the provisions of the Capex

Approval Guidelines, MYT Regulations, Ind AS 16 etc. Hence, the Commission is not inclined to grant prayers of TPC-G.

19. The Commission thus directs TPC-G to immediately commence the work under O&M expenditure head. The same is to be taken up on top priority so as to ensure the Hydro Power Generating Stations' safety and security.

20. Hence, the following Order.

ORDER

1. **Case No. 78 of 2021 is dismissed.**

2. **The Tata Power Co. Ltd.-Generation may approach the Commission in the Mid Term Review Petition or the Multi Year Tariff Petition with justification for approval of additional amount , if allocation of Repair and Maintenance expenses falls short because of execution of scheme.**

Sd/	**Sd/-**	**Sd/-**
(Mukesh Khullar)	**(I.M. Bohari)**	**(Sanjay Kumar)**
Member	**Member**	**Chairperson**

(Dr. Rajendra G. Ambekar)
Secretary (I/c)