ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

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MONDAY, THE FIFTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

: Present :

Sri P.V.R.Reddy,
Member & Chairman(i/c)

R.P.No.8 of 2025 in O.P.NOs. 2 of 2025 and 8 of 2025 and I.A.No.1 of 2025 in R.P.No.8 of 2025

Between

SEIL Energy India Limited ...**Petitioner**

And

1. **Eastern Power Distribution Company of Andhra Pradesh Limited**
2. **Southern Power Distribution Company of Andhra Pradesh Limited**
3. **Andhra Pradesh Central Power Distribution Corporation Limited**

...**Respondents**

R.P.No.9 of 2025 in O.P.NOs. 2 of 2025 and 8 of 2025

Between

1. **Eastern Power Distribution Company of Andhra Pradesh Limited**
2. **Southern Power Distribution Company of Andhra Pradesh Limited**
3. **Andhra Pradesh Central Power Distribution Corporation Limited**

...**Petitioners**

And

SEIL Energy India Limited ...**Respondent**

These Review Petitions and the I.A. were taken up for final hearing on

26.11.2025 in the presence of Sri O.M.Reddy, learned Senior counsel, Sri. Yashaswi Kant & Sri.Varun Byreddy, Learned counsel, Sri A. Sreekanth, GM/Commercial for SEIL Energy India Limited; Sri Ch. Ranga Rao EE/APPCC; Sri P.Shiva Rao, learned standing counsel for APDISCOMS. During the hearing, SEIL and APDISCOMs were directed to file their respective written submissions, if any, within 3 days. SEIL filed its written submissions on 02.12.2025. The Commission, after hearing all the parties and after carefully considering the material available on record, passes the following Common Order:

COMMON ORDER

R.P.No.8 of 2025 in O.P.NOs. 2 of 2025 and 8 of 2025 and I.A.No.1 of 2025 in R.P.No.8 of 2025 (Filed by SEIL)

1. SEIL Energy India Limited (herein after referred to as 'SEIL') filed this Review Petition under section 94(1)(f) of the Electricity Act, 2003 read with Clause 49 of the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Section 114 and Order 47 Rule 1 of the Code of Civil Procedure, seeking review of the Common Order dated 17.06.2025 passed by the Commission in O.P. Nos. 2 of 2025 and 8 of 2025.

2. The grounds on which SEIL sought review of the Common Order are:

A. As per Section 94(l)(f) of the Electricity Act, 2003, read with Regulation 49 of the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Section 114 and Order 47 Rule 1 of the Code of Civil Procedure, the Commission can review its Order (a) on discovery of a new and important matter or evidence which, after the exercise of due diligence, was not within its knowledge or could not be produced by it at the time when the decree was passed or order made, or (b) on account of some mistake or error apparent on the face of the record or (c) for any other sufficient reason

B. <u>Water Charges and Security Expenses</u>

The Commission committed an "error apparent on the face of the record" by selectively applying the Central Electricity Regulatory Commission (CERC) Tariff Regulations, 2024. While the Commission admitted that its own Regulations (APERC Tariff Regulations, 2008) were silent on O&M norms for 660 MW units and therefore adopted the CERC norms for O&M (Operation & Maintenance) charges, it disregarded Regulation 36(1)(6) of the CERC Tariff Regulations, 2024. This Regulation explicitly mandates that Water Charges and Security Expenses "shall be allowed separately after prudence check" in addition to the normative O&M expenses. This selective application and disregard for a specific, applicable Regulation, despite SEIL's categorical submissions, is self-contradictory and financially prejudices the company.

The Commission's rationale for disallowance—being consistent with the approach for other intra-state generators—cannot justify disregarding binding Regulations, as Regulations possess the force of delegated legislation and APERC is legally guided by CERC principles where its own Regulations are silent. Furthermore, the Order granting SEIL only the liberty to file a True-Up Petition if actual O&M expenses exceed the approved normative amounts is also in disregard of the applicable framework, which dictates that these should be allowed as separate, additional components from the outset. Ignorance or disregard of the law and non-consideration of submissions constitute an "error apparent" and "sufficient reason" for the Commission to exercise its power of review and allow these expenses. SEIL cited multiple APTEL, Supreme Court judgements and various CERC orders in support of its arguments and requested the Commission to allow

Water Charges and Security Expenses as additional components over and above the allowed Normative O&M Expenses.

C. <u>Sampling of coal</u>

There is an error apparent in the Order under Review, as the procedure mandated in the Order for measuring Gross Calorific Value (GCV) of coal is not possible for the plant. The Commission directed sampling to occur from loaded wagons before unloading, based on a 2016 CERC Order. However, SEIL operates a coastal plant where coal arrives via a rail-sea route and is immediately transferred from the port to the power station using a dedicated, closed conveyor system, meaning the plant does not receive coal through wagons at its facility. Furthermore, sampling from the moving conveyor belt is disallowed by the safety provisions of the relevant Indian Standards (IS 436). This makes the Commission's direction impractical and non-applicable to SEIL's infrastructure. SEIL has already submitted a representation to the Commission detailing this difficulty. SEIL is currently using an approved sampling agency and providing test results to the DISCOMs. As an alternative, the Commission may permit SEIL to collect samples for GCV measurement from stockpiles while stacking at the power station during the discharge of coal from the conveyor system, as this would still comply with all applicable IS procedures and safety standards, as well as the terms of the PPA.

D. <u>Deduction in Variable Charges for shortfall in monthly availability</u>

The Commission ordered a deduction of 5, 10, or 15 paise per unit if the monthly availability falls up to 5%, between 5% and 15%, or exceeds 15% below the normative/target level, respectively. This direction constitutes an error apparent as it is in complete disregard of the relevant regulatory framework. The PPA does not provide for a

penalty or deduction in variable costs for availability shortfall. Furthermore, neither the APERC Tariff Regulations, 2008 nor the CERC Tariff Regulations, 2024 stipulate any deduction in variable charges for availability shortfall; they only set the Target Availability (80% in APERC, 85% in CERC) for the full recovery of Annual Fixed Charges.

The Commission, as a creature of statute, must adhere to the provisions of the PPA and applicable Regulations. By directing deductions from variable charges based on monthly availability shortfalls, the Commission has exceeded the scope of the APERC and CERC Tariff Regulations and the PPA itself. The Commission's reliance on orders passed for APGENCO/APPDCL thermal stations cannot justify disregarding the specific provisions governing SEIL's contract and operations. The same contradicts the established regulatory and contractual framework. Thus, there is an "error apparent" on record and a "sufficient reason" for the Commission to exercise its power of review and withdraw the direction for variable charge deductions.

E. <u>Reimbursement of Application Filing Fees and Publication Expenses</u>

The Order under Review contains an error apparent because it disregarded SEIL's entitlement to reimbursement of expenses incurred during the tariff determination process, including application filing fees and publication expenses, totalling Rs. 1,57,76,860/-. This entitlement is expressly provided under Regulation 94 of the CERC Regulations, 2024, which stipulates that the application filing fee and expenses incurred on the publication of notices for tariff approval may, at the Commission's discretion, be allowed to be recovered directly from the beneficiaries (in this case, APDISCOMs). By failing to specifically allow for this reimbursement in the Order, the

Commission has violated the principle of *actus curiae neminem gravabit* (an act of the court shall prejudice no one), which is a sufficient reason for review under Order 47 Rule 1 of the CPC. SEIL's apprehension is that APDISCOMs will likely reject the reimbursement claim since the Order under Review does not explicitly provide for it. Therefore, the Commission, in exercise of its power of review, may specifically direct APDISCOMs to reimburse the filing fee and publication costs by allowing SEIL to issue a Supplementary Invoice.

F. Reimbursement of the Processing towards securing SHAKTI B (iii) coal

SEIL paid the Processing Fee to Mahanadi Coalfields Limited (MCL), a subsidiary of Coal India Limited, for the allocation of coal under the Shakti B(iii) scheme. The payment was made pursuant to an MCL Debit Note dated 31.12.2024, which SEIL received on 30.06.2025, after the Commission passed the Order under Review on 17.06.2025. The late receipt of this Debit Note constitutes the discovery of a new and important matter or evidence and is a valid ground for review under Order 47 Rule 1 of the CPC, as the document was not in SEIL's knowledge and could not have been produced during the original proceedings despite due diligence. Such a discovery during the course of the proceedings would have altered any findings in the Order under Review.

The Processing Fee towards securing SHAKTI B (iii) coal is a necessary component of the Landed Cost of Fuel and, therefore, must be reimbursed as part of the Energy Charges. The same is supported by the definitions in Clause 15.2.4 of the PPA, Clause 13.1(c) of the APERC Regulations, 2008, and the broader definition of 'Landed Fuel Cost' in the CERC Tariff Regulations, 2024, which seeks to prevent under-recovery of the total cost of coal. Since the fee was incurred to

secure the coal needed for power supply, the Commission should allow its recovery either through energy charges or a Supplementary Invoice.

3. Subsequently, SEIL also filed I.A. No. 1 of 2025 in the above Review petition on 28.10.2025, praying for the following reliefs:

A. To direct APDISCOMs to forthwith execute the amended PPA and approach the Commission for approval of balance Shakti B(iii) coal corresponding to 0.708 MTPA against the PPA dated 12.12.2024;

B. To direct the urgent listing of Review Petition No. 8 of 2025 at the earliest possible time on or before 07.11.2025, as per the convenience of this Hon'ble Commission and

C. To pass such other or further orders as this Hon'ble Commission may deem fit and proper in the interests of justice and equity.

4. **Reply of APDISCOMs**:

A. The Review Petition filed by SEIL is legally non-maintainable. SEIL has failed to satisfy the strict, mandatory pre-conditions for invoking review jurisdiction under Section 94(1)(f) of the Electricity Act, 2003, read with Order 47 Rule 1 of the Code of Civil Procedure (CPC). The legal basis for review is confined to correcting an "error apparent on the face of the record," or the discovery of new, important evidence that could not have been produced earlier with due diligence. Since the SEIL's grounds do not meet this high bar, the Review Petition is baseless and an abuse of the court's process. The Review Petition is fundamentally an attempt to conduct a re-hearing on merits and is an "appeal in disguise," which is impermissible in law. It is a settled principle that mere re-appreciation of facts, the presentation of alternative interpretations, or dissatisfaction with the original findings do not qualify as an "error apparent on the face of the record. SEIL is

attempting to reopen issues that have already been fully argued and conclusively decided by the Commission. Hence, the Review Petition needs to be dismissed outright.

B. <u>Water Charges and Security Expenses</u>

The Commission followed a consistent and uniform methodology for all intra-state generators (including APGENCO and private generators). Under this approach, normative O&M charges cover all routine operational expenses, and additional allowances are only provided at the true-up stage, after a prudence check of the actual expenditures incurred. This approach is rational, consistent, and based on regulatory certainty. SEIL misinterpreted Clause 10 of the APERC Tariff Regulations, 2008. This Clause states that APERC "shall be guided by"—not "bound by"—CERC norms. This means APERC is not obligated to adopt every CERC provision. The Hon'ble Supreme Court repeatedly held that State Electricity Regulatory Commissions (SERCs) are independent statutory bodies, not subordinate to the CERC. Therefore, the Commission was within its jurisdiction to adopt CERC norms for O&M but to exclude the additional expenditure. SEIL's challenge is, at best, a disagreement with the decision, and does not constitute an "error apparent" that would justify a Review Petition.

C. <u>Sampling of coal</u>

Clause 15.3.2 of the PPA specifies that GCV for Primary Fuel (on "as Received basis") and Secondary Fuel are to be determined as per Appendix-A and Appendix-B of Annexure-I, respectively. Clause 15.3.3 mandates that coal measurement (sampling and analysis) must be carried out by a third-party agency appointed by the Supplier, in accordance with APERC guidelines, if any, or as agreed to by the Utility from the list approved by the Government of India. Clause 15.3.7 acts

as a contingency, stating that in the absence of third-party sampling, the Variable Charge calculation shall be done based on "GCV as Billed". The Variable Charge is currently being computed using "GCV as Billed" (per Clause 15.3.7). There is a delay from SEIL's side regarding the finalisation of the third-party sampling agency due to the lack of confirmation on critical issues: Sample collection method and sample collection location. This delay has arisen as SEIL has filed a Review Petition before the Commission, challenging the direction of the Commission in the order under review that "the GCV shall be calculated from the wagon top at the unloading point to the point of firing in the boiler." Furthermore, SEIL has sought directions from the Commission regarding the methodology for collection of samples from the moving conveyor belt, namely whether to use a manual or automatic sampler, and whether the sampling should be conducted before or after the crusher.

The collection of samples from stockpiles is the least reliable method and should be rejected, as it is contrary to IS-436 (except in exceptional circumstances). The Commission is requested to direct SEIL to provide an 'Auto Sampler' to collect samples, in line with the practice followed at SDSTPS, which is equipped with a dedicated coal conveyor system and an 'Auto Sampler' for collecting samples.

D. <u>Deduction in Variable Charges for shortfall in monthly availability</u>

The matter was already addressed by the Commission in Para 35 of the Order under Review; therefore, it should not be permitted as part of the Review Petition. The Commission is fully empowered to specify incentive and penalty structures, even when dealing with tariffs approved under a PPA. The Commission has consistently applied the same deduction formula to APGENCO units, APPDCL units and Other generators supplying power to APDISCOMs.

SEIL's claim that only annual availability matters is rejected because it ignores several operational and financial realities: Scheduling of power; the need for APDISCOMs to procure costly short-term power to cover monthly shortfalls; system load management; back-down costs; banking & deviation settlements; and load dispatch obligations. The deductions protect consumer interests by preventing the DISCOMs from being forced to buy more expensive power due to SEIL's monthly shortfalls. The PPA does not explicitly prohibit regulatory deductions or adjustments. APERC's directions regarding deductions can override contractual silence. The Commission did not commit an error but correctly applied a uniform regulatory principle across all generators.

E. Reimbursement of Application Filing Fees and Publication Expenses

This issue was not part of the original tariff determination petition (O.P. No. 8 of 2025). As the issue was not raised during the initial tariff hearing, it cannot be included in the current Review Petition. APERC Regulations, not CERC's, govern the Tariff determination in Andhra Pradesh. APERC is not bound by the CERC's Regulations. APERC's Regulations do not provide for the kind of automatic reimbursement that SEIL is seeking. The text in CERC Regulations uses the word "may," which makes the provision discretionary (optional), not mandatory. SEIL misconstrued the CERC Regulations. APERC exercised its discretion by not granting the reimbursement. The exercise of discretion by the Commission is immune from challenge under review jurisdiction. SEIL suffers no immediate harm or "prejudice." SEIL can still claim the related costs or adjustments in a future true-up filing.

F. Reimbursement of the Processing towards securing SHAKTI B (iii) coal

The issue was not part of SEIL's original tariff determination petition

(O.P. No. 8 of 2025). Since it was not raised during the initial hearing, it shall not be included in the present Review Petition. The Processing Fee is an incidental cost of the SHAKTI bidding scheme, not a necessary component of the "landed fuel cost" itself. Neither the APERC Tariff Regulations nor the PPA explicitly include this specific fee as a component of fuel cost. SEIL's reliance on CERC definitions for "landed fuel cost" is misplaced because CERC Regulations do not govern intra-state tariff determination (which falls under APERC). Allowing this fee would unfairly burden consumers.

The fees does not meet the requirements for being considered "new evidence" that warrants a review. The Debit Note for the fee has existed since 31.12.2024, meaning it was not new when the original petition was filed. SEIL had full knowledge of the terms of the SHAKTI scheme, including the processing fee obligation, from the start. The only reason the Debit Note was not produced earlier was attributed to SEIL's internal delay in obtaining it from MCL (Mahanadi Coalfields Limited, likely the supplier). A failure due to a lack of due diligence is not a valid ground for review.

5. In its final written submissions (02.12.2025), SEIL reaffirmed the arguments made in its Review Petition. Additionally, SEIL submitted the following:

A. To allow the cost incurred towards the processing fee for an additional 0.708 MTPA of SHAKTI B(iii) coal, as the Commission had approved the usage of this coal vide letter dated 27.11.2025.

B. Allowing Water Charges and Security Expenses as separate components is not conditional on O&M expenditure being more than normative O&M expenses, as is evident from various orders of CERC.

C. The Regulations and the PPA already provide for a penalty in case of a shortfall in availability vis-à-vis normative availability. Further,

normative availability is computed annually. Therefore, the deduction based on monthly availability is contrary to the express terms of the PPA and Regulations and is not permissible.

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6. APDISCOMs sought a review and amendment of specific clauses in the PPA dated 12.12.2024, as mandated by the Commission's Order under Review. As per APDISCOMs, these Clauses are detrimental to the interests of consumers, and therefore, must be revised. The grounds for this review are:

A. Sampling of Coal and Installation of 'Auto Sampler'

The Order Under Review (Para 30(b)) mandates collecting "as-received" coal samples from loaded wagons at the generating stations (either manually or via Hydraulic Auger), following IS 436 (Part I/Section 1)-1964. The direction emphasises ensuring the safety of personnel during sample collection. However, SEIL's generating station does not receive coal via wagons. Instead, coal is transported directly from the unloading port (Krishnapatnam Port) to the SEIL Power Station using a continuous coal conveying system (a series of conveyors). The Commission is requested to issue directions requiring SEIL to install an 'Auto Sampler' within a specified timeframe for collecting "as-received" coal samples. The absence of an 'Auto Sampler' has led to SEIL reporting an inaccurately higher loss of GCV. Further, an 'Auto Sampler' will ensure accurate measurement (following prevailing standards) and avoid human intervention, thereby addressing the safety concerns of personnel mentioned in the Order under Review.

B. Loss of GCV during storage of coal

Para 31 of the Order under Review states that the GCV for energy charge computation should be calculated at the receiving station,

considering a minimum margin recommended in the MoP Notification dated 18.10.2017 to account for GCV loss from the wagon top/unloading point to the boiler firing point. This notification recommends a margin of 105-120 kCal/kg for a non-pit head station to cover GCV loss from the wagon top until the boiler firing point. However, CERC Regulations (2019 and 2024), which superseded the MoP notification, allowed for a reduction of only 85 kCal/Kg in GCV to account for the loss in GCV during storage. The Commission is requested to review the directions issued in Para 31 of the said order and issue fresh directions to compute the GCV using the margin prescribed by the latest CERC Regulations, 2024. This will be consistent with Clause 15.2.2 of the PPA, where both parties had expressly agreed to follow this methodology.

C. <u>Amendments to the PPA</u>

In the Order under Review, the Commission directed that when the Utility rejects power offered using supplementary fuel, such power shall be treated as Non-Available and the Utility shall mandatorily allow the Supplier to sell that capacity to third-party buyers (Article 15.7.2.ii). The Commission is requested to amend the same to make such permission entirely discretionary by replacing “shall allow” with “the Utility has the sole discretion to allow” the Supplier to sell the Non-Available capacity to third parties.

The Article 15.7.3 provides that if the Utility (APDISCOM) fails to communicate its decision within the stipulated time on the Supplier’s offer under Clause 15.7.2 and/or fails to respond to a fuel-shortage intimation under Clause 15.6, then it shall be treated as deemed approval, automatically allowing the Supplier to sell the capacity to third-party buyers, with gains adjusted as per Clause 15.7.2. The Commission is requested to delete this deemed-approval provision

entirely and replace it with a restricted permission: the Supplier may sell the capacity to third parties only after the minimum fuel stock is fully exhausted and the unit cannot run for want of coal as per CEA guidelines on any day, and even then, only after duly informing the Utility (without requiring the Utility's approval), while retaining the same gain-adjustment mechanism under Clause 15.7.2.

D. <u>Fixation of the benchmark for the GCV loss between the sending and receiving ends</u>

There are significant discrepancies in GCVs of coal between the sending end (as per QCI reports) and receiving end (as reported SEIL), with variations of 378–719 kcal/kg observed for May–September 2025, leading to an effective generation loss of 11–22% (after also accounting for the allowed 0.8% transit loss for coal quantity). Similar irrational GCV slippage of around 600 kcal/kg (equivalent to 2 grades) has been noted in another Power Supply Agreement with SEIL. These excessive GCV losses are causing a substantial increase in per-unit fuel charges, adversely affecting APDISCOMs and consumers. Therefore, the Commission is requested to incorporate a permissible benchmark for the percentage loss in coal quality (GCV) between the sending and receiving ends. If losses are within the benchmark, bills will be processed accordingly, but if they exceed the benchmark, SEIL must approach the Commission for appropriate orders.

7. <u>Reply of SEIL</u>:

The Review Petition filed by APDISCOMs is not maintainable as they have failed to establish grounds for review of the Common Order dated l7.06.2025 in terms of Section 94(1)(f) of the Electricity Act read with Section 114 & Order 47 Rule 1 of CPC, and the APERC Conduct of Business Regulations, 1999. The modifications sought are beyond the scope of the Commission's review jurisdiction. By way of the Review

Petition, APDISCOMs have sought relief (a) which do not emanate from the original proceedings, and (b) require modification of the clauses of the PPA, which the Commission has already approved after deliberating the objections/amendments to such clauses in the original proceedings.

A. <u>Sampling of Coal and Installation of 'Auto Sampler'</u>

The PPA mandates GCV measurement on an "as-received" basis by an independent third-party agency as per IS-436, and the method of sample collection (manual, auger or auto-sampler) does not affect the final GCV reported by the third party. The current manual sampling is fully compliant with the PPA and was witnessed by APDISCOM's team on 21.08.2025. The installation of the Auto-Sampler would require major structural changes to the dedicated conveyor system from Krishnapatnam Port, and, if at all directed, a reasonable time should be allowed for its installation, at a technically feasible location, with costs added to the project capital cost and tariff. As third-party sampling (by Inspectorate Griffith India Pvt. Ltd., with due intimation to APDISCOMs) has already been in place since before the May 2025 supply, and regular test reports are being submitted to APDISCOMs, GCV must be taken as per Clause 15.2.2 (third-party "as-received" GCV) and not as per fallback Clause 15.3.7. APDISCOMs are wrongly applying Clause 15.3.7 while admitting monthly bills from May 2025 onwards, causing substantial under-payment of variable charges. APDISCOMs may be directed to immediately process and pay all monthly bills from May 2025 onwards using the third-party reported GCV instead of wrongly applying Clause 15.3.7.

B. <u>Loss of GCV during storage of coal</u>

APDISCOMs' reliance on CERC Tariff Regulations, 2024 to reduce the permissible GCV loss (from unloading point to boiler) from 105–120

kcal/kg (as per MoP Notification dated 18.10.2017) to only 85 kcal/kg is wholly misplaced and impermissible in review. No such plea was ever raised by APDISCOMs during the original proceedings in O.P. Nos. 02 & 08 of 2025, and therefore it fails the test of Order 47 Rule 1 CPC (discovery of new matter or error apparent on the face of the record). Moreover, the MoP Notification is more comprehensive as it covers the entire path from sampling point to boiler, whereas the 85 kcal/kg in CERC Regulations, 2024 applies only to storage loss. Hence, there is no ground to review or alter Para 31 of the Order under Review.

C. <u>Amendments to the PPA</u>

APDISCOMs are impermissibly using the Review Petition to seek fresh amendments to various clauses of the already-approved PPA. During the original proceedings, the Commission expressly invited objections and suggestions on the PPA. APDISCOMs also participated, certain amendments were discussed and incorporated, and the PPA was finally approved after detailed reasoning. APDISCOMs never sought the present amendments at that stage nor even after the Order (despite SEIL repeatedly requesting execution of the amended PPA in September–October 2025). A settled and approved PPA cannot be unilaterally reopened or modified under the guise of review; such prayers amount to an appeal in disguise and are outside the limited scope of review jurisdiction. Accordingly, all prayers for fresh modification of the PPA deserve outright rejection.

D. <u>Fixation of the benchmark for the GCV loss between the sending and receiving ends</u>

APDISCOMs are impermissibly using the Review Petition to seek insertion of an entirely new GCV-loss benchmark clause in the already-approved PPA, which is not permissible at this late stage and

certainly not through review jurisdiction, as a finally approved PPA cannot be unilaterally modified by one party. Further, APDISCOMs' reliance on another PPA dated 31.12.2021 (executed under Section 63) is misconceived because that PPA operates under a completely different regulatory framework and cannot be compared, as clarified by the Hon'ble Supreme Court in Haryana Power Purchase Centre vs. GMR Kamalanga (08.09.2025).

The GCV is already being correctly determined on an "as-received" basis strictly in accordance with the PPA, the Order under Review, APERC Tariff Regulations, 2008, CERC Tariff Regulations, 2024, and CEA advisory dated 17.10.2017 (which permits an additional 85–100 kcal/kg loss post-receipt on account of moisture, storage and handling). Therefore, comparing sending-end GCV (QCI report) with receiving-end GCV to allege 11–20 % quality loss is irrelevant and contrary to the agreed "as-received" methodology. Since no error apparent on the face of the record exists and the prayer does not satisfy Order 47 Rule 1 CPC, the request for a new GCV-loss benchmark deserves outright rejection.

E. <u>Delay in filing the Review petition</u>

The Review Petition filed by APDISCOMs is time-barred under Regulation 49 of the APERC (Conduct of Business) Regulations, 1999, which prescribes a strict 90-day limitation period for filing reviews from the date of the Commission's order. The Common Order under review was passed on 17.06.2025, making the limitation period expire on 15.09.2025, whereas APDISCOMs filed the Review Petition only on 26.10.2025, i.e., beyond the statutory deadline. As the Commission is a statutory body bound by its own Regulations (as held by the Hon'ble Supreme Court in PTC India Ltd. vs. CERC, (2010) 4 SCC 603), and since APDISCOMs have neither acknowledged the delay nor filed any

application for condonation, the Review Petition is liable to be dismissed as barred by limitation.

Commission's Analysis and Decision

8. In light of the submissions made by SEIL and APDISCOMs in their Review Petitions and the respective counters, the point that arises for consideration is whether they made out a case for review. Before discussing the points raised by them, it is necessary to deal with the scope of review. This aspect was thoroughly discussed by this Commission in its Common Order dated 04.08.2020 in Review Petition No.1 of 2019 in O.P.No.30 of 2018 and Review Petition No. 3 of 2019 in O.P.Nos.28 and 29 of 2018 and order dated 08.04.2021 in Review Petition Nos.2 of 2019 and 1 of 2020 in O.P.NO.47 of 2017. The relevant portions of the orders are reproduced hereunder:

".. Section 94(1)(f) of the Electricity Act, 2003 (for short "the Act") confers power of review of its decisions, directions and orders on the Commission. However, neither the Act nor the Rules framed thereunder indicated any parameters for the exercise of this power. In the absence of any indicia, it is not only apt but also permissible to follow the law laid down by the constitutional courts in this regard.

In Sow Chandra Kanta & Another Vs. Sheikh Habib (1975 SCC (4) 457), the Hon'ble Supreme Court held that a review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. In P.N. Eswara Iyer vs. The Registrar, Supreme Court of India (1980 AIR 808), a constitution bench of the Supreme Court reaffirmed the ratio in Chandra Kanta (1 supra). In Shri Ravinder Kumar Vs. Kamal Sen Gupta (2008) 8, the Hon'ble Apex Court held that unlike in appeal, scope of review is grossly

circumscribed to such cases where review seeker has made a discovery of a new and important matter of evidence, which, after exercise of due diligence, was not within his knowledge and could not be produced by him when the decree or order where some mistakes or errors apparent on the face of the record have been made or when the court has overlooked some obvious facts on the basis of which decision could be made. The court further held that for a review, one of the above three considerations should be established.

In Devender Pal Singh vs. State of NCT of Delhi (2003)2 SCC 501, the Apex Court held that review is not a rehearing of the appeal all over again and that the scope of interference is very limited to aspects such as miscarriage of justice."

Further, in Lily Thomas & Ors. vs Union of India & Ors. [(2000) 6 SCC 224], the Apex Court held as under:

"56. It follows, therefore, that the power of review can be exercised for the correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review...."

In Union of India vs Sandur Manganese and Iron Ores Limited & others [(2013) 8 SCC 337], the Apex Court held as under:

"23. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view."

In Parsion Devi & Others Vs Sumitri Devi & Other [(1997) 8 SCC 715], the Apex Court held as under:

"9. Under Order 47 Rule 1 of CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record, justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered, has a limited purpose and cannot be allowed to be "an appeal in disguise."

9. Keeping in view the limited scope of interference in review jurisdiction as per the dicta laid down by the authoritative pronouncements of the Apex Court, as discussed above, the submissions of the SEIL and APDISCOMs are considered now.

R.P.No.8 of 2025 in O.P.NOs. 2 of 2025 and 8 of 2025 and I.A.No.1 of 2025 in R.P.No.8 of 2025 (Filed by SEIL)

10. Water Charges and Security Expenses

SEIL's contention that the Commission "selectively applied" CERC norms is a challenge to the discretion of the Commission, not a patent error on the part of the Commission. The Commission emphasised uniformity in regulatory treatment across all generators under its jurisdiction. The Commission's view is that allowing separate water charges and security expenses for SEIL would deviate from the approach applied to other state generators. This avoids preferential treatment and ensures equitable tariff determination. Since the Commission consciously chose to adopt a uniform approach for all intra-state generators in respect of these charges and expenses, the wisdom of that decision can not be challenged through a Review Petition on the grounds of 'error apparent' or 'sufficient reason'. Clause 10 of the APERC Tariff Regulations, 2008

states the Commission shall be "guided by" CERC principles, which implies discretion, not a mandatory obligation to adopt every clause. Further, under Section 61 of the Electricity Act, State Commissions are only to be guided by CERC principles, not bound by them. Therefore, declining to import separate water and security components from CERC Regulations is within APERC's statutory discretion and preserves regulatory consistency with all intra-state generators. A debatable point of law or a specific interpretation of a Regulation (i.e., whether APERC is bound to adopt the specific water/security clause) cannot constitute an "error apparent". If two views are possible, opting for one (uniformity over specific CERC clauses) is not a ground for review. Review is permissible if the Commission "overlooked" a material fact. Here, the Commission did not overlook the expenses but made a specific decision. The Commission explicitly stated in the Order under Review that it was following a "consistent and uniform methodology" applicable to all intra-state generators. A conscious decision to maintain parity among state generators cannot be categorised as a "mistake or error apparent on the face of the record". Disagreement with the Commission's decision on uniformity is not a valid ground for review. The Commission has not permanently disallowed these costs. Instead, it granted SEIL liberty to file a true-up petition if actual O&M expenses exceed the approved normative amounts, subject to a prudence check. The Commission's decision to defer these costs to the True-Up stage is a prudent regulatory decision, not an error. Therefore, the plea is rejected as it amounts to an appeal in disguise.

11. <u>Sampling of coal</u>

The Commission recognises the merit in the SEIL's arguments regarding the practical impossibility of implementing the earlier directions on coal sampling. The Commission acknowledges that the direction in the Order

under Review mandating the collection of samples "from loaded wagons... either manually or through Hydraulic Auger" constitutes an error apparent on the face of the record. This direction was based on an application of the CERC Order dated 25.01.2016 (Petition No. 283/GT/2014), without accounting for the specific infrastructural reality of SEIL's Project-1. SEIL's Project-1 is a coastal plant that receives coal via a Rail-Sea-Route (RSR) and utilises a closed conveyor system to transport coal directly from the Krishnapatnam Port to the plant. There are no coal wagons that enter the plant premises. Therefore, the direction to sample from "wagons" is physically impossible to implement. The alternative of manual sampling from a moving conveyor belt, as implicitly necessitated by the absence of wagons, is not advisable due to safety risks to personnel. However, to ensure the continuity of billing and payment cycles, an immediate, compliant sampling mechanism is required. IS 436 (Part 1/Sec 1) recognises "Sampling from Stockpiles" as a valid standard method, though not the preferred one. Therefore, to prevent a stalemate, the Commission permits SEIL to implement stockpile sampling of coal by the present third-party agency while stacking at the power project during the discharge of coal from the conveyor belt, strictly in accordance with IS 436 standards, for a period of one year from the date of this Order. This serves as the only viable immediate alternative.

At the same time, the Commission also recognises the concerns of APDISCOMs in this regard. The Commission is of the view that the above temporary sampling method is susceptible to human variance and provides less representative samples compared to automatic sampling from a moving stream. For a large capacity unit (660 MW) like this, the impact of GCV variations on Energy Charges is substantial. Auto-Samplers eliminate human intervention and bias, ensuring a more

accurate "As Received" GCV. This protects the interests of both the generator (SEIL), APDISCOMs and the consumers by minimising disputes over coal quality.

Therefore, SEIL is directed to install and commission an Auto-Sampler system at suitable location(s) on the coal conveyor system as per IS 436 within one (1) year from the date of this Order. Providing a one-year window allows SEIL sufficient time to undertake the necessary engineering studies, procurement, and structural retrofitting without disrupting power generation. Upon commissioning of the Auto-Sampler, the sampling methodology shall automatically shift from "Stockpile Sampling" to "Auto-Sampler" mode. SEIL may claim reasonable costs incurred for this retrofitting as Additional Capitalisation for a pass-through of the same in the tariff, subject to a prudence check by the Commission.

SEIL is currently having the GCV measured at the project site by a third-party agency empanelled by the Central Government. SEIL contends that although it regularly furnishes the third-party GCV reports to the APDISCOMs, the latter are admitting variable charges based on the “As Billed” GCV rather than these reports, resulting in underpayment of variable charges. The APDISCOMs contend that the third-party agency has not been finalised and approved by them due to reasons attributable to SEIL. In this regard, the Commission observes that, as per Clause 15.3.7 of the approved PPA, computation of energy chargers shall be done based on “GCV as Billed”, only in the absence of third-party sampling, which is not the case here.

Further, in the Order under Review dated 17.06.2025, the Commission directed the APDISCOMs to approve the third-party sampling agency for assessing coal quality in accordance with the provisions of the PPA within one month from the date of that Order. However, the APDISCOMs

have neither approved the third-party sampling agency nor approached the Commission for any clarification or extension.

Therefore, the APDISCOMs are hereby directed once again to approve the third-party sampling agency within one month from the date of this Order, after due coordination with SEIL to resolve any outstanding issues, and to report compliance to the Commission. In the interim, pending such approval, the APDISCOMs shall make payments for variable charges strictly in accordance with the third-party GCV reports furnished by SEIL, without any deductions or adjustments based on "GCV as Billed". Any arrears arising from past bills computed on the basis of "GCV as Billed" shall be adjusted and paid to SEIL within 30 days from the date of this Order.

12. <u>Deduction in Variable Charges for shortfall in monthly availability</u>

The deduction formula is uniformly applied by the Commission across similar thermal generators in Andhra Pradesh, such as those operated by APGENCO (Andhra Pradesh Power Generation Corporation) and APPDCL (Andhra Pradesh Power Development Corporation Limited). This ensures regulatory equity and prevents preferential treatment for SEIL's project, an intra-state project under APERC's jurisdiction. Under Sections 62 and 86 of the Electricity Act, 2003, APERC has broad powers to determine tariffs, including specifying incentive/penalty structures for performance metrics like availability, even when a PPA is silent on the matter. The PPA between SEIL and APDISCOMs does not explicitly prohibit such deductions, allowing regulatory overrides in the public interest. While the PPA and Regulations (e.g., APERC, 2008 and CERC, 2024) focus on annual normative availability, they do not preclude monthly adjustments. APERC's role as a statutory body enables it to fill contractual gaps to ensure a reliable supply.

In Civil Appeal No.6847 of 2025 dated 15.05.2025 (reported as 2025 INSC 697), the Hon'ble Supreme Court held as follows:

"The regulatory powers provided to the CERC under Section 79 are of ad hoc nature and are required to be exercised by the CERC in context of the specific circumstances of the parties before it. The rationale for provision of such ad hoc powers by the Act, 2003 is to ensure that regulatory gaps, if any, that may be discovered on a case-to-case basis, are filled or removed. Therefore, there is no doubt in our mind that the CERC is enabled to exercise its regulatory powers by way of orders under Section 79 and the purview of Section 79 is not limited to only adjudicatory orders but includes within its scope administrative functions as well."

Section 86(1) of the Electricity Act mirrors Section 79(1) for SERCs, empowering them to regulate intra-state matters such as electricity procurement, tariff determination for generation/distribution, and promotion of efficient supply. Similarly, Section 181 (for SERCs) parallels Section 178 (for CERC) for making Regulations. The Supreme Court's interpretation that regulatory powers under Section 79 are independent of Regulations under Section 178 applies equally to SERCs, as the Act's structure treats Central and State Commissions symmetrically for their respective domains. Just as CERC filled a gap in tariff Regulations by ordering compensation for delays, an SERC (e.g., APERC) can issue orders to address lacunae in its own Regulations, such as imposing performance penalties (e.g., variable charge deductions for availability shortfalls). This ensures regulatory continuity and protects consumer interests without waiting for formal amendments.

Further, focusing solely on annual availability, as argued by SEIL, ignores monthly operational challenges. Shortfalls force APDISCOMs to procure expensive short-term power from alternative sources to meet

demand, incurring costs for scheduling, load management, back-down, banking, deviation settlements, and dispatch obligations. Monthly deductions encourage consistent performance, aligning with grid stability needs under the Indian Electricity Grid Code. Without this, generators could underperform monthly while meeting annual targets, shifting burdens to utilities and consumers. The mechanism safeguards end-consumers by mitigating financial impacts on APDISCOMs. It promotes efficiency without being punitive—deductions are modest (5-15 paise/unit) and recoverable if proven uncontrollable, providing a fair safeguard. SEIL claimed this as an "error apparent" for disregarding the PPA and Regulations. However, the deduction is not an error but a correct application of uniform principles and a conscious decision taken by the Commission. If the Commission consciously decided to apply a deduction for availability shortfall to ensure regulatory uniformity, challenging the merit or fairness of that decision constitutes a request for a "re-hearing," which is impermissible in a Review Petition. A review can not be used to substitute a view. Since the Commission already considered the issue and applied a uniform regulatory principle, SEIL's attempt to overturn it via review is nothing but an "appeal in disguise". Hence, the plea of SEIL is rejected.

13. <u>Reimbursement of Application Filing Fees and Publication Expenses</u>

SEIL did not explicitly claim or provide details for reimbursement of Application Filing Fees and Publication Expenses in its original tariff determination petition (O.P. No. 8 of 2025) or during the hearings. These costs were only raised post-facto in the Review Petition. Review jurisdiction is limited to addressing discoveries of new evidence, errors apparent on the face of the record, or other sufficient reasons. It is not a mechanism to introduce new claims or arguments that could have been raised earlier. Allowing such a claim in review would amount to

rehearing the matter on merits, which exceeds the scope of review.

SEIL's claim relied heavily on CERC Tariff Regulations, 2024, arguing that the Central Regulations allow for direct reimbursement of filing fees. However, tariff determination for intra-state generators like SEIL falls under APERC's jurisdiction. While APERC adopted certain CERC norms (from the CERC Tariff Regulations, 2024) for O&M expenses where its own Regulations were silent (specifically for 660 MW units), this adoption was selective and limited to filling gaps. APERC is not bound to wholesale apply CERC's Regulations, including reimbursement of application fees and publication expenses.

APERC's own Regulations do not contain an equivalent provision mandating automatic reimbursement of these procedural costs. The Commission is guided by CERC principles only where necessary, but retains discretion to apply its own framework for consistency across intra-state generators. Even under CERC Regulations, reimbursement of application fees and publication expenses is not automatic or mandatory. The Regulation uses the word "may", which makes it discretionary. SEIL misconstrued this as a mandatory entitlement. APERC exercised its regulatory discretion in not allowing this specific reimbursement. Such an exercise of discretion does not constitute an "error apparent on the face of the record," which is the strict legal standard required to succeed in a Review Petition.

Further, the disallowance aligns with APERC's consistent approach for other intra-state generators, where procedural costs like filing fees and publication expenses are not typically passed through as separate reimbursable items. This prevents selective treatment and maintains regulatory uniformity. Hence, the plea of SEIL for reimbursement is rejected.

14. <u>Reimbursement of the Processing towards securing SHAKTI B (iii) coal</u>

The processing fee was not claimed or discussed in the original tariff determination petition (O.P. No. 8 of 2025) or during hearings. Since it was not raised initially, it was not addressed in the Order under Review. The debit note existed well before the issue of the Order under Review. SEIL had full knowledge of the SHAKTI B(iii) scheme's terms, including the processing fee obligation, from the auction participation stage, though it did not know the exact amount. Therefore, SEIL could have proposed or requested conditional reimbursement (e.g., "as and when received") in their original tariff petition (O.P. No. 8 of 2025) or during the initial hearings, which it did not do. Therefore, the claim is not "New evidence" which was not within the knowledge of SEIL. Raising it now in review is impermissible, as it amounts to a "re-hearing on merits" or an "appeal in disguise."

Even if considered "new," it would not alter the order's findings, as the fee is not inherently part of tariff components. The "landed cost of fuel" includes base coal cost, premiums, transportation, taxes, and duties, etc., but not bidding/processing fees as per Clause 15.2.4 of the PPA, Clause 13.1(c) of the APERC Regulations 2008. The processing fee is a one-time auction levy, not a part of ongoing fuel procurement costs. SEIL cited CERC Tariff Regulations, 2024, which broadly define landed cost to include "processing charges." However, APERC is not bound by CERC Regulations for intra-state generators; it adopts CERC norms selectively at its discretion, balancing the interests of all stakeholders. Allowing it would unfairly burden consumers without a regulatory precedent. Hence, the plea of SEIL is rejected.

15. As regards the plea of SEIL in the IA to direct APDISCOMs to forthwith execute the amended PPA and approach the Commission for approval of balance Shakti B(iii) coal corresponding to 0.708 MTPA against the PPA

dated 12.12.2024, it may be noted that the Commission, vide letter dated 27.11.2025, already granted approval to APDISCOMs for utilisation of the premium coal of 0.708 MTPA already secured by SEIL under the SHAKTHI B(iii) auctions. As for the PPA, the Commission directs the APDISCOMs to execute the PPA after appropriately amending it to be in line with the directions issued in the Order dated 17.06.2025 under Review and Para No. 11 of this Order. APDISCOMs shall submit the amended PPA to the Commission for approval within one month from the date of this Order.

R.P.No.9 of 2025 in O.P.NOs. 2 of 2025 and 8 of 2025 (Filed by APDISCOMs)

16. The Order under Review was issued on 17.06.2025. Clause 49(1) of APERC's Conduct of Business Regulations prescribes a 90-day window for filing review applications. This window expired on 15.09.2025. However, APDISCOMs filed their Review Petition well after this deadline. SEIL raised objections that the Review Petition filed by APDISCOMs is time-barred under Regulation 49 of the APERC (Conduct of Business) Regulations, 1999, which prescribes a strict 90-day limitation period for filing reviews from the date of the Commission's order. That APDISCOMs have neither acknowledged the delay nor filed any application for condonation. Therefore, SEIL argued that the Review Petition is liable to be dismissed as barred by limitation.

Clause 55(2) APERC's Conduct Of Business Regulations states: "***Nothing in these Regulations shall bar the Commission from adopting a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing deems it necessary or expedient.***"

This Clause explicitly empowers APERC to deviate from strict timelines (e.g., the 90-day limit in Clause 49) without a formal condonation request, provided: Special circumstances exist, reasons are recorded in

writing, and the variance is necessary or expedient for justice.

Further, Clause 55(1) APERC's Conduct of Business Regulations, 1999, protects the Commission's inherent powers to issue orders "necessary for meeting the ends of justice or to prevent the abuse of the process." Therefore, accepting a delayed review prevents potential injustice if the original order has errors affecting public interest.

The Commission, in view of the special circumstances involving public interest and to meet the ends of justice under Clauses 55(1) & (2) of APERC's Conduct of Business Regulations, 1999, deems it expedient to condone the delay and decide the Review Petition of APDISCOMs on merits, despite no formal condonation request.

17. Sampling of Coal and Installation of 'Auto Sampler'

The Commission already addressed this issue in Para 11 and issued appropriate directions.

18. Loss of GCV during storage of coal

APDISCOMs sought to replace the margin recommended by the MoP Notification dated 18.10.2017 (105-120 kCal/kg) with the margin from CERC Regulations, 2024 (85 kCal/kg). Though the original PPA provided for a margin of 85 kCal/kg, the Commission took a conscious decision to allow the margin as per the MOP Notification to maintain parity with other intrastate generators. Disagreement with the Commission's choice of which standard to apply (MoP vs. CERC) constitutes a difference of opinion, not a patent error. A review cannot be used to "substitute a view" or strictly for "re-hearing" a matter where two views are possible. Since the Commission consciously applied the MoP standard originally, seeking to overturn it for the CERC standard amounts to an "appeal in disguise," which is impermissible in a Review Petition. Hence, the plea of APDISCOMs is rejected.

19. Amendments to the PPA

The Commission had expressly invited objections and suggestions on the PPA during the original proceedings. APDISCOMs participated fully but did not propose these specific changes at that time. A PPA, once approved by the Commission with appropriate amendments after due process, cannot be unilaterally altered by one party through a Review Petition. A Review Petition is not the appropriate forum to renegotiate contractual terms or introduce new clauses that were not requested during the original proceedings. A review is permissible only to correct a "mistake or error apparent on the face of the record" or to consider "new evidence." It is not a mechanism to rehear the case or improve upon the original decision. APDISCOMs are seeking to modify substantive clauses now, which amounts to an "appeal in disguise," which is legally impermissible. APDISCOMs waived their right to seek these specific amendments because they did not raise them during the original Tariff and PPA approval proceedings. Hence, the plea of APDISCOMs is rejected.

20. Fixation of benchmark on GCV loss of coal between the sending and receiving Ends

This plea constitutes a "New Plea" outside the scope of Review. APDISCOMs are attempting to introduce an entirely new condition into the PPA that was not part of the original proceedings. The PPA had already been approved by the Commission after inviting objections and suggestions. APDISCOMs did not seek this specific benchmark clause during those original proceedings. Introducing a benchmark for the loss in GCV between the sending and receiving ends effectively alters the agreed tariff determination mechanism, which is not an "error" in the original order but a fundamental change in methodology. A Review Petition cannot be used to seek fresh amendments or insert new clauses

(like a GCV-loss benchmark) into a concluded contract. Doing so would amount to an "appeal in disguise" or a fresh hearing, which is impermissible under review jurisdiction.

Further, both the Order under Review and the relevant Regulations stipulate that the GCV must be assessed on an "As-Received" basis at the project site, rather than through the deduction of a predetermined margin from the "As Billed GCV." The PPA was approved after detailed deliberation. Allowing one party (APDISCOMs) to unilaterally insert a penal benchmark clause post-approval would violate the sanctity of the contract and the regulatory process. Hence, the plea of APDISCOMs is rejected.

While rejecting the plea of APDISOMs, the Commission nonetheless takes cognisance of their concerns regarding the substantial variance between 'As-Billed' and 'As-Received' GCVs. The Commission in the Order under Review already directed SEIL to submit a report detailing the measures taken to address the discrepancy between as-billed and as-received GCV, which SEIL has not submitted. Therefore, SEIL is once again directed to submit a report detailing the measures already taken to address the discrepancy between ‘As-billed’ and ‘As-received’ GCV, within 30 days from the date of this Order.

21. The Review Petitions and IA are accordingly disposed of.

Sd/-
Sri P.V.R.Reddy
Member & Chairman$_{(i/c)}$