

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION**

5<sup>th</sup> Floor, "Metro Plaza", Bittan Market, Bhopal - 462016



**Petition No. 46 of 2020**

**PRESENT:**

**S.P.S Parihar, Chairman**

**Mukul Dhariwal, Member**

**Shashi Bhushan Pathak, Member**

**IN THE MATTER OF:**

**Determination of Multi-Year Tariff for the 2x600 MW Coal Based Thermal Power Project at District Anuppur, Madhya Pradesh for the control period from FY 2019-20 to FY 2023-24 based on Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.**

**AND IN THE MATTER OF:**

**M/s M. B. Power (Madhya Pradesh) Limited**

**Petitioner**

**Versus**

- 1. M. P. Power Management Co. Ltd., Jabalpur**
- 2. M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd., Jabalpur**
- 3. M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal**
- 4. M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd., Indore**

**Respondents**

## ORDER

(Passed on this day of 1<sup>st</sup> May' 2021)

1. M/s M.B. Power (Madhya Pradesh) Limited (hereinafter called “the petitioner”) has filed the subject petition on 29<sup>th</sup> June' 2020 for determination of Multi-Year Tariff for 2X600 MW Coal Based Anuppur Thermal Power Project (Phase-I) comprising Unit No. 1 and Unit No. 2 (600 MW each) at District Anuppur, Madhya Pradesh for the control period from 1<sup>st</sup> April' 2019 to 31<sup>st</sup> March' 2024 under the provisions of Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 {RG-(IV) of 2020}.
2. Madhya Pradesh Electricity Regulatory Commission (hereinafter referred to as “the Commission or MPERC”) issued MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 {RG-(IV) of 2020} (hereinafter referred to as “the Regulations” 2020) for the new control period i.e. FY 2019-20 to FY 2023-24 on 20<sup>th</sup> February' 2020 and notified in the Madhya Pradesh Gazette on 28<sup>th</sup> February' 2020.
3. The subject petition has been filed under Section 62 and Section 86(1) (a) of the Electricity Act, 2003 and based on the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020{RG-(IV) of 2020}.
4. The petitioner’s thermal power station comprises of two generating units of 600 MW each. Date of Commercial Operation (COD) of both the units under Phase 1 are as given below:

**Table 1: CoD of Thermal Generating Units**

S. No.	Unit	Installed Capacity (MW)	Date of Commercial Operation
1.	Unit No. 1	600 MW	20 <sup>th</sup> May' 2015
2.	Unit No. 2	600 MW	07 <sup>th</sup> April' 2016

5. Unit No. 1 and 2 of the project achieved COD under different control period, therefore, on all previous occasions, the tariff/true-up of petitioner’s project till 31<sup>st</sup> March' 2019 was determined separately for each unit under the provisions of applicable MYT Regulations. However, the subject petition is being filed for determination of Multi-year tariff for the Project (Unit-1 and Unit-2) ,therefore, the base figures considered by the petitioner in the subject MYT petition is for the project as a whole (Unit No. 1&2).

6. The petitioner has entered into a Power Purchase Agreement (“PPA”) with MP Power Management Company Limited formerly known as Madhya Pradesh Power Trading Company Limited (hereinafter “Respondent No.1”), on 05.01.2011 for sale of 30% of the Installed Capacity for a period of 20 years at the regulated tariff to be determined by the Commission. The petitioner has also entered into another PPA dated 04.05.2011 with Government of Madhya Pradesh, (Respondent No. 1 being the nominated agency of GoMP) for supply of 5% of the net power generated from the Project at the variable charges for the life of the Project.

**Background of the petition:**

7. A brief background related to subject petition is as given below:
- i) On achieving CoD of Unit No. 1 of the project, the petitioner filed the petition (Petition No. 68 of 2016) for determination of final tariff of the Unit No. 1 based on the Annual Audited Accounts for FY 2015-16. At the time of filing the aforesaid petition No. 68 of 2016, the COD of Unit No. 2 was not achieved.
  - ii) Vide tariff order dated 1<sup>st</sup> December’ 2017 in Petition No. 68 of 2016, the Commission determined the final generation tariff for Unit No.1 of the Project for the period from COD of Unit No. 1 (i.e. 20.05.2015) till 31.03.2016 in terms of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012. In the aforesaid order, the Commission also determined Multi Year tariff of Unit No. 1 for the control period FY 2016-17 to FY 2018-19 in accordance with the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 subject to true-up on annual basis based on the Annual Audited Accounts for the respective year .
  - iii) Subsequently, the Commission issued following true-up orders for the Unit No. 1 of the project in terms of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015:

Petition No.	Financial year	Date of the Order
P-11 of 2018	FY 2016-17	6 <sup>th</sup> September’ 2018
P-51 of 2018	FY 2017-18	12 <sup>th</sup> June’ 2019
P-21 of 2020	FY 2018-19	8 <sup>th</sup> February’ 2021

- iv) On achieving COD of Unit No. 2 of the project, the petitioner filed the petition (Petition No. 10 of 2018) for determination of final tariff of Unit No. 2 in terms of the provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 based on the Annual Audited Accounts for FY 2016-17.
  - v) Vide tariff order dated 29<sup>th</sup> November' 2018, the Commission determined the final tariff for Unit No. 2 of the Project for the period from COD of Unit No. 2 (i.e. 07.04.2016) till 31.03.2017 in terms of the Regulations, 2015 based on the Annual Audited Accounts. In the aforesaid order, the Commission also determined the tariff for Unit No.2 from 01.04.2017 till 31.03.2019 on provisional basis subject to true-up based on the Annual Audited Accounts for the respective year.
  - vi) Subsequently, vide order dated 1<sup>st</sup> July' 2019 in Petition No. 57 of 2018, the Commission issued true-up order of Unit No. 2 for FY 2017-18 based on the Annual Audited Accounts for FY 2017-18 and in terms of provisions under the Regulations, 2015. Further, vide order dated 10<sup>th</sup> February' 2021 in Petition No 22 of 2020, the Commission determined the true-up of tariff for FY 2018-19 for Unit No. 2 based on the Annual Audited Accounts for FY 2018-19.
8. In view of the above, it is observed that on all previous instances, the tariff of petitioner's project was determined and trued-up separately for each Unit. However, the subject petition is filed for determination of multi-year tariff for the entire project (which includes both Unit-1 and Unit-2).
9. In the subject petition, the petitioner prayed the following:
- (a) *Determine the Multi YearTariff for the Petitioner's 1200 MW Project as required under the Non-Concessional PPA dated 05.01.2011 for the MYT Period from 01.04.2019 till 31.03.2024 taking into consideration, projected year-wise Additional Capital Expenditure during the MYT Period in the instant Petition.*
  - (b) *Allow the recovery of the application filing fees from the beneficiary as per Para 58 of the instant Petition in terms of Regulation 65 of MPERC Tariff Regulations 2020;*

- (c) Allow the recovery of the publication expenses from the beneficiary as and when incurred in terms of Regulation 65 of MPERC Tariff Regulations 2020;
- (d) Allow the recovery of other charges including but not limited to RLDC/ NLDC charges, Electricity Duty, Cess, Water Charges, other Statutory Charges, Taxes, Duties & Cess, re-imbursment of any fee and/or expenses etc. on pass through basis from the beneficiary for MYT Period from 01.04.2019 to 31.03.2024;
- (e) Allow carrying cost / interest on the under-recovered amount in accordance with Regulation 7.11 of Tariff Regulations, 2020.

10. Based on the above, the petitioner has claimed the following Annual Capacity (fixed) Charges for the project (Unit No. 1 and 2) for the control period from FY 2019-20 to FY 2023-24:

**Table 2: Annual Capacity (Fixed) Charges claimed in the petition (Rs in Crores)**

S. No.	Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Depreciation	395.24	398.67	414.82	444.01	458.25
2	Interest on Loan	554.84	510.40	486.07	481.01	447.64
3	Return on Equity	429.11	433.11	450.54	481.92	497.24
4	Interest on Working Capital	103.17	97.65	101.57	108.53	112.66
5	O & M Expenses	243.12	251.64	260.52	287.57	297.68
6	<b>Annual Capacity Charges</b>	<b>1725.47</b>	<b>1691.47</b>	<b>1713.51</b>	<b>1803.04</b>	<b>1813.48</b>
7	No of days applicable for the year	366.00	365.00	365.00	365.00	366.00
8	Total Capacity Charges for applicable days	1725.47	1691.47	1713.51	1803.04	1813.48
9	Less:-Non-Tariff Income	0.00	0.00	0.00	0.00	0.00
10	Net Capacity Charges	1725.47	1691.47	1713.51	1803.04	1813.48
11	<b>Annual Capacity Charges for the Contracted Capacity i.e., (30%)</b>	<b>517.64</b>	<b>507.44</b>	<b>514.05</b>	<b>540.91</b>	<b>544.04</b>

11. The petitioner also filed the following Energy (variable) charges for the control period:

**Table 3: : Energy Charges Filed in the petition (Rs./Unit)**

Financial Years	Energy Charges
FY 2019-20	2.387
FY 2020-21	2.506
FY 2021-22	2.631
FY 2022-23	2.880
FY 2023-24	3.024

12. In this order, the Commission has considered the opening figures of capital cost, funding and cumulative depreciation for the project same as admitted by the Commission in its last true-up orders for FY 2018-19 in respect of Unit No. 1 and Unit No. 2 issued on 08<sup>th</sup> February' 2021 (in Petition No. 21 of 2020) and 10<sup>th</sup> February' 2021 (in Petition No. 22 of 2020), respectively.
13. The subject MYT petition has been examined by the Commission in accordance with the principles, methodology and the norms specified in the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 and other supplementary submissions filed by the petitioner in response to the additional information / details sought by the Commission alongwith all other documents placed on record by the petitioner. The Commission has also examined the subject MYT petition in light of the comments/ suggestions offered by the Respondent No.1 and other stakeholder and the response of the petitioner on the same.

### **Procedural History**

14. Motion hearing in the subject MYT petition was held on 07<sup>th</sup> August' 2020 wherein the petition was admitted and the petitioner was directed to serve copies of its petition to all Respondents in the matter. The Respondents were also asked to file their comments/response on the petition by 05<sup>th</sup> September' 2020.
15. Vide Commission's letter dated 2<sup>nd</sup> September' 2020, the information gaps and requirement of additional details/documents were communicated to the petitioner seeking its comprehensive reply on the same with all the supporting documents by 25<sup>th</sup> September' 2020.
16. By affidavit dated 28<sup>th</sup> September' 2020, the petitioner filed its response on the issues communicated to it by the Commission.
17. Vide letter dated 10<sup>th</sup> September' 2020, the Respondent No.1 (M.P. Power Management Company Limited) sought time extension of three weeks for filing its response on the subject petition. Subsequently, vide another letter dated 01<sup>st</sup> October' 2020, the Respondent No. 1 further sought two weeks' time extension for filing its response. Considering the request, vide Commission's letter dated 05<sup>th</sup> October' 2020, the Respondent No. 1 was asked to file its response by 15<sup>th</sup> October' 2020.

18. By affidavit dated 28<sup>th</sup> October' 2020, Respondent No. 1 filed its comments/response on the subject petition. By affidavit dated 23<sup>rd</sup> November' 2020, the petitioner filed rejoinder/reply to the comments/response filed by Respondent No. 1. The petitioner's reply on each comment offered by the Respondent No. 1 along with the observations are annexed as **Annexure- I** with this order.
19. The public notice for inviting comments/suggestions from stakeholders was published on 03<sup>rd</sup> November' 2020 in the following newspapers:
  - i. The Hitavada (English), Bhopal
  - ii. Nav Bharat (Hindi), All M.P
  - iii. Raj Express( Hindi), Indore
20. The comments/objections from only one stakeholder received in this matter on 24<sup>th</sup>November' 2020. By affidavit dated 10<sup>th</sup> December' 2020, the petitioner filed its response on each issue raised by the stakeholders. The response of the petitioner and Commission's observations on the comments/objections filed by the stakeholder are annexed as **Annexure-II** with this order.
21. The public hearing in the subject petition was held on 08<sup>th</sup> December' 2020 through video conferencing wherein the representatives of the petitioner, Respondent No.1 and the stakeholder who offered comments were appeared.

### **Capital Cost**

#### **Petitioner's submission**

22. Regarding capital cost of the project, the petitioner submitted the following:

*Based on the unit-wise capital cost of the Project till 31.03.2018 as admitted by the Commission vide its last true-up Orders for FY 2017-18 for Unit-1 (Petition 51 of 2018; Order dated 12.06.2019) and Unit-2 (Petition 57 of 2018; Order dated 01.07.2019) and subsequent additional capital expenditure for FY 2018-19 filed by the petitioner in true-up petitions for Unit No. 1 and 2, the opening Capital Cost of the Project as on 01.04.2019 (i.e. closing Capital Cost of the Project as on 31.03.2019) has been retained as Rs 8082.78 Crores:-*

(All Figures in Rs. Crores)

Particulars	Unit-1	Unit-2	Project
<b>Capital Cost as on 31.03.2018 admitted by this Commission</b>	4431.19 <sup>#</sup>	3552.44 <sup>\$</sup>	7983.63
Additional Capital Expenditure during FY 2018-19 filed in P-21 & 22 of 2020	32.81*	66.35**	99.16
Capital Cost as on 31.03.2019	4464.00*	3618.79**	8082.79

# As per Commission's Order dated 12.06.2019 in Petition No. 51 of 2018;

\$ As per Commission's Order dated 01.07.2019 in Petition No. 57 of 2018

\* As claimed by the Petitioner under true-up Petition No.21 of 2020;

\*\* As claimed by the Petitioner under true-up Petition No.22 of 2020.

### Provisions Under Regulations

23. With regard to capital cost of the existing project, Regulation 21.3 of MPERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2020 provides that:

21.3 "The Capital cost of an existing project shall include the following:

- (i) the capital cost admitted by the Commission prior to 1.4.2019 duly trued up by excluding liability, if any, up to last true-up order issued by the Commission;
- (ii) additional capitalization and de-capitalization for the respective year of tariff as determined in accordance with these Regulations;
- (iii) capital expenditure on account of renovation and modernization as admitted by the Commission in accordance with these Regulations;
- (iv) capital expenditure on account of ash disposal including handling and transportation facility;
- (v) capital expenditure incurred towards railway infrastructure and its augmentation for transportation of coal upto the receiving end of generating station but does not include the transportation cost and any other appurtenant cost paid to the railway; and
- (vi) capital cost incurred or projected to be incurred by a thermal generating station, on account of implementation of the norms under Perform, Achieve and Trade (PAT) scheme of Government of India shall be considered by the Commission subject to sharing of benefits accrued under the PAT scheme with the beneficiaries."



### Commission's Analysis

24. Regulation 6.2 of the Tariff Regulations, 2020 provides that in case of an existing generating station or unit thereof, the application for determination of Multi-year tariff shall be made by the generating company based on admitted capital cost including additional capital expenditure already admitted in last true up order of the Commission and estimated additional capital expenditure for the respective years for the tariff period 2019-24 in accordance with the the Tariff Regulations, 2020.
25. Accordingly, the petitioner has filed the opening capital cost of Rs 8082.79 Crore as on 01<sup>st</sup> April' 2019 for the project based on the unit-wise capital cost till 31<sup>st</sup> March' 2018 as admitted by the Commission vide true-up orders for FY 2017-18 for Unit-1 (i.e order dated 12.06.2019 in Petition 51 of 2018) and (Order dated 01.07.2019 in Petition 57 of 2018) for Unit 2. However, at the time of filing the subject MYT petition, the true-up orders for FY 2018-19 for Unit No. 1 and 2 were under process therefore, the petitioner has also considered the additional capital expenditure filed in true-up petitions for FY 2018-19 for Unit No. 1 and 2 of the project.
26. The Commission issued true-up orders for Unit No. 1 and Unit No. 2 for FY 2018-19 on 08<sup>th</sup> February' 2021 and 10<sup>th</sup> February' 2021 respectively based on the Annual Audited Accounts for FY 2018-19. The capital cost as on 31<sup>st</sup> March' 2019 considered by the Commission for Unit No. 1 and 2 in the aforesaid true-up orders is as given below:

**Table 4: Capital Cost considered by the Commission for the Project as on 31.03.2019**

Unit	Petition No.	Date of the Order	Capital Cost as on 31.03.2019 considered by the commission
Unit No. 1	21 of 2020	08 <sup>th</sup> February' 2021	Rs. 4464.00 Cr.
Unit No. 2	22 of 2020	10 <sup>th</sup> February' 2021	Rs. 3618.79 Cr.
<b>Total capital cost for the project</b>			<b>Rs. 8082.79 Cr.</b>

27. Considering the capital cost as on 31<sup>st</sup> March' 2019 admitted in last true-up orders for Unit No. 1 and Unit No. 2 of the project, the Commission has considered the Opening capital cost of **Rs. 8082.79 Crore** as on 1<sup>st</sup> April' 2019 for the project in this order.

**Additional Capitalization**

**Petitioner’s Submission:**

28. Regarding the additional capitalization claimed during the control period, the petitioner broadly submitted the following:

*The petitioner has considered completion of Balance/Deferred works (that were spilled over the Cut-offDate for reasons beyond the control of the petitioner) within the MYT Period of FY 2019-20 to FY 2023-24 and is claiming Additional Capital Expenditurefor the same under the following enabling Regulatory provisions:-*

	<b>Balance/Deferred Works with in the Scope of Works of the Project</b>	<b>Enabling Regulatory Provisions</b>
1	<i>Deferred works related to construction of ash dyke/ash pond/ash handling system</i>	<i>1. Regulation 27.1 of the Tariff Regulations, 2020,</i>
2	<i>Deferred works related to Railway Siding Works – New Entry Line</i>	<i>2. Regulations 66 and 67 of the Tariff Regulations, 2020;</i>
3	<i>Unfinished works by M/s Lancolnfratech Limited.</i>	<i>3. Regulations 4.1(I), 20.2, 54, 55 of the Tariff Regulations, 2015; 4. MPERC Order dated 27.04.2019 in the PetitionNo. 18 of 2019.</i>
4	<i>Certain other works on account of compliance to Statutory Requirements</i>	<i>1. Regulation 28.1 of the Tariff Regulations, 2020, 2. Regulations 66 and 67 of the Tariff Regulations, 2020; 3. Regulations 4.1(I), 20.2, 54, 55 of the Tariff Regulations, 2015; 4. MPERC Order dated 27.04.2019 inthe Petition No. 18 of 2019.</i>

**Implementation of Revised Emission Standards**

*On 07.12.2015,Ministry of Environment, Forest & Climate Change (‘MoEFCC’), Government of India (‘Gol’)in exercise of power conferred by Sections 6 and 25 of the Environment (Protection) Act 1986, issued the Environment (Protection) Amendment Rules, 2015 (“MoEFCC Notification”) mandating all Thermal Power Plants (‘Plants’) installed till December 2016, like petitioner’s project, to comply with Revised Emission*

Standards of Sulphur Dioxide (SO<sub>2</sub>), Oxides of Nitrogen (NO<sub>x</sub>) and other terms and conditions stipulated under the MoEFCC Notification on or before 06.12.2017. A copy of MoEFCC Notification dated 07.12.2015 is annexed.

Pursuant thereto, on 11.12.2017, Central Pollution Control Board ('CPCB') in exercise of power under Section 5 of the Environment (Protection) Act, 1986 directed the Petitioner to install various Emission Control Systems ('ECS') in its Project in compliance of the revised emission standards prescribed by MoEFCC Notification: -

- (a) Flue Gas Desulphurization (FGD) System for compliance of SO<sub>2</sub> emission norms; and
- (b) Combustion Modification System such as Low NO<sub>x</sub> Burner ('De-NO<sub>x</sub> System') for compliance of NO<sub>x</sub> emission norms

The above-mentioned ECS have to be installed in the petitioner's project as per the phase-wise accelerated timelines given by CPCB: -

- (a) Unit-1 (600 MW) - March 2022
- (b) Unit-2 (600 MW) - June 2022

Accordingly, in addition to the Additional Capital Expenditure to be incurred on the above mentioned Balance/Deferred Works, the Petitioner is required to also incur substantial Additional Capital Expenditure during the MYT Period for implementation of Emission Control Systems such as FGD and De-NO<sub>x</sub> System.

Ministry of Power ('MoP') by its statutory directions dated 30.05.2018 has declared MoEFCC Notification as an event of Change in Law for Thermal Power Plants.

Further, Regulations 28.1 and 31 of the Tariff Regulations, 2020 duly acknowledge pass through of such Additional Capital Expenditure on account Change in Law and implementation of Emission Control Systems towards compliance of Revised Emission Standards for the purpose of determination of tariff during the MYT Period.

### **Estimated Additional Capital Expenditure Plan during the MYT Period**

In accordance with the submissions made above, it is submitted that the petitioner has been making earnest efforts to complete the above mentioned spilled-over works and capitalize the same within FY 2020-21, however due to the prevailing unprecedented situation on account of outbreak of global pandemic COVID-19 & the consequent nation-wide lockdowns in the country affecting various construction & other related business activities, the petitioner anticipates that these works might not be completely capitalized in FY 2020-21.

Nonetheless, the petitioner shall complete all these spilled-over works as also the works related to installation of Emission Control Systems on account of implementation of Revised Emission Standards and capitalize the same during the MYT Period of FY 2019-24. Accordingly, the petitioner humbly requests that in-view of the of ongoing pandemic/natural calamity being a “Force Majeure Event”, this Commission may kindly allow the petitioner to complete these works and capitalize the same within the MYT Period of FY 2019-24 under Tariff Regulations, 2020., The estimated Additional Capital Expenditure to be incurred by the petitioner on its Project during the MYT period is as under:-

(All Figures in Rs. Crores)

	<b>Capital Expenditure</b>	<b>FY 19-20</b>	<b>FY 20-21</b>	<b>FY 21-22</b>	<b>FY 22-23</b>	<b>FY 23-24</b>
<b>1</b>	<b>Freehold Land &amp; associated R&amp;R Expenses (Release of R&amp;R payments provisions)*</b>	<b>5.00</b>	<b>5.00</b>	<b>5.00</b>	<b>5.00</b>	<b>5.00</b>
<b>2</b>	<b>Plant &amp; Machinery</b>					
2.1	Unfinished works by M/s Lancolnfratech Limited	40.85	14.41	37.64	0.50	-
2.2	Initial Spares	13.12	3.41	4.15	-	-
2.3	Deferred works related to Railway Siding Works-New Entry Line	7.29	5.00	70.00	75.00	-
2.4	Other minor works on account of compliance to Statutory Requirements	9.02	8.78	-	-	-
2.5	Emission Control Systems towards Revised Emission Standards	-	-	448.37	448.37	-
	<b>Sub Total – Plant &amp; Machinery</b>	<b>70.28</b>	<b>31.60</b>	<b>560.16</b>	<b>523.87</b>	<b>-</b>
<b>3</b>	<b>Building &amp; Civil Works</b>					
3.1	Deferred works related to construction of ash dyke/ash pond/ash handling system	23.14	6.92	10.00	10.00	-
	<b>Sub Total – Building &amp; Civil Works</b>	<b>23.14</b>	<b>6.92</b>	<b>10.00</b>	<b>10.00</b>	<b>-</b>
	<b>Grand Total</b>	<b>98.42</b>	<b>43.52</b>	<b>575.16</b>	<b>538.87</b>	<b>5.00</b>

\*Payments against R&R benefits provisions to Project Affected People already capitalized in the Annual Audited Accounts of the Petitioner on accrual basis.

### Provisions Under Regulations

29. With regard to additional capitalization beyond the original scope of work and after cut-off date of the project, Regulation 28.1 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020 provides as under:

*28.1 The capital expenditure in respect of existing generating station incurred or projected to be incurred on the following counts beyond the original scope, may be admitted by the Commission, subject to prudence check:*

- (a) Liabilities to meet award of arbitration or for compliance of the order or directions of the any statutory authority, or order or decree of any court of law;*
- (b) Change in law or compliance of any existing law;*
- (c) Force Majeure Events;*
- (d) Any capital expenditure to be incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies or statutory authorities responsible for national security/ internal security;*
- (e) Deferred works relating to ash pond or ash handling system in addition to the original scope of work, on case to case basis:*

*Provided that if any expenditure has been claimed under Renovation and Modernisation (R&M) or repairs and maintenance under O&M expenses, the same expenditure cannot be claimed under this Regulation; and*

- (f) Usage of water from sewage treatment plant in thermal generating station.*

*28.2 In case of de-capitalisation of assets of a generating company, the original cost of such asset as on the date of de- capitalisation shall be deducted from the value of gross fixed asset and corresponding loan as well as equity shall be deducted from outstanding loan and the equity respectively in the year such de-capitalisation takes place with corresponding adjustments in cumulative depreciation and cumulative repayment of loan, duly taking into consideration the year in which it was capitalized.*

30. Regarding the Additional Capitalization on account of Revised Emission Standards, Regulation 31 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020 provides as under:

- 31.1 *A generating company requiring to incur additional capital expenditure in the existing generating station for compliance of the revised emission standards shall share its proposal with the beneficiaries and file a petition before Commission for undertaking such additional capitalization.*
- 31.2 *The proposal under clause above shall contain details of proposed technology as specified by the Central Electricity Authority, scope of the work, phasing of expenditure, schedule of completion, estimated completion cost including foreign exchange component, if any, detailed computation of indicative impact on tariff to the beneficiaries, and any other information considered to be relevant by the generating company.*
- 31.3 *Where the generating company makes an application for approval of additional capital expenditure on account of implementation of revised emission standards, the Commission may grant approval after due consideration of the reasonableness of the cost estimates, financing plan, schedule of completion, interest during construction, use of efficient technology, and such other factors as may be considered relevant by the Commission.*
- 31.4 *After completion of the implementation of revised emission standards, the generating company shall file a petition for determination of tariff. Any expenditure incurred or projected to be incurred and admitted by the Commission after prudence check based on reasonableness of the cost and impact on operational parameters shall form the basis of determination of tariff.*

### **Commission's Analysis**

31. The petitioner has claimed estimated additional capital expenditure during the period FY 2019-20 to FY 2023-24 on account of completion of some balance/deferred works towards Freehold Land & associated R&R Expenses, Unfinished works by M/s Lanco Infratech Limited, Deferred works related to Railway Siding, Initial Spares and some Other minor works(that were spilled over the Cut-off date). The petitioner has also claimed additional capitalization towards implementation of Revised Emission Standards in compliance of Ministry of Environment, Forest and Climate Change, Government of India Notification dated 7.12.2015. The details of the projected/proposed additional capitalization and corresponding funding claimed by the petitioner are as given below:

**Table 5: Additional Capitalization and Funding claimed (Rs in Crores)**

Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Provisional Additional Capitalization Claimed	98.42	43.52	575.16	538.87	5.00
Loan	68.89	30.46	402.61	377.21	3.50
Equity	29.53	13.06	172.55	161.66	1.50

32. Out of the total additional capital expenditure, the petitioner has claimed the additional capital expenditure for FY 2021-22 and FY 2022-23 under Regulation 31 of the Tariff Regulations, 2020 on account of installation of various emission control systems at its Thermal Generating Station in compliance of Ministry of Environment, Forest and Climate Change (MoEF&CC), Government of India, Notification dated 7.12.2015. The petitioner has filed the details of implemented technology/ emission control systems to comply with the revised emission norms in respect of its generating stations along with the estimated costs for implementation and its impact on the tariff of the project.
33. With regard to the additional capitalization, vide Commission's letter dated 2<sup>nd</sup> September' 2020, the petitioner was asked to file a comprehensive reply to the issues raised by the Commission with all relevant supporting documents. In response, by affidavit dated 19<sup>th</sup> October' 2020, the petitioner filed its reply to the issues raised by the Commission. The following issues were communicated to the petitioner:
- i. Whether the assets capitalized during the year are under original scope of work. If so, all supporting documents establishing that the assets capitalized are under scope of work be filed. The petitioner was also asked to explain that whether the assets addition is on account of the reasons mentioned in Regulation 27.1 of the Tariff Regulations, 2020.
  - ii. The information of additional capitalization regarding asset additions, detailed reasons of asset additions, provision of Regulations under which the additional capitalization filed along with supporting documents.
  - iii. If the additional capitalization claimed beyond the original scope of work, the petitioner was asked to explain that the addition of assets is on account of the reasons mentioned in Regulation 28.1 of the Tariff Regulation, 2020.
  - iv. Details of funding of the proposed additional capitalization.
  - v. Copy of Orders placed for all assets claimed under additional capitalization along with a statement indicating all such details of works/assets, amount, Order No. date etc. be filed.

34. In response to above, by affidavit dated 19<sup>th</sup> October' 2020, the petitioner submitted the following response on the issues raised by the Commission:

- i. *The Petitioner submits that except for the works related to installation of Emission Control Systems towards compliance with the Revised Emission Standards prescribed by MoEFCC, the other works which are necessary and required to be completed for seamless and sustainable operation of the Petitioner's Project (viz.deferred works related to Ash Dyke/ Ash Pond/ Ash Handling System, deferred works related to Railway Siding - New Entry line and the unfinished work by the EPC Contractor M/s LancoInfratech Limited including Initial Capital Spares etc.) and hence planned to be undertaken by the Petitioner in its Project during the MYT Period are very well under the original scope of works. It is further submitted that the Petitioner has kept the Hon'ble Commission informed about these works from time to time in its various Petitions/ submissions detailed hereunder. -*

<b>S.No</b>	<b>Petition No.</b>	<b>Page No.</b>	<b>Para No.</b>
1	14 of 2016	9-10-11-12	17.1.2 & 17.2.1
2	68 of 2016 (Amended Petition)	15-16	44
3	10 of 2018	22	63-64
4	51 of 2018	26-27	Footnote of Form TPS-5B
5	57 of 2018	25-26	Footnote of Form TPS-5B
6	18 of 2019	Entire Petition	

*Further, as submitted under Para No. 17 of the present Petition, it is reiterated that the Petitioner has anticipated spilling over of the abovementioned works beyond the then existing Cut-off Date of 31.03.2019 under MPERC Tariff Regulations, 2015 for the reasons beyond the control of the Petitioner. In order to execute the said works, the Petitioner had prayed for extension of then existing Cut-off Date of the Project beyond 31.03.2019 in its PetitionNo. 18 of 2019 filed before this Hon'ble Commission.*

*This Commission by Order dated 27.04.2019 disposed-off this Petition No. 18 of 2019 observing that the then existing Cut-off Date of 31.03.2019 of the Petitioner's Project may be extended after due prudence check of such spilled over works. Further, liberty was granted to the Petitioner to approach this Hon'ble Commission with actual additional capitalization of all works beyond the then*



existing Cut-off Date as per the Annual Audited Accounts along with all details and documents while filing the True-up Petition for respective financial year: -

“10. In view of above provisions under MPERC Tariff Regulations, 2015, it is observed that for considering the actual additional capitalization beyond cut-off date of the project, detailed examination of actual capital expenditure of each work beyond cut-off date and the reasons for delay in capitalization of all such works beyond cut-off date shall be required by the Commission in terms of Regulation 4.1(l) and 20.2 of MPERC Tariff Regulations, 2015. Hence, the subject petition cannot be examined and decided by the Commission at this stage. Therefore, the petitioner is directed to approach the Commission with actual additional capitalization of all works beyond cut-off date as per the Annual Audited Accounts along with all details and documents in terms of aforesaid Regulations while filing the true-up petition for respective financial year.”

Accordingly, the Petitioner has considered completion of these Balance/ Deferred works (that were spilled over then existing Cut-off Date of 31.03.2019 for reasons beyond the control of the Petitioner) within the MYT Period and is claiming Additional Capital Expenditure for the same under the following enabling Regulatory provisions:-

<b>S. No</b>	<b>Balance/ Deferred Works with in the Scope of Works of the Project</b>	<b>Enabling Regulatory Provisions</b>
1	Deferred works related to construction of Ash Dyke/ Ash Pond/ Ash Handling System	1. Regulation 27.1 of the MPERC Tariff Regulations, 2020, 2. Regulations 66 and 67 of the MPERC Tariff Regulations, 2020;
2	Deferred works related to Railway Siding Works - New Entry Line	3. Regulations 4.1(l), 20.2, 54, 55 of the MPERC Tariff Regulations, 2015;
3	Unfinished works by M/s Lancolnfratech Limited (including Initial Capital Spares).	4. Hon'ble MPERC Order dated 27.04.2019 in the Petition No. 18 of 2019.

- ii. The details of additional capitalization have already been submitted under Form TPS-9A placed at Annexure-4 of the present Petition (Page Nos: 48 to 50) and the same may kindly be referred to.
- iii. In addition to the aforesaid works, the Petitioner has also claimed Additional Capital Expenditure on account of certain other works, to be undertaken during the MYT

Period, towards compliance of various Statutory requirements as mandated by Statutory Agencies like Ministry of Power, Pollution Control Boards and MoEFCC. Such works may be beyond the Original scope of work, however the same are allowed/admitted under the following enabling Regulatory provisions:-

<b>S. No.</b>	<b>Particular</b>	<b>Enabling Regulatory Provisions</b>
1	<p>Works to be undertaken by the Petitioner during MYT Period on account of compliance to Statutory Requirements:</p> <p>a. Cyber Security Package for thermal power plants as advised by appropriate Government agencies;</p> <p>b. Sewer Network, Sewage Treatment Plant &amp; Toilet Blocks/Sewage Treatment Plant as advised by Pollution Control Boards</p>	<p>1. Regulation 28.1 (a)&amp; (d) of MPERC Tariff Regulations, 2020;</p> <p>2. Regulation 66 and 67 of MPERC Tariff Regulation 2020;</p> <p>3. Regulation 4.1(l), 20.2,54,55 of MPERC Tariff Regulation 2015;</p>
2	<p>Emission Control Systems to be installed by the Petitioner during MYT Period towards compliance with the Revised Emission Standards stipulated under MoEFCC Notification dated 07.12.2015</p>	<p>1. Regulation 28.1 (b) of MPERC Tariff Regulations, 2020;</p> <p>2. Regulation 31 of MPERC Tariff Regulations, 2020;</p>

- iv. As already submitted under Para Nos. 27 and 28 of the present Petition, it is reiterated that Additional Capital Expenditure planned to be incurred towards the various capital works detailed above, except installation of Emission Control Systems, is proposed to be funded through internal accruals. The Additional Capital Expenditure towards installation of Emission Control Systems is proposed to be funded on the normative debt-equity ratio of 70:30 under fresh financial appraisal where the equity portion would be funded through internal accruals of the Petitioner and balance 70% is proposed to be funded by long term debt.

A statement indicating the details of works/assets claimed to be undertaken during the MYT Period duly mentioning Order details along with copies of the Orders are attached herewith and marked as Annexure-8.

35. On perusal of the details and documents filed by the petitioner, the Commission observed that the reply filed by the petitioner regarding the provisional/proposed additional capitalization during FY 2019-20 to FY 2023-24 required detailed examination on several counts specified in the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 as well as the Annual Audited Accounts for FY 2019-20.
36. It was further observed that the cost expenditure for installation and operation & maintenance of FGD are tentative and estimated based on the assessment made by the petitioner. The cost of FGD and other equipments for implementation of revised emission standards need to be determined only after implementation of the same in a transparent manner. The estimate submitted by the petitioner are only indicative and based on preliminary studies carried out by the consultant. However, the actual adjustment of tariff will be based on actual expenditure subject to prudence check.
37. With regard to truing-up exercise, Regulation 9.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 provides that:
- “A generating company shall file a petition at the beginning of the Tariff period. A review shall be undertaken by the Commission to scrutinize and true up the Tariff on the basis of the capital expenditure and additional capital expenditure actually incurred in the Year for which the true up is being requested. The generating company shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred for the period from 1.4.2019 to 31.3.2024, duly audited and certified by the auditors.”*
38. In view of the above, the additional capitalization filed by the petitioner during the control period is required to be scrutinized on several counts specified in the Regulations 2020. Based on the information made available by the petitioner, this exercise may be carried out while undertaking true-up for the respective year based on Annual Audited Accounts and other requisite details in this regard. The petitioner shall be at liberty to approach the Commission for approval of additional capitalization at the appropriate stage based on the actual expenditure incurred and duly reconciled with the Annual Audited Accounts.
39. Accordingly, the opening Gross Fixed Assets (GFA) for the project as on 1<sup>st</sup> April' 2019 considered in this order shall remain unchanged during the control period in this order.

## Debt : Equity Ratio

### Petitioner's Submission

40. The petitioner has filed the loan and equity balances as on 1<sup>st</sup> April' 2019 by considering the closing balances of loan and equity components as on 31.03.2018 as admitted by the Commission in true-up orders for FY 2017-18 for Unit No.1 and Unit No. 2 and subsequent loan and equity addition as filed in true up petitions for FY 2018-19 (in Petition No 21 and Petition No. 22 of 2020) for Unit No 1 and Unit No 2 respectively.
41. For proposed additional capitalization during control period FY 2019-20 to FY 2023-24, the petitioner considered normative debt:equity ratio i.e., 70:30 in terms of Tariff Regulations' 2020.

### Provisions under Regulations

42. With regard to funding of the project, Regulation 33 of MPERC (Terms & Conditions for Determination of Generation Tariff), Regulations, 2020 provides as under:

*33.1 For new projects, the debt-equity ratio of 70:30 as on date of commercial operation shall be considered. If the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan:*

*Provided that:*

- a. where equity actually deployed is less than 30% of the capital cost, actual equity shall be considered for determination of tariff:*
- b. the equity invested in foreign currency shall be designated in Indian rupees on the date of each investment:*
- c. any grant obtained for the execution of the project shall not be considered as a part of capital structure for the purpose of debt : equity ratio.*

*Explanation.-The premium, if any, raised by the generating company while issuing share capital and investment of internal resources created out of its free reserve, for the funding of the project, shall be reckoned as paid up capital for the purpose of computing return on equity, only if such premium amount and internal resources are actually utilised for meeting the capital expenditure of the generating station.*

33.2 *The generating company shall submit the resolution of the Board of the company regarding infusion of fund from internal resources in support of the utilization made or proposed to be made to meet the capital expenditure of the generating station.*

33.3 *In case of the generating station declared under commercial operation prior to 1.4.2019, debt- equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2019 shall be considered:*

*Provided that in case of a generating station which has completed its useful life as on or after 01.04.2019, if the equity actually deployed as on 01.04.2019 is more than 30% of the capital cost, equity in excess of 30% shall not be taken into account for tariff determination.*

33.4 *In case of the generating station declared under commercial operation prior to 1.4.2019, but where debt: equity ratio has not been determined by the Commission for determination of tariff for the period ending 31.3.2019, the Commission shall approve the debt : equity in accordance with Regulation 33.1 of these Regulations.*

33.5 *Any expenditure incurred or projected to be incurred on or after 1.4.2019 as may be admitted by the Commission as additional capital expenditure for determination of tariff, and renovation and modernisation expenditure for life extension shall be serviced in the manner specified in clause 33.1 of this Regulation.*

### **Commission's Analysis**

43. Regulation 33.3 of MPERC (Terms & Conditions for Determination of Generation Tariff) Regulations' 2020 provides that "in case of generating station declared under Commercial Operation prior to 1<sup>st</sup> April' 2019, the debt-equity ratio allowed by the Commission for determination of tariff for the period ending 31<sup>st</sup> March' 2019 shall be considered". Therefore, the commission has considered the same opening equity and opening loan as on 1<sup>st</sup> April' 2019 for the project which was admitted as closing loan and equity in true-up orders for FY 2018-19 for Unit No. 1 and 2 issued on 08<sup>th</sup> February' 2021 and 10<sup>th</sup> February' 2021 respectively.

44. The Commission has not considered the proposed/projected additional capitalization during FY 2019-20 to FY 2023-24 filed by the petitioner in this order and the same shall be dealt with in true-up order for the respective years based on the Annual Audited Accounts. Therefore, no addition of loan and equity is considered during the control period in this order.
45. The details of the equity and loan amount as on 31<sup>st</sup> March' 2019 admitted by the Commission for Unit No. 1 and 2 in the respective true-up orders for FY 2018-19 are as given below:

**Table 6: Equity as on 31.03.2019 admitted by the Commission for the Project**

Unit	Petition No.	Date of the Order	Equity as on 31.03.2019 considered by the commission
Unit No. 1	21 of 2020	08 <sup>th</sup> February' 2021	Rs. 1239.63 Cr.
Unit No. 2	22 of 2020	10 <sup>th</sup> February' 2021	Rs. 960.95 Cr.
<b>Total Equity for the project</b>			<b>Rs. 2200.58 Cr.</b>

**Table 7: Loan as on 31.03.2019 considered by the Commission for the Project**

Unit	Petition No.	Date of the Order	Loan as on 31.03.2019 considered by the commission
Unit No. 1	21 of 2020	08 <sup>th</sup> February' 2021	Rs. 2416.51 Cr.
Unit No. 2	22 of 2020	10 <sup>th</sup> February' 2021	Rs. 2152.29 Cr.
<b>Total loan for the project</b>			<b>Rs. 4568.80 Cr.</b>

46. In view of the above, the Commission has considered opening equity balance of Rs. 2200.58 Crore and opening loan balance of Rs. 4568.80 Crore as on 1<sup>st</sup> April' 2019 for the project in this order.

#### **Annual Capacity (fixed) Charges**

47. Regulation 17.1 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020, provides that the Annual Capacity Charges shall derived on the basis of annual fixed cost (AFC) of a generating station shall consist of the following components:

- (a) Return on Equity;
- (b) Interest on Loan Capital;
- (c) Depreciation;
- (d) Interest on Working Capital;
- (e) Operation and Maintenance Expenses;

## Return on Equity

### Petitioner's Submission

48. The petitioner filed the Return on Equity during control period from FY 2019-20 to FY 2023-24 by grossing up the base rate of return with the MAT as given below:

**Table 8: Return on Equity Claimed**

Sr. No	Particulars	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening Equity	Rs. Cr.	2269.98	2299.51	2312.56	2485.11	2646.77
2	Add: Increase in equity due to asset addition	Rs. Cr.	29.53	13.06	172.55	161.66	1.50
<b>3</b>	<b>Closing Equity</b>	Rs. Cr.	<b>2299.51</b>	<b>2312.56</b>	<b>2485.11</b>	<b>2646.77</b>	<b>2648.27</b>
4	Average Equity	Rs. Cr.	2284.74	2306.03	2398.84	2565.94	2647.52
5	Base Rate of ROE	%	15.50%	15.50%	15.50%	15.50%	15.50%
6	Tax rate considered MAT	%	15.91%	15.91%	15.91%	15.91%	15.91%
7	Pre-Tax Rate of Return on Equity	%	18.78%	18.78%	18.78%	18.78%	18.78%
8	<b>Return on Equity</b>	Rs. Cr.	<b>429.11</b>	<b>433.11</b>	<b>450.54</b>	<b>481.92</b>	<b>497.24</b>

### Provisions in the Regulation:

49. With regard to Return on Equity, Regulation 34 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 provides that:

*"34.1 Return on equity shall be computed in rupee terms on the equity base determined in accordance with Regulation 33 of these Regulations.*

*34.2 Return on equity shall be computed at the base rate of 15.50% for thermal generating stations and hydro generating stations and at the base rate of 16.50% for the pumped storage hydro generating stations and run-of river generating stations with pondage.*

*Provided that*

- (a) in case of a new project, the rate of return of a new project shall be reduced by*

1.00% for such period as may be decided by the Commission, if the generating station is found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO)/ Free Governor Mode Operation (FGMO):

- (b) in case of existing generating station any of the above requirements are found lacking based on the report submitted by the respective SLDC/RLDC, RoE shall be reduced by 1% for the period for which the deficiency continues.
- (c) in case of a thermal generating station, with effect from 1.04.2020:
  - (a) rate of return on equity shall be reduced by 0.25% in case of failure to achieve the ramp rate of 1% per minute:
  - (b) an additional rate of return on equity of 0.25% shall be allowed for every incremental ramp rate of 1% per minute achieved over and above the ramp rate of 1% per minute, subject to ceiling of additional rate of return on equity of 1.00%:

*Provided that the detailed guidelines in this regard shall be issued by National Load Despatch Centre)*

50. Regarding Tax on Return on Equity, Regulation 35 of the Regulations, 2020 further provides that:

**35. Tax on Return on Equity:**

35.1 The base rate of return on equity as allowed by the Commission under Regulation 34 shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid in the respective financial year in line with the provisions of the relevant Finance Acts by the concerned generating company. The actual income tax on other income stream including deferred tax liability (i.e., income from non-generation business) shall be excluded for the calculation of “effective tax rate”.

35.2 Rate of return on equity shall be rounded off to three decimal places and shall be computed as per the formula given below:

Rate of pre-tax return on equity = Base rate / (1-t)



Where  $t$  is the applicable tax rate in accordance with Regulation 35.1 of this Regulation and shall be calculated at the beginning of every financial year based on the estimated profit and tax to be paid estimated in line with the provisions of the relevant Finance Act applicable for that financial year to the company on pro-rata basis by excluding the income of non-generation business and the corresponding tax thereon. In case of generating company paying Minimum Alternate Tax (MAT), " $t$ " shall be considered as MAT rate including surcharge and cess. For example: - In case of the generating company paying

(i) Minimum Alternate Tax (MAT) @ 20.96% including surcharge and cess:

$$\text{Rate of return on equity} = 15.50 / (1 - 0.2096) = 19.610\%$$

(ii) In case of generating company paying normal corporate tax including surcharge and cess:

(a) Estimated Gross Income from generation business for FY 2019-20 is Rs 1000 Crore.

(b) Estimated Advance Tax for the year on above is Rs 240 Crore.

(c) Effective Tax Rate for the year 2019-20 = Rs 240 Crore / Rs 1000 Crore = 24%

(d) Rate of return on equity =  $15.50 / (1 - 0.24) = 20.395\%$

35.3 The generating company shall true-up the grossed up rate of return on equity at the end of every financial year based on actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2019-20 to 2023-24 on actual gross income of any financial year. However, penalty, if any, arising on account of delay in deposit or short deposit of tax amount shall not be claimed by the generating company. Any under-recovery or over-recovery of grossed up rate on return on equity after trueing up, shall be allowed to be recovered or refunded to beneficiaries on year to year basis."

### **Commission's Analysis:**

51. Regulation 33.3 of the Regulations, 2020 provides that in case of the generating station declared under commercial operation prior to 1.4.2019, debt- equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2019 shall be considered. In accordance to the aforesaid Regulation, the equity balances as on 31<sup>st</sup> March' 2019 as admitted by the Commission in the true-up order for FY 2018-19 for both the units dated 08<sup>th</sup> February' 2021 and 10<sup>th</sup> February' 2021 respectively is

considered as the base figures for opening equity balance as on 01<sup>st</sup> April' 2019 for the project in this order. However, the Commission has not considered the projected additional capitalization and its corresponding equity during the control period in this order. Therefore, the equity balance as on 1<sup>st</sup> April' 2019 shall remain unchanged during the control period.

52. The petitioner has claimed Return on Equity during the control period by grossing up the base rate of return with Minimum Alternate Tax (MAT). Vide letter dated 02<sup>nd</sup> September' 2020, the petitioner was asked to explain the basis of claiming Return on Equity by grossing up with MAT in light of the Regulation 35 of the Tariff Regulations, 2020. The petitioner was also asked to file supporting documents like Annual Audited Accounts for FY 2018-19 in this regard.

53. By affidavit dated 28<sup>th</sup> September' 2020, the petitioner submitted the following:

*“The Petitioner has estimated the Return on Equity considering the base rate of 15.50% grossed up with effective tax rate (i.e. MAT) of 17.472% during the MYT period in line with the Regulation 34 & 35 of MPERC Tariff Regulations, 2020. It is submitted that the same has been claimed on projection basis, which would be subject to prudence check carried out by the Commission during year-wise Tariff True-up for the MYT Period.”*

54. Regulation 35.1 of the Regulations, 2020 provides that the base rate of return on equity shall be grossed up with the effective tax rate of the respective financial year. For FY 2019-20 onwards, the effective tax rate shall be considered on the basis of actual tax paid in the respective financial year based on Annual Audited Accounts. Therefore, the base rate of return on equity has not been grossed up with MAT in this order. The petitioner is directed to file the details of actual tax payment in light of the respective Annual Audited Accounts with the true-up petitions of each year of the control period.

55. Further, in compliance to Regulation 34.2, the petitioner submitted that the RGMO/FGMO was duly installed at the time of COD of the petitioner's project and the petitioner's project has been duly operating under RGMO/ FGMO. The petitioner further submitted that both the units of the Project have been operating with the ramp rate of over 1% per minute. In this regard, for reference purpose a sample screen shot of website WRLDC detailing the block-wise scheduling of petitioner's project during two 15 mins time-block(s) i.e. 00:00 to 00:15 Hrs and 00:15 to 00:30 Hrs of 22.09.2020

has been filed by the petitioner with the additional submission.

56. Accordingly, the return on equity has been worked out for the control period FY 2019-20 to FY 2023-24 considering the base rate of return as given below:

**Table 9 : Return on Equity admitted**

Sr. No	Particular	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening Equity	Rs.Cr.	2200.58	2200.58	2200.58	2200.58	2200.58
2	Equity Additions	Rs.Cr.	0.00	0.00	0.00	0.00	0.00
3	Closing Equity	Rs.Cr.	2200.58	2200.58	2200.58	2200.58	2200.58
4	Average Equity	Rs.Cr.	2200.58	2200.58	2200.58	2200.58	2200.58
5	Base Rate of ROE	%	15.50%	15.50%	15.50%	15.50%	15.50%
6	Applicable Tax Rate	%	0.00	0.00	0.00	0.00	0.00
7	Applicable Rate of Return	%	15.50%	15.50%	15.50%	15.50%	15.50%
8	<b>Annual Return on Equity</b>	Rs.Cr.	<b>341.09</b>	<b>341.09</b>	<b>341.09</b>	<b>341.09</b>	<b>341.09</b>

57. The petitioner is directed to approach the Commission with details of the actual applicable tax payment during each year of the control period in true-up petition for the respective year.

### Interest on Loan Capital

#### Petitioner's submission:

58. The petitioner has claimed interest on loan capital for the control period FY 2019-20 to FY 2023-24 as given below:

**Table 10: Interest on Loan Claimed**

Sr. No.	Particulars	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening Loan	Rs.Cr.	4499.32	4172.98	3804.77	3792.57	3725.77
2	Add: Increase in Loan additions	Rs.Cr.	68.89	30.46	402.61	377.21	3.50
3	Less: Repayment during the year	Rs.Cr.	395.24	398.67	414.82	444.01	458.25
4	Closing Loan	Rs.Cr.	4172.98	3804.77	3792.56	3725.77	3271.01
5	Average Normative Loan	Rs.Cr.	4336.15	3988.88	3798.66	3759.17	3498.38
6	Weighted average Rate of Interest on actual Loans	%	12.80%	12.80%	12.80%	12.80%	12.80%
7	<b>Interest on loan</b>	Rs.Cr.	<b>554.84</b>	<b>510.40</b>	<b>486.06</b>	<b>481.01</b>	<b>447.64</b>

### Provisions in Regulation

59. With regard to interest and finance charges, Regulation 36 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 provides that:

*“36.1 The loans arrived at in the manner indicated in Regulation 33 of these Regulations shall be considered as gross normative loan for calculation of interest on loan.*

*36.2 The normative loan outstanding as on 1.4.2019 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2019 from the gross normative loan. The repayment for each of the year of the tariff period 2019-24 shall be deemed to be equal to the depreciation allowed for the corresponding year/period. In case of de- capitalization of assets, the repayment shall be adjusted by taking into account cumulative repayment on a pro rata basis and the adjustment should not exceed cumulative depreciation recovered upto the date of de- capitalisation of such asset.*

*36.3 Notwithstanding any moratorium period availed by the generating company, the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the depreciation allowed for the year or part of the year.*

*36.4 The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio after providing appropriate accounting adjustment for interest capitalized:*

*Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered:*

*Provided further that if the generating station does not have actual loan, then the weighted average rate of interest of the generating company as a whole shall be considered.*

*36.5 The interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.*

**Commission's analysis:**

60. Regulation 36.2 of the Regulations, 2020 provides that the normative loan outstanding as on 1.4.2019 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2019 from the gross normative loan. In accordance to the aforesaid Regulation, the loan balances as on 31<sup>st</sup> March' 2019 as admitted by the Commission in the true-up order for FY 2018-19 for Unit No. 1 and 2 dated 08<sup>th</sup> February' 2021 and 10<sup>th</sup> February' 2021, respectively is considered as the base figures for opening loan balance as on 1<sup>st</sup> April' 2019 for the project. However, the Commission has not considered the proposed additional capitalization during the control period and its corresponding loan in this order. Therefore, the loan balances for each financial year is worked out accordingly by considering the normative repayment equivalent to depreciation for the respective year.
61. In para 36 of the petition, the petitioner has submitted that the weighted average rate of interest of 12.80% has been considered based on actual loan portfolio as on 31.03.2019. The petitioner submitted the lending agency-wise calculation details to work out the weighted average rate of interest in Form-TPS-13 filed with the petition.
62. On perusal of the details of weighted average rate of interest filed in Form TPS 13, it was observed that the rate of interest in PFC loan and IIFCL-UK loan for FY 2018-19 is on higher side as compared to past period. Therefore, the petitioner was asked to explain the reasons for higher rate of interest in aforesaid loan schemes. The petitioner was also asked to file calculation sheet along with supporting documents of all lending agencies in respect of actual weighted average rate of interest claimed in the petition.
63. By affidavit dated 28<sup>th</sup> September' 2020, the petitioner submitted the following:
- *"It is submitted that lender-wise annual interest rates as also annual weighted average rate of interest mentioned under Form TPS-13 of the Tariff Forms placed at Annexure-4 of the present Petition have been computed strictly in accordance with the format prescribed under MPERC Tariff Regulations, 2020. These have been computed based on the actual loan portfolio and annual interest paid as certified by each of the lenders in terms of the respective Banker's Certificates for FY 2018-19.*
  - *It is submitted that despite a marginal increase in the interest rates of PFC and IIFCL during FY 2018-19, the overall weighted average rate of interest for FY*

2018-19 has reduced sharply to 12.80% vis-a-vis 13.22% for FY 2017-18, thereby resulting in reduction of tariff.

- The computation sheet of weighted average rate of interest for FY 2018-19 (Form TPS-13 of the Tariff Forms) has already been submitted and placed at Annexure-4 of the present petition. Copies of the Bankers' Certificates for FY 2018-19 are attached herewith and marked as ANNEXURE-10.

64. Considering the above, the interest on loan capital has been worked out during the control period considering the following:

- Opening loan as on 01.04.2019 for the project is considered same as admitted by the Commission in last true-up orders for Unit No. 1 and 2 of the project;
- No loan addition/deduction is considered during the control period;
- Normative repayment equal to depreciation in accordance to Regulations is considered;
- Weighted average rate of interest as filed by the petitioner is considered for the entire control period.

**Table 11: Interest on Loan Allowed**

Sr. No.	Particular	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening Loan	Rs. Cr.	4568.80	4175.17	3781.54	3387.90	2994.27
2	Loan Additions during the year	Rs. Cr.	0.00	0.00	0.00	0.00	0.00
3	Repayment of Loan equal to depreciation	Rs. Cr.	393.63	393.63	393.63	393.63	393.63
4	Closing Loan	Rs. Cr.	4175.17	3781.54	3387.90	2994.27	2600.64
5	Average Loan	Rs. Cr.	4371.98	3978.35	3584.72	3191.09	2797.46
6	Weighted Average Rate of Interest	%	12.80%	12.80%	12.80%	12.80%	12.80%
7	<b>Annual Interest amount on Loan</b>	<b>Rs. Cr.</b>	<b>559.43</b>	<b>509.06</b>	<b>458.69</b>	<b>408.32</b>	<b>357.95</b>

65. The petitioner is directed to file actual weighted average rate of interest in respect of each loan in the true up petitions for respective year of the control period

## Depreciation

### Petitioner's submission:

66. The petitioner has claimed the depreciation for each year of the control period from FY 2019-20 to FY 2023-24 as given below:

**Table 12: Depreciation Claimed (Rs in Crore)**

Sr. no.	PARTICULARS	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening Capital Cost	8,082.79	8,181.21	8,224.73	8,799.89	9,338.76
2	Asset Additions During the year	98.42	43.52	575.16	538.87	5.00
3	Closing Capital Cost	8,181.21	8,224.73	8,799.88	9,338.76	9,343.75
4	Average Capital Cost	8,132.00	8,202.97	8,512.30	9,069.32	9,341.25
5	Rate of Depreciation	4.86%	4.86%	4.87%	4.90%	4.91%
<b>6</b>	<b>Depreciation during the year</b>	<b>395.24</b>	<b>398.67</b>	<b>414.82</b>	<b>444.01</b>	<b>458.25</b>
7	Cumulative Depreciation at the end of the period	1,708.71	2,107.38	2,522.19	2,966.20	3,424.45

### Provisions of the Regulation:

67. With regard to depreciation, Regulation 37 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulation, 2020 provides that:

*37.1 "Depreciation shall be computed from the date of commercial operation of a generating station or unit thereof. In case of the tariff of all the units of a generating station for which a single tariff needs to be determined, the depreciation shall be computed from the effective date of commercial operation of the generating station taking into consideration the depreciation of individual units:*

*Provided that effective date of commercial operation shall be worked out by considering the actual date of commercial operation and installed capacity of all the units of the generating station for which single tariff needs to be determined.*

*37.2 The value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission. In case of multiple units of a generating station, weighted average life for the generating station shall be applied.*

*37.3 The salvage value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the capital cost of the asset:*

*Provided that in case of hydro generating station, the salvage value shall be as*

*provided in the agreement, if any, signed by the developers with the State Government for development of the generating station:*

*Provided further that the capital cost of the assets of the hydro generating station for the purpose of computation of depreciated value shall correspond to the percentage of sale of electricity under long-term power purchase agreement at regulated tariff:*

*Provided also that any depreciation disallowed on account of lower availability of the generating station or generating unit shall not be allowed to be recovered at a later stage during the useful life or the extended life:*

*Provided also that the salvage value for IT equipment and software shall be considered as NIL and 100% value of the assets shall be considered depreciable.*

*37.4 Land other than the land held under lease and the land for reservoir in case of hydro generating station shall not be a depreciable asset and its cost shall be excluded from the capital cost while computing depreciable value of the asset.*

*37.5 Depreciation shall be calculated annually based on 'Straight Line Method' and at rates specified in Appendix-I to these Regulations for the assets of the generating station.*

*37.6 Depreciation shall be chargeable from the first Year of commercial operation. In case of commercial operation of the asset for part of the Year, depreciation shall be charged on pro rata basis:*

*Provided that the remaining depreciable value as on 31<sup>st</sup> March of the year closing after a period of 12 years from the effective date of commercial operation of the station shall be spread over the balance useful life of the assets.*

*37.7 In case of the existing projects, the balance depreciable value as on 1.4.2019 shall be worked out by deducting the cumulative depreciation as admitted by the Commission upto 31.3.2019 from the gross depreciable value of the assets.*

*37.8 The generating company shall submit the details of proposed capital expenditure five years before the completion of useful life of the project along with justification and proposed life extension. The Commission based on prudence check of such submissions shall approve the depreciation on capital expenditure during the fag end of the project.*



37.9 *In case of de-capitalization of assets in respect of generating station or unit thereof, the cumulative depreciation shall be adjusted by taking into account the depreciation recovered in tariff by the de-capitalized asset during its useful services.”*

**Commission’s Analysis:-**

68. The base Gross Fixed Asset (GFA) for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission. In accordance to the aforesaid Regulation, the Gross Fixed Assets as on 31<sup>st</sup> March’ 2019 admitted by the Commission in the true-up order for FY 2018-19 for both the Units i.e., Unit No. 1 and 2 issued on 08<sup>th</sup> February’ 2021 and 10<sup>th</sup> February’ 2021 respectively is considered as the base figures for opening GFA as on 1<sup>st</sup> April’ 2019 for the project. However, the Commission has not considered the proposed/projected additional capitalization during the control period, therefore, the Gross Fixed Assets as on 1<sup>st</sup> April’ 2019 shall remain same for the entire control period.
69. On perusal of the subject petition, it was observed that the petitioner has claimed the higher weighted average rate of depreciation for FY 2022-23 and FY 2023-24. Vide letter dated 2<sup>nd</sup> September’ 2020, the petitioner was asked to explain the reasons for claiming higher weighted average rate of depreciation for FY 2022-23 and FY 2023-24. The petitioner was also asked to file the basis of the rate of depreciation claimed in the petition in light of Asset-Cum-Depreciation register maintained as on date vis-à-vis the addition of assets claimed in the subject petition.
70. By affidavit dated 28<sup>th</sup> September’ 2020, the petitioner submitted that the Emission Control Systems being implemented by the petitioner towards compliance with the Revised Emission Standards stipulated by MoEFCC, GoI are scheduled to be under operations from FY 2022-23 onwards. The depreciation of such Emission Control Systems from FY 2022-23 onwards shall consequently result in slight increase in the overall weighted average rate of depreciation of the petitioner’s project from FY 2022-23 onwards.
71. As mentioned in preceding part of this order, the Commission has not considered additional capitalization during the control period in this order and the same shall be dealt with in true-up petition for respective year based on the Annual Audited Accounts. Therefore, the Commission has considered the same weighted average rate of depreciation of 4.87% as considered in the last true-up orders for Unit No. 1 and 2 for FY 2018-19 in this order.

72. Cumulative depreciation as on 31<sup>st</sup> March' 2019 admitted in last true-up order for FY 2018-19 for Unit No. 1 and 2 dated 08<sup>th</sup> February' 2021 and 10<sup>th</sup> February' 2021 respectively is considered as opening cumulative depreciation in this order.
73. Based on above, the annual depreciation for the control period is worked out in this order as given below:-

**Table 13: Depreciation Admitted**

Sr. No.	Particular	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening GFA	Rs Cr.	8082.79	8082.79	8082.79	8082.79	8082.79
2	Assets Addition	Rs Cr.	0.00	0.00	0.00	0.00	0.00
3	Closing GFA	Rs Cr.	8082.79	8082.79	8082.79	8082.79	8082.79
4	Average GFA	Rs Cr.	8082.79	8082.79	8082.79	8082.79	8082.79
5	Weighted Average Rate of Depreciation	%	4.87%	4.87%	4.87%	4.87%	4.87%
<b>6</b>	<b>Annual Depreciation</b>	<b>Rs Cr.</b>	<b>393.63</b>	<b>393.63</b>	<b>393.63</b>	<b>393.63</b>	<b>393.63</b>
7	Cumulative Depreciation	Rs Cr.	2036.47	2430.10	2823.74	3217.37	3611.00

74. The petitioner is directed to file a detailed year-wise Asset-Cum-Depreciation register in accordance to the Regulations, 2020 with the true-up petition for respective years of control period.

### Operation & Maintenance Expenses

#### Petitioner's Submission

75. The petitioner filed the annual Operation and Maintenance expenses for the control period FY 2019-20 to FY 2023-24 as given below:

**Table 14: Operation & Maintenance Expenses claimed (Rs. in Crore)**

Particular	Units	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Annual O&M expenses	Rs Crore	243.12	251.64	260.52	287.57	297.68

#### Provision in Regulations:-

76. The norms for Operation and Maintenance Expenses for thermal generating units commissioned on or after 01/04/2012 are specified under Regulation 40.2 of the Regulations, 2020 for the generating Unit of "600/660 MW Series" for control period FY 2019-20 to FY 2023-24 which are as given below:

**Table 15: Norms for O&M Expenses****(Rs. lakh/MW/Year)**

Units (MW)	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
600/660	20.26	20.97	21.71	22.47	23.26

**Commission's Analysis**

77. The Commission has worked out the annual Operation and Maintenance Expenses as per the norms prescribed under aforesaid Regulations, 2020 for the control period FY 2019-20 to FY 2023-24 as given below:

**Table 16: O& M Expenses for Generating Unit**

Particular	Units	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Installed Capacity	MW	1200	1200	1200	1200	1200
O&M Expenses Norms	Rs in Lakh/MW	20.26	20.97	21.71	22.47	23.26
<b>Annual O&amp;M expenses</b>	<b>Rs. Cr.</b>	<b>243.12</b>	<b>251.64</b>	<b>260.52</b>	<b>269.64</b>	<b>279.12</b>

**Interest on Working Capital****Petitioner's submission**

78. The petitioner filed the interest on working capital for the control period in accordance with Regulations, 2020. The rate of interest on working capital has been taken by the petitioner on normative basis and considered as the bank rate as on 01<sup>st</sup> April of the year during the tariff period from FY 2019-20 to FY 2023-24 (MCLR as on 1<sup>st</sup> April of the year specified by State Bank of India+ 350 bps). The details of the Interest on Working Capital as filed by the petitioner is given below :-

**Table 17: Interest on Working Capital claimed****(Rs. In Crores)**

Sr. No.	Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Cost of Coal/Lignite	162.68	170.82	179.36	190.21	199.72
2	Cost of Secondary Fuel Oil	3.31	3.47	3.64	3.83	4.03
3	Maintenance Spares	48.62	50.33	52.10	57.51	59.54
4	O&M Expenses	20.26	20.97	21.71	23.96	24.81
5	Receivables	458.62	467.33	482.99	514.17	529.42
<b>6</b>	<b>Total Working Capital</b>	<b>856.19</b>	<b>883.74</b>	<b>919.16</b>	<b>982.13</b>	<b>1019.58</b>
<b>7</b>	<b>Interest on Working Capital</b>	<b>12.05%</b>	<b>11.05%</b>	<b>11.05%</b>	<b>11.05%</b>	<b>11.05%</b>
<b>8</b>	<b>Total Interest on Working Capital</b>	<b>103.17</b>	<b>97.65</b>	<b>101.57</b>	<b>108.53</b>	<b>112.66</b>

**Provisions in Regulation:**

79. With regard to interest on working capital Regulation 38 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulation, 2020 provides that:

*38.1 "The Working Capital shall cover:*

- (1) Coal- based thermal generating stations*
  - (a) Cost of coal towards stock, if applicable, for 15 days for pit-head generating stations and 30 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal stock storage capacity whichever is lower;*
  - (b) Advance payment for 30 days towards cost of coal for generation corresponding to the normative annual plant availability factor;*
  - (c) Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil;*
  - (d) Maintenance spares @ 20% of operation and maintenance expenses specified in Regulation 39 and 40 of these Regulations;*
  - (e) Receivables equivalent to 45 days of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor; and*
  - (f) Operation and maintenance expenses for one month.*

*38.2 The cost of fuel shall be based on the landed fuel cost incurred (taking into account normative transit and handling losses) by the generating station and gross calorific value of the fuel as per actual weightage average for the three months preceding the first month for which tariff is to be determined and no fuel price escalation shall be provided during the tariff period."*

*Provided that in case of new generating station, the cost of fuel for the first financial year shall be considered based on landed fuel cost (taking into account normative transit and handling losses) and gross calorific value of the fuel as per actual weighted average for three months, as used for infirm power, preceding date of commercial operation for which tariff is to be determined*

*38.3 "Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.4.2019 or as on 1<sup>st</sup> April of the year during*

*the tariff period 2019-20 to 2023-24 in which the generating station or a unit thereof, is declared under commercial operation, whichever is later:*

*Provided that in case of truing-up, the rate of interest on working capital shall be considered at bank rate as on 1<sup>st</sup> April of each of the financial year during the tariff period 2019-24.*

*38.4 Interest on working capital shall be payable on normative basis notwithstanding that the generating company has not taken loan for working capital from any outside agency.*

**Commission’s analysis:**

80. The working capital for thermal power stations is worked out based on the aforesaid norms for working capital as given below:

**(a) Cost of Coal**

81. The petitioner’s power station is non pit-head station therefore, the cost of coal for 60 days (30 days towards stock and 30 days towards advance payment )for generation corresponding to the normative annual plant availability factor is considered for working capital purpose. The weighted average rate of coal is worked out as per the details filed by the petitioner for the preceding three months i.e., January, February and March’ 2019.

82. GCV of coal has been considered as per the information furnished by the petitioner on ‘received basis’ for the preceeding three months i.e., January, February and March’ 2019.The Petitioner also filed the laboratory test reports for GCV on received basis for aforesaid preceeding three months in this regard.Accordingly, the 60 days cost of coal for working capital is worked out as under:

**Table 18: Cost of 60 days coal stock for working capital**

Particular	Units	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Installed Capacity	MW	1200	1200	1200	1200	1200
Gross Station Heat Rate	kCal/kWh	2372.80	2372.80	2372.80	2372.80	2372.80
Gross Generation	MUs	8959.68	8935.20	8935.20	8935.20	8959.68
GCV of Coal	kCal/Kg	3588.23	3588.23	3588.23	3588.23	3588.23
Sp. Coal Consumption	kg/kWh	0.6652	0.6652	0.6652	0.6652	0.6652
Annual Coal Consumption	MT	5959997	5943713	5943713	5943713	5959997

60 Days Coal Stock	MT	977049	977049	977049	977049	977049
Rate of Coal	Rs./MT	3408.99	3408.99	3408.99	3408.99	3408.99
<b>Coal Cost (60 days stock)</b>	<b>Rs in Cr.</b>	<b>333.07</b>	<b>333.07</b>	<b>333.07</b>	<b>333.07</b>	<b>333.07</b>

**(b) Secondary Fuel Oil Cost**

83. The petitioner filed the cost of secondary fuel oil based on the fuel oil procured during preceding three months i.e. January, February and March' 2019. The petitioner filed the details of oil procured and worked out the weighted average rate of secondary fuel oil.
84. Regulation 38.1 of the Regulations, 2020 provides that in case of use of more than one secondary fuel oil, cost of fuel oil stock shall be provided for the main secondary fuel oil. In view of the above provision, the petitioner was asked to confirm along with details that the cost of only main fuel is considered while determining the working capital.
85. By affidavit dated 28<sup>th</sup> September' 2020, the petitioner informed that while computing the annual working capital requirement, the petitioner has claimed the cost of Light Diesel Oil only as main secondary fuel oil for two months as per Regulation 38.1 of the MPERC Tariff Regulations, 2020.
86. The petitioner has worked out the weighted average rate of oil as Rs. 44391.02/KL for the control period based on the landed price of secondary fuel oil purchased during the year. The same weighted average rate of oil is considered by the Commission in this order. Accordingly, the cost of two months' main fuel oil stock at normative availability is worked out as given below:

**Table 19: Cost of Main Secondary Fuel Oil for 2 Months availability**

Particular	Units	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Installed Capacity	MW	1200	1200	1200	1200	1200
NAPAF	%	85.00%	85.00%	85.00%	85.00%	85.00%
Gross Generation	MUs	8959.68	8935.20	8935.20	8935.20	8959.68
Normative Specific Oil Consumption	ml/kWh	0.50	0.50	0.50	0.50	0.50
Quantity of Sec Fuel Oil required	KL	4479.84	4467.60	4467.60	4467.60	4479.84
Two months' stock of main fuel oil	KL	746.64	744.60	744.60	744.60	746.64
Weighted Avg. Rate of Secondary Fuel Oil	Rs./KL	44,391.02	44,391.02	44,391.02	44,391.02	44,391.02
<b>Two Months Oil Cost</b>	<b>Rs. Cr.</b>	<b>3.31</b>	<b>3.31</b>	<b>3.31</b>	<b>3.31</b>	<b>3.31</b>

**(c) O&M Expenses**

87. Operation and Maintenance expenses of one month as determined in this order have been considered for working capital of thermal power station.

**Table 20: O&M Expenses for 1 Months (Rs. in Crore)**

Particular	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Annual O&M Expenses	243.12	251.64	260.52	269.64	279.12
O&M Expenses for 1 Month	20.26	20.97	21.71	22.47	23.26

**(d) Maintenance Spares**

88. Maintenance spares for the purpose of working capital is worked out as 20% of the normative annual O&M expenses respectively as per the provision under Regulations.

**Table 21: Maintenance Spares (Rs. in Crore)**

Particular	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Annual O&M Expenses	243.12	251.64	260.52	269.64	279.12
<b>20% of Annual O&amp;M Expenses</b>	<b>48.62</b>	<b>50.33</b>	<b>52.10</b>	<b>53.93</b>	<b>55.82</b>

**(e) Receivables**

89. Receivables for thermal power stations are worked out equivalent to 45 Days of Capacity (Fixed) charges and Energy Charges for sale of electricity worked out on the basis of Normative Annual Plant Availability Factor as follows:

**Table 22: Receivables for 45 Days (Rs. in Crores)**

Particular	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Variable Charges- 45 days	252.25	252.25	252.25	252.25	252.25
Fixed Charges- 45 days	201.71	196.21	191.06	185.93	180.35
<b>Receivables- 45 days</b>	<b>453.96</b>	<b>448.46</b>	<b>443.31</b>	<b>438.18</b>	<b>432.60</b>

90. Further, with regard to the rate of interest on working capital, Regulation 38.3 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 provides as under:

*“38.3 “Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.4.2019 or as on 1<sup>st</sup> April of the year during the tariff period 2019-20 to 2023-24 in which the generating station or a unit thereof , is declared under commercial operation, whichever is later.”*

Further, Regulation 3.1(7) reads as under:

‘Bank Rate’ means the one-year marginal cost of lending rate (MCLR) of the State Bank of India issued from time to time plus 350 basis points”

91. In line with Regulation 38.3 of the Tariff Regulations, the rate of interest on working capital shall be considered as 12.05% (i.e. 1 (one) year SBI MCLR of 8.55% as on 01.04.2019 + 350 bps) for FY 2019-24 control period. Further, the aforesaid rate of interest is subject to truing up based on SBI MCLR as on 1<sup>st</sup> April of the respective financial years. The tariff of this generating station is being determined in the year 2020- 21 and one year SBI MCLR as on 1.4.2020 (i.e. 7.75%) is available. Hence, in order to safeguard against additional interest burden due to excess/under recovery or tariff, it would be appropriate to consider the rate of interest on working capital for the period from 1.4.2020 to 31.3.2024 as 11.25% (i.e. 1 year SBI MCLR of 7.75% as on 1.4.2020 + 350 bps). Accordingly, the interest on working capital has been considered as 12.05% for 2019-20 and 11.25% for the period from 2020-21 to 2023-24. Accordingly, interest on working capital is computed as under:

**Table 23: Rate of interest on working capital**

Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
MCLR prevailing as on 1 <sup>st</sup> April of the year specified by State Bank of India.	8.55%	7.75%	7.75%	7.75%	7.75%
Plus 350 basis point	3.50%	3.50%	3.50%	3.50%	3.50%
<b>Rate of Interest on Working Capital</b>	<b>12.05%</b>	<b>11.25%</b>	<b>11.25%</b>	<b>11.25%</b>	<b>11.25%</b>

92. Based on the above, the interest on working capital for FY 2019-20 to FY 2023-24 is determined as given below:

**Table 24: Interest on Working Capital Allowed**

(Rs. Crore)

Sr. No.	Particular	Norms	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Cost of Coal	60 Days	333.07	333.07	333.07	333.07	333.07
2	Cost of Main Fuel Oil	2 months	3.31	3.31	3.31	3.31	3.31
3	O&M Expenses for One Months	1 Month	20.26	20.97	21.71	22.47	23.26
4	Maintenance Spares 20% of O&M expenses	20% of O&M	48.62	50.33	52.10	53.93	55.82



5	Receivables for 45 days	45 days	453.96	448.46	443.31	438.18	432.60
6	Total Working Capital	Rs Cr.	<b>859.23</b>	<b>856.14</b>	<b>853.50</b>	<b>850.95</b>	<b>848.07</b>
7	Rate of Interest on Working Capital	%	12.05	11.25	11.25	11.25	11.25
8	<b>Annual Interest on Working Capital</b>	<b>Rs Cr.</b>	<b>103.54</b>	<b>96.32</b>	<b>96.02</b>	<b>95.73</b>	<b>95.41</b>

## Non-Tariff Income

### Provisions in Regulation:

93. Regulation 58.1 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 provides that

*58.1 “The non-tariff net income in case of generating station on account of following shall be shared in the ratio of 50:50 with the beneficiaries and the generating company on annual basis:*

- a) Income from rent of land or buildings;*
- b) Income from sale of scrap;*
- c) Income from sale of fly ash;*
- d) Interest on advances to suppliers or contractors;*
- e) Rental from staff quarters;*
- f) Rental from contractors;*
- g) Income from advertisements; and*
- h) Interest on investments and bank balances:*

*Provided that the interest or dividend earned from investments made out of Return on Equity corresponding to the regulated business of the Generating Company shall not be included in Non-Tariff Income:*

*Provided further that the Generation Company shall submit full details of its forecast of Non-Tariff Income to the Commission. Non-tariff income shall also be trued-up based on audited accounts.”*

94. The aforesaid Regulation provides that the Generation Company shall submit full details of its forecast of Non-Tariff Income to the Commission. On perusal of the petition, it was observed that the petitioner had not filed projected non-tariff income for the control period. Vide Commission’s letter dated 02<sup>nd</sup> September’ 2020, the Commission asked the petitioner to file projected non-tariff/other income during the control period FY 2019-20 to FY 2023-24 in accordance to the Regulation 58.1 of the Regulations, 2020.

95. By affidavit dated 28<sup>th</sup> September 2020, the petitioner submitted the following:

*It is submitted that in absence of Annual Audited Accounts for FY 2019-20 at the time of filing of the present Petition, the Petitioner was unable to project non-tariff income for FY 2019-20 onwards. However, at this juncture Annual Audited Accounts for FY 2019-20 are being finalized and a non-tariff income for FY 2019-20 is expected to be of the order of Rs. 0.50 Crore. Accordingly, the year-wise non-tariff income on projected basis during the MYT Period may be considered as under in accordance with Regulation 58 of the MPERC Tariff Regulations, 2020:*

(Rs. Crore)

	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>	<b>FY 2023-24</b>
<b>Non Tariff Income</b>	0.50	0.50	0.50	0.70	0.70

In view of the above, the Commission has provisionally considered the following non-tariff income as filed by the petitioner, which is subject to true-up based on Annual Audited Accounts of each year of the control period.

**Table 25: Non-Tariff Income**

(Rs. in Crore)

<b>Year</b>	<b>Non-Tariff Income</b>	<b>50% of the Non-Tariff Income</b>
FY 2019-20	0.50	0.25
FY 2020-21	0.50	0.25
FY 2021-22	0.50	0.25
FY 2022-23	0.70	0.35
FY 2023-24	0.70	0.35

96. The petitioner is directed to file details of actual non-tariff income for each year based on Annual Audited Accounts with the true-up petition of respective year.

#### **Normative Annual Plant Availability Factor**

97. Normative Annual Plant Availability Factor (NAPAF) for recovery of Annual Capacity (fixed) Charges is 85% as per MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations 2020.

**Summary of Annual Capacity (fixed) Charges**

98. The Annual Capacity (fixed) Charges determined for each year of the control period from FY 2019-20 to FY 2023-24 in this order are summarized below:

**Table 26: Summary of Annual Capacity (Fixed) Charges: Amount in Rs. Crore**

S. No	Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
1	Return on Equity	341.09	341.09	341.09	341.09	341.09
2	Interest on Loan	559.42	509.06	458.69	408.32	357.95
3	Depreciation	393.63	393.63	393.63	393.63	393.63
4	Interest on Working Capital	103.54	96.32	96.02	95.73	95.41
5	O & M Expenses	243.12	251.64	260.52	269.64	279.12
6	<b>Annual capacity (fixed) charges</b>	<b>1,640.80</b>	<b>1,591.73</b>	<b>1,549.95</b>	<b>1,508.42</b>	<b>1,467.20</b>
7	Less: Non-Tariff Income	0.25	0.25	0.25	0.35	0.35
8	Net Annual Capacity Charges	1,640.55	1,591.48	1,549.70	1,508.07	1,466.85
9	<b>Capacity Charges corresponding to 30% of the Installed Capacity</b>	<b>492.17</b>	<b>477.45</b>	<b>464.91</b>	<b>452.42</b>	<b>440.06</b>

99. The aforesaid Annual Capacity Charges have been computed based on norms specified under the Regulations, 2020. The above Annual Capacity (fixed) Charges are determined corresponding to the contracted capacity under PPA. The recovery of Annual Capacity (Fixed) charges shall be made by the petitioner in accordance with Regulation 42 of the Regulations, 2020

100. Regulation 7.11 of the Regulations, 2020 provides as under:

*In case of the existing projects, the generating company shall continue to bill provisionally the beneficiaries at the capacity charges as approved by the Commission and applicable as on 31.03.2019 for the period starting from 01.04.2019 till approval of final capacity charges in accordance with these Regulations:*

*Provided that the billing for energy charges w.e.f 01.04.2019 shall be as per the operational norms specified in these Regulations:*

*Provided further that the difference between the tariff above provisional bills raised by the generating company to beneficiary and the tariff determined by the Commission in accordance with these Regulations, shall be recovered or refunded to, the beneficiary with simple interest at the rate equal to the bank rate prevailing as on 1st April of the respective year of the tariff period, in six equal monthly installments.*

101. The Capacity Charges determined by the Commission in this order shall be recovered or refunded in accordance with the aforesaid Regulation in six equal monthly installments.

### Energy (Variable) Charges

#### Petitioner's submission:

102. While claiming the Energy charges for the control period, the petitioner has considered parameters like Gross Station Heat Rate and Auxiliary Consumption, Specific fuel oil consumption, transit loss for FY 2019-20 to FY 2023-24 based on the provisions under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. The details of the Energy Charges worked out by the petitioner are as given below:

**Table 27: Energy Charges Rate Claimed**

Particular	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Installed Capacity	MW	1200	1200	1200	1200	1200
NAPAF	%	85%	85%	85%	85%	85%
Gross Station Heat Rate	kCal/kWh	2372.80	2372.80	2372.80	2372.80	2372.80
Sp. Fuel Oil Consumption	ml/kWh	0.50	0.50	0.50	0.50	0.50
Aux. Energy Consumption	%	6.25%	6.25%	6.25%	6.25%	6.25%
Transit Loss	%	0.80	0.80	0.80	0.80	0.80
Weighted average GCV of Oil	kCal/ltr.	10000	10000	10000	10000	10000
Weighted average GCV of Coal	kCal/kg	3673	3673	3673	3673	3673
Weighted Average landed Price of Coal	Rs./MT	3409	3579	3758	3946	4144
Weighted Average landed Price of Oil	Rs/ KL	44,391	46,611	48,941	51,388	53,958
Heat Contributed from HFO	kCal/kWh	5.00	5.00	5.00	5.00	5.00
Heat Contributed from Coal	kCal/kWh	2367.80	2367.80	2367.80	2392.00	2392.00
Specific Coal Consumption	kg/kWh	0.645	0.645	0.645	0.651	0.651
Energy Charge from Coal	RsCrore	1985	2078	2182	2314	2437
Total Cost of Oil	RsCrore	19.89	20.82	21.86	22.96	24.17
Total Energy Charges	RsCrore	2,004.63	2,099.11	2,204.07	2,367.43	2,492.45
<b>Rate of Energy Charge at ex bus</b>	<b>Rs./kWh</b>	<b>2.387</b>	<b>2.506</b>	<b>2.631</b>	<b>2.880</b>	<b>3.024</b>

**Provisions in Regulation:**

103. For determining the energy charges (variable charges) of thermal power stations, Regulation 18 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulation, 2020 provides as under:

*Energy charges shall be derived on the basis of the Landed Fuel Cost (LFC) of a generating station (excluding hydro) and shall consist of the following cost:*

- (a) Landed Fuel Cost of primary fuel; and*
- (b) Cost of secondary fuel oil consumption*
- (c) Cost of Lime-stone or any other regent as applicable*

104. Regulation 43.1, 43.2 and 43.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulation, 2020, further provides that:

*43.1 The energy charge shall cover the primary and secondary fuel cost and shall be payable by every beneficiary for the total energy scheduled to be supplied to such beneficiary during the calendar month on ex-power plant basis, at the energy charge rate of the month (with fuel price adjustment). Total Energy charge payable to the generating company for a month shall be:*

*(Energy charge rate in Rs./kWh) x {Scheduled energy (ex-bus) for the month in kWh.}*

*43.2 Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the following formula:*

$$ECR = \{(SHR - SFC \times CVSF) \times LPPF / CVPF + SFC \times LPSFi\} \times 100 / (100 - AUX)$$

*Where,*

*AUX = Normative auxiliary energy consumption in percentage.*

*CVPF= Weighted Average Gross calorific value of coal as received, in kCal per kg less 85 Kcal/kg on account of variation during storage at generating station:*

*Provided that, in case of blending of coal from different sources, the weighted average Gross Calorific Value of coal (primary fuel) shall be arrived in proportion to blending ratio.*

*CVSF = Calorific value of secondary fuel, in kCal per ml.*

*ECR = Energy charge rate, in Rupees per kWh sent out.*

*SHR = Gross station heat rate, in kCal per kWh.*

*LPPF= Weighted average landed price of coal (primary fuel), in Rupees per kg, during the month. (In case of blending of coal from different sources, the weighted average landed price of coal shall be arrived in proportion to blending ratio).*

*SFC = Normative Specific fuel oil consumption, in ml per kWh.*

*LPSFi = Weighted Average Landed Price of Secondary Fuel in Rs./ml during the month*

43.4 *The generating company shall provide to the beneficiaries of the generating station the details of parameters of GCV and price of coal i.e. domestic coal, imported coal, e-auction coal, etc., as per the forms prescribed to these Regulations:*

*Provided that the details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal and the weighted average GCV of the coal as received shall also be provided separately, along with the bills of the respective month:*

*Provided further that copies of the bills and details of parameters of GCV and price of coal i.e. domestic coal, imported coal, e-auction coal, etc., details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal shall also be displayed on the website of the generating company. The details should be available on its website on monthly basis.*

**Commission's analysis:**

105. The MPERC Tariff Regulations, 2020 provides that the energy (variable) charges shall cover both primary and secondary fuel costs and shall be payable during the calendar month for the scheduled energy on ex-power plant basis.

In order to determine the energy charges of thermal power station, the operating parameters like Gross Station Heat Rate, Auxiliary Energy Consumption, Secondary Fuel Oil Consumption and Transit loss need to be examined as per provisions under the Regulations, 2020.

**Gross Station Heat Rate:**

106. On perusal of the details regarding Energy charges filed with the petition, it is observed

that the petitioner has filed gross station heat rate for the project (Unit No. 1&2) as 2372.80 Kcal/KWh for the control period of FY 2019-20 to FY 2023-24.

107. Regarding the Gross Station Heat Rate of thermal generating units, Regulation 49.3 (C) of the Regulations, 2020, provides as under:

*“(i) Existing Coal-based thermal generating stations having CoD on or after 1.4.2012 till 31.03.2016, (other than those covered under Regulation 49.2), the station heat rate norms shall be as already approved by the Commission.*

*(ii) Existing Coal based thermal generating stations having CoD on or after 1.4.2016 till 31.3.2019, the station heat rate for the control period FY 2019-20 to FY 2023-24 shall be as given below:*

$$\text{Station Heat Rate} = 1.05 \times \text{Design Heat Rate (kCal/kWh)}$$

*.....Provided also that if one or more Units were declared under commercial operation prior to 1.4.2016, the heat rate norms for those Units as well as Units declared under commercial operation on or after 1.4.2016 shall be lower of the heat rate norms arrived at by above methodology*

108. In para 49 of the subject petition, the petitioner submitted the following:

*In accordance to the above provisions, the petitioner has arrived at GSHR of 2372.80 kCal/kWh) for computation of Energy Charges during the MYT Period as given below:*

<b>Unit-1(COD: 20.05.2015)</b>	<b>Unit-2 (COD: 07.04.2016)</b>	<b>Project</b>
<b>A. Max. Design Unit Heat Rate:</b> 2294 kCal/kWh as per Tariff Regulations, 2012	<b>B. Max. Design Unit Heat Rate:</b> 2267 kCal/kWh as per Tariff Regulations 2015	<b>C. Lower of A &amp; B</b> i.e. 2267 kCal/kWh
<b>D. Max. Turbine Heat rate:</b> 1945.7 kCal/kWh <b>E. Boiler Efficiency:</b> 86.10% <b>F. Design Heat Rate:</b> 1945.7/86.1% =2259.81 kCal/Kwh	<b>G. Max. Turbine Heat rate:</b> 1945.7 kCal/kWh <b>H. Boiler Efficiency :</b> 86.10% <b>I. Design Heat Rate:</b> 1945.7/86.1% = 2259.81 kCal/Kwh	<b>J. 2259.81 kCal/kWh</b> <b>K.Design Heat Rate considered (Lower of C &amp; J)</b> <u><b>=2259.81kCal/kWh</b></u>
<b>Project GSHR for MYT Period: 1.05 X 2259.81 = 2372.80 kCal/kWh</b>		

109. In view of the above provisions under the Regulations, 2020 and submission made by the petitioner, the Commission observed the following:

- i. The Unit No. 1 of the project achieved COD on 20<sup>th</sup> May' 2015 and vide order dated 1<sup>st</sup> December' 2017 in petition No. 68 of 2016, the Commission determined the Gross Station Heat Rate of Unit No. 1 as 2402Kcal/kWh in accordance with the provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012.
- ii. Further, Unit No. 2 of the project achieved COD on 07<sup>th</sup> April' 2016 and vide order dated 29<sup>th</sup> November' 2018, the Commission determined the Gross Station Heat Rate of Unit No. 2 as 2361.51 Kcal/kWh in accordance with the provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015.
- iii. Regulation 49.3 (C)(i) of the Regulations, 2020 provides that the "existing Coal-based thermal generating stations having CoD on or after 1.4.2012 till 31.03.2016, the station heat rate norms shall be as already approved by the Commission.
- iv. Regulation 49.3 (C) (ii) of the Regulations, 2020 provided that the Existing Coal based thermal generating stations having CoD on or after 1.4.2016 till 31.3.2019, the station heat rate for the control period FY 2019-20 to FY 2023-24 shall be as given below:  
$$\text{Station Heat Rate} = 1.05 \times \text{Design Heat Rate (kCal/kWh)}$$
- v. Unit No. 2 of the project achieved COD after 1.4.2016 and design heat rate of this unit is 2259.81 Kcal/kWh therefore, the Gross Station Heat Rate of Unit No, 2 in accordance to above formula shall be 2372.80 Kcal/kWh.
- vi. The aforesaid Regulation also provides that if one or more Units were declared under commercial operation prior to 1.4.2016, the heat rate norms for those Units as well as Units declared under commercial operation on or after 1.4.2016 shall be lower of the heat rate norms arrived at by above methodology.

110. In accordance to the above provision under Regulations, the lower of the Station Heat Rate norms of 2372.80 Kcal/Kwh as filed by the petitioner is considered for the project in this order for the enrire control period of FY 2019-20 to FY 2023-24.



**Auxiliary Energy Consumption**

- 111. While claiming the Energy Charges, the petitioner considered the normative Auxiliary consumption of 6.25% for the project for control period FY 2019-20 to FY 2023-24 in accordance with the Tariff Regulations, 2020.
- 112. Regulation 49.3 (E) of the Regulations, 2020 specified the norms of 6.25% for auxiliary energy consumption for thermal generating station/unit of 600 MW with natural draft cooling tower, which have achieved COD on or after 01/04/2012 and the same has been considered in this order.

**Specific Oil Consumption**

- 113. With regard to specific secondary fuel oil consumption, the petitioner considered the normative specific secondary fuel oil consumption of 0.50 ml/kWh for the project for the control period FY 2019-20 to FY 2023-24. The Commission has considered the normative specific secondary fuel oil consumption of 0.50 ml/kWh in accordance to Regulation 49.3 (D) of the Regulations, 2020 in this order for the control period from FY 2019-20 to FY 2023-24.
- 114. The MB Thermal Power Station is a non-pit head power station. Accordingly, the norms for transit and handling losses of 0.80% are considered as per Regulation 45.1 of the Regulations, 2020.
- 115. In view of above, the following operating norms as prescribed in Regulations, 2020 for the control period FY 2019-20 to FY 2023-24 are considered for determination of energy charges in this order :

Particulars	Unit	Norms
Gross Station Heat Rate	kCal/kWh	2372.80
Specific Oil Consumption	ml/kWh	0.50
Aux. Energy Consumption	%	6.25%
Transit losses	%	0.80%

**Gross Calorific Value of Coal:**

- 116. With regard to Gross Calorific Value (GCV) of Coal, Regulation 43.4 of the Regulations, 2020 provided as unde:

*“The generating company shall provide to the beneficiaries of the generating station the details of parameters of GCV and price of coal i.e. domestic coal,*

*imported coal, e-auction coal, etc., as per the forms prescribed to these Regulations:*

*Provided that the details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal and the weighted average GCV of the coal as received shall also be provided separately, along with the bills of the respective month:*

*Provided further that copies of the bills and details of parameters of GCV and price of coal i.e. domestic coal, imported coal, e-auction coal, etc., details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal shall also be displayed on the website of the generating company. The details should be available on its website on monthly basis.”*

117. With regard to GCV of coal for Coal based Thermal Power Stations, Regulation 43.2 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020, provides that weighted average gross calorific value of coal “as received”, in kCal per kg less 85 Kcal/kg on account of variation during storage at generating station shall be considered for determination of energy charges. The aforesaid Regulation further provides that in case of blending of coal from different sources, the weighted average Gross Calorific Value of coal (primary fuel) shall be arrived in proportion to blending ratio.
118. On scrutiny of the petition, the Commission observed that the petitioner filed energy charges based on the weighted average GCV of coal on “As received basis” for the three preceding months i.e. for January’2019, February’2019 and March’2019 for the control period.
119. Vide Commission’s letter dated 2<sup>nd</sup> September’ 2020, the petitioner was asked to file the weighted average GCV of coal three preceding months as per Regulation 43.2 of the Tariff Regulation, 2020. The petitioner was also asked to file GCV of coal as per joint coal analysis report and bill/invoice raised by the coal companies along with the copies of joint coal analysis report and invoices and laboratory test report in support of weighted average GCV “as received basis”.
120. By affidavit dated 28<sup>th</sup> September’ 2020, the petitioner filed weighted average GCV of coal on received basis for preceeding three months.However, the petitioner has not made adjustment in GCV as per the norms specified in Regulation 43.2 on account of

reducing the GCV by 85 Kcal/kg, therefore, the weighted average GCV so arrived has been reduced by 85 kCal/kg on account of variation during storage at generating station in line with the Regulation 43.2. The petitioner also submitted month-wise laboratory coal analysis report.

121. Based on the above, the following weighted average GCV of coal has been worked out and considered in this order:

**Table 28: Weighted Average GCV of Coal**

Month	GCV	Qty of Coal Consumed (MT)	GCV	Qty of Coal Consumed (MT)	Weighted Avg. GCV (Kcal/kg)
	FSA		Non FSA		Blended
Jan' 19	3647	107427	3883	67801	3738.38
Feb' 19	3618	85221	3379	65691	3513.96
March' 19	3643	107503	3942	76265	3767.30
<b>Total</b>					<b>3,673.21</b>
<b>Less: 85 kcal/kg in accordance to the Regulation 43.2=</b>					<b>3,588.21</b>

122. Hence, GCV of coal 3588.21 Kcal/Kg is considered for the project for determination of energy charges in this order. The petitioner is directed to ensure the compliance with Regulation 43.4 of the Regulations, 2020.

123. The Petitioner has filed Gross Calorific Value of fuel oil of 10,000 Kcal/ltr. The same value of GCV of fuel oil as filed by the petitioner is considered in this order.

**Landed Cost of fuel:**

124. The petitioner claimed weighted average landed cost of fuel of Rs. 3409/MT for FY 2019-20 based on the landed cost of coal during preceding three months i.e. January to March' 2019 worked out in form TPS 15 filed with the petition. Further, the petitioner has escalated the landed cost of coal determined for the first year of the control period @5% to work out the landed price of fuel oil for balance period of the control period.

125. Regarding the landed cost of coal, Regulation 44.2 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 provides as under:

*“The landed cost of coal for any month shall consist of base price of coal*

*corresponding to the grade and quality of coal inclusive of statutory charges as applicable/allowed by the Commission, washery charges, if any, transportation cost by rail/ road or any other means, and loading, unloading and handling charges.*

*Provided that procurement of coal at a price other than Government notified prices may be considered, if it is based on competitive bidding through transparent process, for the purpose of landed coal cost: Provided further that landed cost of coal shall be worked out based on the actual bill paid by the generating company including any adjustment on account of quantity and quality:*

*Provided also that the Gross Calorific Value of coal shall be measured by third party sampling and the expenses towards the third-party sampling facility shall be reimbursed by the beneficiaries.*

126. In form TPS 15 of the petition, the petitioner filed weighted average landed price of coal considering the price of coal for preceding three months i.e. January, February and March' 2019. Vide letter dated 02<sup>nd</sup> September' 2020, the petitioner was asked to submit the detailed calculation sheet for arriving at the weighted average landed cost of coal claimed while determining the energy charges in the Petition along with supporting documents like copy of the bills/invoice. The petitioner was also asked to submit the month wise details of quantity and landed cost of coal purchased from all sources.
127. By Affidavit dated 28<sup>th</sup> September' 2020, the petitioner submitted the following:
- *Detailed calculation sheet for arriving at the weighted average landed cost of coal claimed while determining the energy charges has already been submitted as Form TPS-15 of the Tariff Forms placed at Annexure-4 of the present Petition. This Form TPS-15 duly contains the month wise details of quantity and landed cost of coal purchased from all sources.*
  - *The supporting documents in terms of bills/invoices raised on MPPMCL for the months of Jan' 2019, Feb' 2019 and Mar' 2019 have also been submitted and placed at Annexure-7 of the present Petition.*
128. On perusal of the aforesaid details filed by the petitioner, it is observed that the petitioner filed the month-wise bills/invoices of coal cost components raised to

MPPMCL for the month of January' 19, February' 2019 and March' 19.

129. The petitioner's power station under subject petition is non-pit head therefore, transit and handling losses of 0.8% is considered. It is pertinent to mention here that while determining the energy charges rate in this order, the Commission has considered the normative transit and handling losses for determining the specific coal consumption for energy charge rate. Therefore, the price of coal is considered without considering normative transit and handling losses since these losses are considered while determining the energy charges. The weighted average coal price considered in this order is for preceding three months i.e., January' 2019, February' 2019 and March' 2019 in accordance to the Tariff Regulations.
130. Based on the above submissions made by the petitioner regarding the cost of coal received by the petitioner during January' to March' 2019, the Weighted Average landed price of coal is worked out as given below in terms of Tariff Regulations, 2020:

**Table 29: Weighted Average Price of Coal**

Month	Price (Rs/MT)	Qty of Coal Consumed (MT)	Price (Rs/MT)	Qty of Coal Consumed (MT)	Weighted Avg. price (Rs/MT)
	FSA		NON-FSA		Blended
Jan' 19	2719	107427	4662	67801	3,470
Feb'19	2884	85221	3776	65691	3,272
March'19	2683	107503	4615	76265	3,485
<b>Weighted Average Price of Coal Considered in this Order</b>					<b>Rs. 3,408.99/MT</b>

131. Accordingly, the weighted average price of coal of **Rs. 3,408.99/ MT** for preceding three month's is considered in this order. Regulation 38.2 of the Regulations, 2020 provides that while determining the weighted average price of fuel, no fuel price escalation shall be provided during the tariff period. Therefore, the preceding three months weighted average rate of coal of Rs 3408.99 /MT is considered for entire control period in this order.

**Landed Cost of secondary fuel oil:**

132. The petitioner claimed weighted average landed cost of secondary fuel oil of Rs. 44,391 /KL for FY 2019-20 based on the landed cost of fuel oil during preceding three months i.e. January to March' 2019 worked out in form TPS 15 filed with the petition. Further, the petitioner has escalated the landed cost fuel oil determined for the first year of the control period @5% to work out the landed price of fuel oil for balance

period of the control period.

133. Vide Commission’s letter dated 02<sup>nd</sup> September’ 2020, the petitioner was asked the following details regarding wt. average rate of secondary fuel oil:

“ While computing the weighted average rate of Secondary fuel oil, the petitioner has claimed the weighted average price of LDO/HFO. As per Regulation 19.1 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020, the wt. average landed price of secondary fuel oil is required.

In view of the above, the petitioner was asked to file the landed price of secondary fuel oil purchased during three preceding months in accordance with the provisions under the MPERC Tariff Regulations, 2020. Supporting documents (Bills/invoices) in respect of price of oil purchased were also sought from the Petitioner in this regard”.

134. By affidavit dated 28<sup>th</sup> September’ 2020, the petitioner submitted the following:

*As already submitted, it is reiterated that the Petitioner has used Light Diesel Oil (“LDO”) only as main secondary fuel oil. Further, the Petitioner has already submitted the weighted average price of this secondary fuel oil for preceding three months (i.e. Jan’ 2019, Feb’ 2019 and Mar’ 2019) in Form TPS-15 of the Tariff Forms placed at Annexure-4 of the present Petition.*

*Further, the supporting documents (Bills/invoices) in respect of price of LDO purchased during the months of Jan’ 2019, Feb’ 2019 and Mar’ 2019 are attached herewith.*

135. In view of above, the weighted average rate of secondary fuel for preceding three months is considered as Rs 44,391/KL based on the details filed by the petitioner as given below.

**Table 30: Weighted Average Landed Cost of Secondary Fuel Oil**

Particular	Rs Per KL			Wt. average price of fuel oil
	January’ 2019	February’ 2019	March’ 2019	
Weighted Average Landed Cost of Secondary Fuel Oil	44,390	44,392	44,391	<b>44,391</b>

136. Regulation 38.2 of the Regulations, 2020 provides that while determining the weighted

average price of fuel, no fuel price escalation shall be provided during the tariff period. Therefore, the preceding three months weighted average rate of secondary fuel of Rs 44,391 /KL is considered for entire control period in this order.

137. Accordingly, the following Energy Charges for the control period of FY 2019-20 to FY 2023-24 are worked out in this order:

**Table 31: Energy Charges determined in this order**

Particular	Unit	FY 2019-20 to FY 2023-24
Installed Capacity	MW	1200
NAPAF	%	85%
Gross Station Heat Rate	kCal/kWh	2372.80
Sp. Fuel Oil Consumption	ml/kWh	0.50
Aux. Energy Consumption	%	6.25%
Transit Loss	%	0.80
Weighted average GCV of Oil	kCal/ltr.	10000
Weighted average GCV of Coal	kCal/kg	3588.23
Weighted Average landed Price of Coal	Rs./MT	3408.99
Weighted Average landed Price of Oil	Rs/ KL	44391.02
Heat Contributed from HFO	kCal/kWh	5.00
Heat Contributed from Coal	kCal/kWh	2367.80
Specific Coal Consumption	kg/kWh	0.660
Sp. Coal Consumption including Transit Loss	kg/kWh	0.665
Energy Charge from Coal	Rs Crore	2031.75
Total Cost of Oil	Rs Crore	19.89
Total Energy Charges	Rs Crore	2051.64
Rate of Energy Charge	Rs./kWh	2.290
<b>Rate of Energy Charge from at ex bus</b>	<b>Rs./kWh</b>	<b>2.443</b>

138. The aforesaid energy charges have been worked out for working capital purpose. The base rate of the energy charges shall however be subject to month to month adjustment of actual fuel price and actual GCV of coal on received basis. The recovery of energy charges shall be made in accordance with Regulations 43 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020.

## Other Charges

139. In the subject petition, the petitioner has prayed for the recovery of following other charges from the beneficiaries:

- *Allow the recovery of other charges including but not limited to RLDC/ NLDC charges, Electricity Duty, Cess, Water Charges, other Statutory Charges, Taxes, Duties & Cess, re-imburement of any fee and/or expenses etc. on pass through basis from the beneficiary for MYT Period from 01.04.2019 to 31.03.2024.*
- *Allow the recovery of the publication expenses from the beneficiary as and when incurred in terms of Regulation 65 of MPERC Tariff Regulations 2020.*
- *Allow the recovery of the application filing fees from the beneficiary as per Para 58 of the instant Petition in terms of Regulation 65 of MPERC Tariff Regulations 2020.*

140. Regarding the Application fee, publication expenses and other statutory charges, Regulation 65 of MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2020, provides as under:

65.1 *“The following fees, charges and expenses shall be reimbursed directly by the beneficiary in the manner specified herein:*

- The application filing fee and the expenses incurred on publication of notices in the application for approval of tariff, may in the discretion of the Commission, be allowed to be recovered by the generating company directly from the beneficiaries.*
- The Commission may, for the reasons to be recorded in writing and after hearing the affected parties, allow reimbursement of any fee or expenses, as may be considered necessary.*
- SLDC Charges and Transmission Charges as determined by the Commission shall be considered as expenses, if payable by the generating stations.*
- RLDC/NLDC charges as determined by the Central Commission shall also be considered as expenses, if payable by the generating station.*

65.2 *Electricity duty, cess and water charges if payable by the Generating Company for generation of electricity from the power stations to the State Government, shall*



*be considered and allowed by the Commission separately by considering normative parameters specified in these Regulations and shall be trued-up on actuals:*

*Provided that in case of the Electricity duty is applied in the auxiliary consumption, such amount of electricity duty shall apply on normative auxiliary consumption of the generating station (excluding colony consumption) and apportioned to the each beneficiaries in proportion to their schedule dispatch during the month.*

141. In view of the above, the petitioner is allowed to recover the fee paid to MPERC and publication expenses as per Regulation 65.1 (i) of the Regulations, 2020 on submission of documentary evidence.
142. The petitioner is also allowed to recover the electricity duty on plant auxiliary consumption, Energy Development Cess on energy supplied to MPPMCL and water charges paid to Water Resources Department, Government of MP as per Regulation 65.2 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 on submission of documentary evidence.
143. The petitioner is further allowed to recover RLDC/ NLDC charges if any payable by the generating station from the beneficiary in accordance to Regulation 65.1 (iv) of the Regulations, 2020.

#### **Implementation of the order**

144. The generation tariff under the Multi-Year Tariff framework for the control period from FY 2019-20 to FY 2023-24 is determined under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulation' 2020. The petitioner is directed to file true-up petition for the first year of control period i.e. FY 2019-20 based on the Annual Audited Accounts within 60 days from the date of issue of this order.
145. The Commission directs that the generation tariff determined in this order shall be applicable from 1<sup>st</sup> April' 2019 and will continue to be operative till 31<sup>st</sup> March' 2024, under Multi Year Tariff Principles. The difference between the billing done in accordance with Regulation 7.11 for the period starting from 01.04.2019 and billing based on the tariff determined in this order shall be in accordance to the second proviso of Regulation 7.11 of the Regulations, 2020.

146. The petitioner must take steps to implement this order after giving seven (7) days' public notice in accordance to Regulation 1.30 of MPERC (Details to be furnished and fee payable by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004 and its amendments and must also provide information to the Commission in support of having complied with this order.

147. With the above directions, this Petition No. 46 of 2020 is disposed of.

**(Shashi Bhushan Pathak)**  
**Member**

**(Mukul Dhariwal)**  
**Member**

**(S.P.S Parihar)**  
**Chairman**

**Date: 1<sup>st</sup> May' 2021**

**Place: Bhopal**

**Annexure-1**

**Petitioner's Response on the comments offered by the Respondent No.1 (MPPMCL) along with the observations**

**MPPMCL Comment:**

1. In Para 8, Petitioner has details of Petition No. 18 of 2019 filed seeking extension of Cut-off Date beyond 31.03.2019. Also, in Para 9, the Petitioner has referred to the order dated 27.04.2019 passed by this Commission disposing off the said Petition. In Para 10 the Petitioner has requested for considering submissions made in P.No. 18 of 2019 as part of the present Petition.

2. It is submitted that in order dated 27.04.2019 passed in P.No. 18 of 2019, this Commission had merely referred to the provisions of the Regulation 4.1 of 2015 Tariff Regulations and the Prayer of the Petitioner to extend the Due Date by 2 years was actually rejected. Also, in the concluding para of the order, following was observed by the Commission:

***“10. In view of above provisions under MPERC Tariff Regulations, 2015, it is observed that for considering the actual additional capitalization beyond cut-off date of the project, detailed examination of actual capital expenditure of each work beyond cut-off date and the reasons for delay in capitalization of all such works beyond cut-off date shall be required by the Commission in terms of Regulation 4.1(i) and 20.2 of MPERC Tariff Regulations, 2015. Hence, the subject petition cannot be examined and decided by the Commission at this stage. Therefore, the petitioner is directed to approach the Commission with actual additional capitalization of all works beyond cut-off date as per the Annual Audited Accounts along with all details and documents in terms of aforesaid Regulations while filing the true-up petition for respective financial year.*”**

*In view of the above observations and directives of the Commission, the subject petition stands disposed of.”*

3. In view of above it is prayed that this Commission may graciously be pleased ignore the contents of Paras 8 to 10 as they are not relevant for the purpose of the present Petition filed for determination of Multi-year tariff for control period from FY 2019-20 to FY 2023-24. In response to Para 17 of the Petition, the submissions made by the

Respondent in Paras 4 to 6 of the present Reply (in response to Paras 8 to 10 of Petition) may kindly be considered.

**Petitioner's Reply:**

*It is submitted that MB Power had filed Petition No. 18 of 2019 seeking extension of Cut-off-Date of the Project on account of anticipated spilling over of certain works beyond the then existing Cut-off-Date of 31.03.2019, for reasons beyond the control of MB Power.*

*This Commission by Order dated 27.04.2019 disposed-off the said Petition No. 18 of 2019 observing that in terms of Regulation 4.1(I) of Tariff Regulations 2015, Cut-off-Date of the Project may be extended after due prudence check of the documentary evidence establishing that such spilled over works could not be capitalized within the Cut-off-Date for the reasons beyond the control of MB Power. Further, liberty was granted to M B Power to approach this Commission with actual additional capitalization of all works beyond Cut-off-Date as per the Annual Audited Accounts along with all details and documents while filing the True-up Petition for respective financial year: -*

*“8. The case was fixed for motion hearing on 23<sup>rd</sup> April, 2019 wherein Ld. Counsel of the petitioner while stating the relevant provisions of MPERC (Terms & Conditions for Determination of Generation Tariff) Regulation, 2015 reiterated the contention in the petition. **Having heard the petitioner and on perusal of contents in the subject petition, the Commission has noted that in terms of Regulation 4.1 (I) of aforesaid Regulations, the cut-off date of a project may be extended by the Commission after exercising prudence check based on the documentary evidence for establishing that capitalization could not be made within cut-off date for the reasons beyond the control of the petitioner.** The Commission expressed during the hearing that the works which are mentioned in the subject petition shall be completed and capitalized during FY 2019-20 or FY 2020-21 as per contention of the petitioner. **Thus, the additional capitalization of all such works shall be claimed by the petitioner in its true-up petitions for relevant year along with all requisite documents.** Therefore, this is not the appropriate stage to decide the prayer made at Sr. No. (a) and (c) in para 41 of the subject petition. In response to aforesaid, Ld. Counsel of petitioner pressed on its prayer (b) of the subject petition which states that “In the alternative, grant liberty to the Petitioner to approach this Commission at*

*the appropriate stage for capitalization of Additional Capital Expenditure as stated in the Petition due to reasons beyond the control of the Petitioner.*

*10. In view of above provisions under MPERC Tariff Regulations, 2015, it is observed that for considering the actual additional capitalization beyond cut-off date of the project, detailed examination of actual capital expenditure of each work beyond cut-off date and the reasons for delay in capitalization of all such works beyond cut-off date shall be required by the Commission in terms of Regulation 4.1(I) and 20.2 of MPERC Tariff Regulations, 2015. Hence, the subject petition cannot be examined and decided by the Commission at this stage. Therefore, the petitioner is directed to approach the Commission with actual additional capitalization of all works beyond cut-off date as per the Annual Audited Accounts along with all details and documents in terms of aforesaid Regulations while filing the true-up petition for respective financial year.”*

*In view of the above, it is submitted that MB Power’s prayer for extension of Cut-off-Date was not rejected by this Commission rather, liberty was granted to MB Power to approach this Commission along with all details and documents for approval of such additional capitalization. Accordingly, MB Power, in the present Petition, has inter-alia claimed Additional Capitalization on account of works spilled-over beyond the then existing Cut-off-Date of 31.03.2019 for reasons beyond the control of MB Power. Any submissions made by MPPMCL to the contrary merit no consideration by this Commission.*

**Observation:**

By Order dated 27.04.2019 in Petition No. 18 of 2019, the Commission had granted liberty to the petitioner to approach the Commission for approval of any additional capitalization after the cut-off date as per the Annual Audited Accounts along with all details and documents in terms of the applicable Tariff Regulations while filing the true-up petition for respective financial year. Therefore, detailed examination of actual capital expenditure of each work beyond cut-off date and the reasons for delay in capitalization of all such works beyond cut-off date shall be carried out in true-up petition for respective financial year.

**MPPMCL Comment**

4. In Para 16, the Petitioner referring to the last true-up orders passed by this Commission in relevant true-up Petitions, the Petitioner has stated the admitted Capital Costs for

Unit-1 (Rs. 4,431.19 Cr.) and Unit-2 (Rs. 3,552.44 Cr.) and for the Project as Rs. 7,983.63 Cr. as on 31.03.2018. Besides, the Petitioner has also indicated its claims of Additional Capital Expenditure during FY 2018-19 for Unit 1 (Rs. 32.81 Cr.) and Unit 2 (Rs. 66.35 Cr.), which is based on its claim made in Petition Nos. 21 of 2020 and 22 of 2020, decision on which is pending.

5. In above context, it is that the submissions made by the Respondent No. 1 (MPPMCL) in its Reply Affidavits Dated 14.0.2020 filed in Petition Nos. 21 of 2020 and 22 of 2020 may kindly be considered and Additional Capital Expenditure for FY 2018-19 be strictly allowed as permissible under the provisions of 2015 Tariff Regulations.
6. It is therefore submitted that, the Capital Cost as on 31.03.2019 may be admitted only after decision in Petition Nos. 21 of 2020 and 22 of 2020, after considering all the submissions made by the Respondent No. 1 (MPPMCL) in those Petitions.

### **Petitioner's Reply**

*It is submitted that the present Petition has been filed only for determination of MYT of the Project for the Period FY 2019-20 to FY 2023-24. Allowance of Additional Capital Expenditure for FY 2018-19 is not an issue in the present Petition since the same is pending decision of this Commission under Petition Nos. 21 of 2020 and 22 of 2020 ("True-up Petitions") and the respective final Order(s) in these True-up Petitions have already been reserved by this Commission.*

*In the present MYT Petition, for the purpose of tariff determination for the period FY 2019-20 to FY 2023-24, MB Power has claimed the opening Capital Cost of the Project as on 31.03.2019 (i.e., Rs. 8082.79 Crore), which includes: -*

- (a) *Capital Cost of the Project as on 31.03.2018 (i.e., Rs.7,983.63 Crore) already admitted by this Hon'ble Commission by its Orders dated 12.06.2019 passed in Petition No. 51 of 2018 and 01.07.2019 passed in Petition No. 57 of 2018; and*
- (b) *Additional Capital Expenditure already incurred by MB Power during FY 2018-19 for Unit-1(Rs. 32.81 Crore) and Unit 2 (Rs. 66.35 Crore) of the Project, which is based on the claims made in the True-up Petitions.*

*It is submitted that the Additional Capital Expenditure for the Project claimed during the MYT Period i.e. FY 2019-20 to FY 2023-24 can only be estimated based on the closing*

*Capital Cost of the Project as on 31.03.2019. It is to be appreciated that not including the Additional Capital Expenditure already incurred on the Project during FY 2018-19 in the opening Capital Cost of the Project as on the date of commencement of MYT Period i.e. 01.04.2019 would essentially result in under recovery of tariff to MB Power, which is contrary to the principles enshrined in Section 62 of the Electricity Act, 2003. Hence, the same has been included in the opening Capital Cost of the Project as on 01.04.2019 and the same may be kindly considered by this Commission.*

**Observation:**

To work out the opening capital cost as on 1<sup>st</sup> April' 2019 in MYT Order, the Commission has considered the closing Gross Fixed Assets (combined closing capital cost of both Unit No 1 and Unit No 2) as on 31<sup>st</sup> March' 2019 as admitted in last true up orders for FY 2018-19 issued on 08<sup>th</sup> February' 2021 in Petition No 21 and 10<sup>th</sup> February' 2021 in petition No. 22 of 2020 for Unit No. 1 and Unit No. 2 respectively as a base figure as on 1<sup>st</sup> April' 2019.

**MPPMCL Comment:**

7. In Para 24 the Petitioner has stated that the spill-over works might not be completely capitalized in FY 2020-21. In Para 25, it has been stated that the said spill-over works and also the works related to installation of Emission Control System shall be completed and capitalized during MYT Period of FY 2019-24. The Petitioner has also requested treating ongoing pandemic/natural calamity being a "Force Majeure Event". The Petitioner has given a Table showing estimated Additional Capital Expenditure for each year beginning FY 2019-20 till FY 2023-24.
8. In above contest it is most humbly submitted that as the present Petition has been filed on 29.06.2020 and is still under consideration of this Commission, it is most humbly prayed that the Petitioner may kindly be directed to indicate "Actual" instead of "Estimated" Additional Capital Expenditure for FY 2019-20 on the basis of Annual Audited Accounts for FY 2019-20.
9. Also, in the Table given in Para 25, the Petitioner has indicated Additional Capital Expenditure of Rs. 448.37 Crore for both FY 2021-22 and FY 2022-23 i.e. total Additional Capital Expenditure of Rs. 896.74 Crore towards implementation of Emission Control System (ECS). It is most humbly submitted that the said claim of

Additional Capital Expenditure towards ECS is not in accordance with 2020 Tariff Regulations as explained below.

10. The above said claim of Additional Capital Expenditure towards ECS has been made under provisions of Regulation 31 of 2020 Tariff Regulations. The Regulation 31 provides as under :

**“31.Additional Capitalization on account of Revised Emission Standards:**

**31.1** A generating company requiring to incur additional capital expenditure in the existing generating station for compliance of the revised emissions standards **shall share its proposal with the beneficiaries** and file a petition for undertaking such additional capitalization.

**31.2** The proposal under clause above **shall contain details of proposed technology as specified by the Central Electricity Authority, scope of the work, phasing of expenditure, schedule of completion, estimated completion cost including foreign exchange component, if any, detailed computation of indicative impact on tariff to the beneficiaries, and any other information considered to be relevant by the generating company.**

**31.3.** Where the generating company makes an application for approval of additional capital expenditure on account of implementation of revised emission standards, **the Commission may grant approval after due consideration of the reasonableness of the cost estimates, financing plan, schedule of completion, interest during construction, use of efficient technology and such other factors as may be considered relevant by the Commission.**

**31.4.** After completion of the implementation of revised emission standards, **the generating company shall file a petition for determination of tariff.** Any expenditure incurred or projected to be incurred and admitted by the Commission after prudence check based on reasonableness of the cost and impact on operational parameters shall form the basis of determination of tariff.”

**[Emphasis Added]**



11. Regulation 31 envisages a 4 step procedure for implementation of Emission Control System (ECS) and determination of tariff in respect of the same, which are summarised below:

STEP	DESCRIPTION	APPLICABLE REGULATION
1	Preparation and Sharing of Proposal with Beneficiaries and file petition	Regulation 31.1&31.2
2	Filing of Application for Approval of the Proposal	Regulation 31.3
3	Implementation of ECS	-
4	Filing of the Petition for determination of Tariff for ECS after Implementation	Regulation 31.4

12. It is most humbly submitted that the Petitioner cannot bypass the well laid down steps and procedure contained in Regulation 31 and directly file Petition for determination of Multi Year Tariff based on “Estimated Costs” of implementation of ECS, which is not permissible under Regulation 31 of 2020 Tariff Regulations.
13. The provisions of Regulation 31 are mandatory in nature, which cannot be bypassed or ignored by the generating company. The said provisions are integral are part of the 2019 Tariff Regulations and all the stake holders are bound by them.
14. It is submitted that the present Petition has been filed in complete violation and disregard of the provisions contained in Regulations 31 of 2020 Tariff Regulations. Therefore, it is most humbly submitted that this Commission may graciously be pleased to ignore/ reject the claim Additional Capital Expenditure of Rs. 448.37 Crore for both FY 2021-22 and FY 2022-23 i.e. total of Rs. 896.74 Crore towards Emission Control System (ECS).

### **Petitioner’s Reply**

*It is submitted that the present Petition has been filed on 29.06.2020 based on estimated Additional Capital Expenditure during MYT Period i.e. FY 2019-20 to FY 2023-24 in accordance with Regulation 6.2 of Tariff Regulations 2020. MPPMCL’s contention under Para No. 16 of MPPMCL’s Reply seeking filing MB Power to file actual Additional Capital Expenditure during FY 2019-20 instead of estimated Additional Capital Expenditure in the present Petition is contrary to the provisions of Tariff Regulations 2020. It may kindly be noted that filing of actual Additional Capital Expenditure by the Petitioner during a financial year is essentially required to be done*

only at the time of filing Tariff True-up Petition for that financial year in terms of Regulations 9.4, 9.7 & 9.8 of Tariff Regulations 2020 and not in the present MYT Petition. As such, such a baseless contention of MPPMCL warrants no merit and is liable to be rejected.

It is further submitted that MB Power's claim for Additional Capital Expenditure to be incurred during FY 2021-22 and FY 2022-23 towards installation of Emission Control Systems ("ECS") [in compliance of statutory Notification dated 07.12.2015 issued by Ministry of Environment Forest and Climate Change ("MoEFCC")] is in accordance with the regulatory framework provided under Tariff Regulations 2020 as brought out hereunder:

**Re: Regulatory Framework**

Regulation 6.2 of Tariff Regulations 2020 provides the mechanism for filing of an Application/Petition by an existing Generating Company (like MB Power) for determination of Multi-year tariff for the period FY 2019-2024:-

**"6.2 In case of an existing generating station or unit thereof, the application for determination of Multi-year tariff shall be made by the generating company within a period of 60 days from the date of notification of these Regulations or as directed by the Commission whichever is earlier, based on admitted capital cost including additional capital expenditure already admitted in last true up order of the Commission and estimated additional capital expenditure for the respective years for the tariff period 2019-24 in accordance with the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020:**

*Provided that the application shall contain details of underlying assumptions for projected capital cost and admitted capital expenditure, where applicable."*

*[Emphasis Supplied]*

Regulations 28.1 and 31 of Tariff Regulations 2020 provides the mechanism for claiming and approval of Additional Capital Expenditure beyond the original scope of work and on account of installation of ECS towards compliance of Revised Emission Standards for the purpose of determination of tariff during the MYT Period: -

**"28. Additional Capitalization beyond the original scope:**

**28.1 The capital expenditure in respect of existing generating station incurred or projected to be incurred on the following counts beyond the original scope, may be admitted by the Commission, subject to prudence check:**

(a) Liabilities to meet award of arbitration or for compliance of the order or directions of the any statutory authority, or order or decree of any court of law;

**(b) Change in law or compliance of any existing law;**

**31. Additional Capitalization on account of Revised Emission Standards:**

**31.1 A generating company requiring to incur additional capital expenditure in the existing generating station for compliance of the revised emission standards shall share its proposal with the beneficiaries and file a petition before Commission for undertaking such additional capitalization.**

31.2 The proposal under clause above shall contain details of proposed technology as specified by the Central Electricity Authority, scope of the work, phasing of expenditure, schedule of completion, estimated completion cost including foreign exchange component, if any, detailed computation of indicative impact on tariff to the beneficiaries, and any other information considered to be relevant by the generating company.

**31.3 Where the generating company makes an application for approval of additional capital expenditure on account of implementation of revised emission standards, the Commission may grant approval after due consideration of the reasonableness of the cost estimates, financing plan, schedule of completion, interest during construction, use of efficient technology, and such other factors as may be considered relevant by the Commission.**

**31.4 After completion of the implementation of revised emission standards, the generating company shall file a petition for determination of tariff. Any expenditure incurred or projected to be incurred and admitted by the Commission after prudence check based on reasonableness of the cost and impact on operational parameters shall form the basis of determination of tariff.”**

[Emphasis Supplied]

In terms of the regulatory framework stipulated above, the following is noteworthy: -

- (a) Petition for determination of Multi-Year Tariff shall be filed by the generating company based on Additional Capital Expenditure already admitted by the Commission and estimated Additional Capital Expenditure during the MYT Period of FY 2019-20 to FY 2023-24 [Regulation 6.2 of Tariff Regulations 2020].
- (b) Additional Capital Expenditure in respect of an existing generating station incurred or projected to be incurred on account of Change in Law or compliance of any existing law, shall be admitted by the Commission [Regulation 28.1 of Tariff Regulations 2020].

- (c) A generating company required to incur Additional Capital Expenditure for compliance of the Revised Emission Standards shall share its proposal with the beneficiaries (providing all details) and file a Petition before this Hon'ble Commission for undertaking such additional capitalization [Regulation 31.1 of Regulations 2020].
- (d) Upon an Application made by the generation company this Hon'ble Commission can grant approval of the Additional Capital Expenditure to be incurred on account of implementation of Revised Emission Standards after due consideration of the reasonableness of the cost estimates (i.e., cost on projected basis). Thereafter, final tariff determination shall take place on the basis of such approved/admitted expenditure (incurred or projected to be incurred) [Regulations 31.3 and 31.4 of Tariff Regulations 2020].

It is submitted that the present Petition for determination of Multi Year Tariff based on the "Projected/Estimated Cost" of installation of ECS (on account of Change in Law and towards compliance of Revised Emission Standards prescribed by MoEFCC) is in accordance with the mandate of Regulation 6.2 read with Regulations 28.1 and 31 of Tariff Regulations 2020 for the following reasons: -

- (a) While filing the present MYT Petition, MB Power is mandated to provide details of all estimated Additional capital expenditure to be incurred during the respective financial years of the MYT Period of FY 2019-20 to FY 2023-24. Accordingly, based on the estimate of completion of work regarding installation of ECS, MB Power in its MYT Petition has provided such details and claimed such associated expenditure in the respective financial years (i.e. Rs.448.37 Crore each in FY 21-22 and FY 22-23).
- (b) Additional Capital Expenditure on estimated basis is admissible while determination of Multi-Year Tariff.
- (c) In compliance of Regulation 31.1 and 31.2, M B Power has: -
- (i) Shared its proposal (for installation of ECS in compliance of the Revised Emission Standards) with MPPMCL vide its various communications from time to time including MB Power's letters to MPPMCL dated 05.09.2019 and 18.09.2020 providing various details pertaining to the scope of the work, estimated completion cost and proposed technology as specified by Central Electricity Authority ("CEA") along with a copy of CEA's recommendation dated 05.03.2020.
  - (ii) Filed the present Petition seeking approval of this Hon'ble Commission for undertaking the necessary works for compliance with the Revised Emission Standards and the associated capital and operational cost to be incurred by MB Power.

The copies of MB Power's letters dated 05.09.2019 and 18.09.2020 written to MPPMCL are attached herewith and marked as Annexure R/ [1].

(d) It is submitted that prior regulatory approval of this Hon'ble Commission for installation of ECS and its associated capital and operational cost is necessary in order to obtain/deploy additional funds including debt funds, which will not be sanctioned by the lenders in the absence of regulatory certainty on recovery of such cost. This position has been discussed and affirmed by: -

(i) The Hon'ble Appellate Tribunal for Electricity ('Tribunal') in its Judgment dated 28.08.2020 passed in Appeal No. 21 of 2019 titled *Talwandi Sabo Power Ltd. v. Punjab State Electricity Regulatory Commission & Anr*: -

*"139. It is also seen additional funds including debt funds, which will not be sanctioned by lenders (as amount involved is significantly high) in the absence of regulatory certainty for the methodology/mechanism of arriving at compensation to mitigate the impact of Change in Law event."*

(ii) *Ld. Central Electricity Regulatory Commission's Order dated 23.04.2020 passed in Petition No. 446/MP/2019 titled Sasan Power Limited vs MP Power Management Company Limited & Ors*: -

*"18. We have considered the submissions of the Petitioner and the Respondents. There has been material change in the situation as regards the Petitioner after the Commission issued orders in Petition No. 133/MP/2016 wherein request for in-principle approval was denied since no such provision existed in the PPA. As per directions of the Commission, the Petitioner approached CEA that has indicated the appropriate technology for installation of FGD system in the Project. CEA has also indicated tentative base cost for such installation. Through competitive bidding process, the Petitioner has selected a vendor for installation of FGD system. **The Petitioner has approached financial institutions for loans where the banks through IBA have expressed difficulty in funding in view of prevailing situation in the power sector. Similar is the case with PFC that has informed the Petitioner that it needs comfort in terms of approval of the Commission so that there are no problems in debt servicing of loans that may be availed by the Petitioner. Commission is also conscious of the fact that the installation of FGD system in thermal power stations is being monitored by the Hon'ble Supreme Court. Any further delay in securing loan from financial institutions is likely to further delay installation of***

**FGD system.**

**39.....Therefore, it would be appropriate to adopt a uniform compensation mechanism in respect of all such generating stations.**

**40. We have approved provisional capital cost and other costs related to installation of FGD system that is likely to provide enough comfort to financial institutions. However, we recognise that certainty of stream of cash flow in form of tariff is likely to give further comfort to these financial institutions and that it is also equally important for the procurers as well as sellers to know the tariff implications on account of installation of FGD system.”**

(iii) Ministry of Power’s Office Memorandum dated 20.04.2020: -

**“4. Independent Power Producers (IPPs) informed that CERC normally takes 6-12 months for issuing any Change in Law related Orders for FGD commissioning and sometimes when multiple States are involved, States also resort to unwarranted delay in any reply to CERC, to avoid paying any increased amount at an early date. So Cash flows become a major issue during this time, as any further equity infusion is spent only on past debt servicing. Secretary, CERC assured that they would ensure any such petition on FGD installation be settled in around 3 months or so, and even in some cases of deliberate delays by States, ex-parte decisions might be taken. Secretary (Power) suggested CERC to devise a proper process vide which applications of Gencos for installation of FGD as per norms of CEA, may be decided by the Appropriate Commission within a period of three months for Investment approval. The investment approval to power plants for installation of FGD based on the CEA’s benchmark cost and indicative technologies, would facilitate the cash flow to the power projects immediately after completion of FGD installations without any delay to recover the cost incurred on the FGD equipment. This will encourage banks to fund the FGD installation in the coal-based power plants. Similar process may also be taken up with SERCs. This be may be conveyed in a fortnight to MoP.”**

A copy of MoP OM dated 20.04.2020 is attached herewith and marked as Annexure R/ [2].

(iv) Indian Banking Association (IBA) letter dated 08.08.2018 to Association of Power Producers (APP) highlighting their inability to fund Power sector for

*installation of FGD/ Emission Control Systems. A copy of IBA letter dated 08.08.2018 is attached herewith and marked as Annexure R/ [3].*

*(f) The present Petition is in consonance with commercial principles and the twin objective of ensuring financial viability and consumer interest as MB Power is seeking approval of the cost, which is a statutory expense being uncontrollable in nature and has to be mandatorily incurred towards compliance to a Statute, which shall be subject to a due two-level Prudence Check by this Hon'ble Commission during adjudication of the present Petition and also during year-wise tariff true-up exercise.*

*In view of the above, it is clearly evident that MB Power has not bypassed or ignored the regulatory framework stipulated under Tariff Regulations 2020 and has shared required details in this regard with MPPMCL from time to time.*

### **Observations:**

The additional capitalization claimed by the petitioner in the subject petition during the control period is required to be examined on several counts specified in the Tariff Regulations 2020. Based on the submission/information made available by the petitioner, this exercise shall be carried out while undertaking true-up for the respective year based on Annual Audited Accounts and other requisite details in this regard. Therefore, the amount towards additional capitalization claimed by the petitioner has not been considered in this order. The petitioner is at liberty to approach the Commission to claim the actual amount towards additional capitalization at the appropriate stage based on the actual expenditure incurred and duly reconciled with the Annual Audited Accounts in accordance to MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.

### **MPPMCL Comment**

15. In Para 28 and 29, the Petitioner has given details of funding of Additional Capital Expenditure and proposed Debt : Equity Ratio. The averments of the Petitioner in respect of its claim of Additional Capital Expenditure Rs. 896.74 Crore proposed to be incurred towards implementation of ECS is opposed in terms of Paras 15 to 22 of the present Reply.
16. In Para 32, the Petitioner has given basis for its claim of Gross Rate of Return on Equity (i.e. 18.782%). In Para 33 and 34, the Petitioner has given computation of consolidated opening equity for the Project as on 01.04.2019 and computation of Return on Equity. This claim of the Petitioner is opposed on the basis of submissions made in Paras 9 to 11 and Paras 15 to 22 of the present Reply.

17. It is most humbly prayed that Return on Equity may kindly be allowed only as per Regulation 34 and 35 of 2020 Tariff Regulations.
18. In Para 35, the Petitioner has extracted Regulation 36.4 of 2020 Tariff Regulations. In Para 36, the Petitioner has given weighted average rate of interest (WAROI) and also computed Net Closing Loan for FY 2018-19. In Para 37, the Petitioner has given computation of Interest on Loan Capital for the MYT Period.
19. In above context it is most humbly prayed that the submissions made by the Respondent at Paras 9 to 11 and Paras 15 to 22 of the present Reply may kindly be considered while computing increase in loan for FY 2018-19, increase in Normative Loan for FY 2019-20 to FY 2023-24 and allowing Annual Interest and Financing Charges for FY 2018-19 to FY 2023-24. In Para 40, the Petitioner has computed Annualized Depreciation and Net Cumulative Depreciation at the end of the Period. It is most humbly submitted that while considering Opening and Closing Capital Costs for each Financial Year for MYT Period, the submissions made by the Respondent in Paras 9 to 11 and Paras 15 to 22 of the present Reply may kindly be considered. In Para 46, the Petitioner has given Summary of Annual Fixed Cost for the MYT Period. It is most humbly prayed that the components of Annual Fixed Cost may only be allowed strictly in accordance with the provisions of 2020 Tariff Regulation. In this context the submissions made by the Respondent in foregoing Paragraphs of the present Reply may kindly be considered

### **Petitioner's Reply**

*It is submitted that MPPMCL has not opposed MB Power's tariff claim on merits. Rather MPPMCL has adopted a hyper technical approach to oppose various components of Tariff (viz; Debt Equity Ratio, Return on Equity, Interest on Loan Capital, Depreciation etc.) as claimed by MB Power on the pretext that the opening/admitted Capital Cost of the Project for FY 2019-2020 has not yet been approved by this Hon'ble Commission since the same is pending decision in True-up Petition Nos. 21 of 2020 and 22 of 2020. Such contentions of MPPMCL are wrong and denied for detailed reasons mentioned above at Para Nos. 9 to 11 and 13 to 18 of the present Rejoinder MPPMCL has not provided any reasoning as to how MB Power claims are not permissible within the ambit of Tariff Regulations 2020. Therefore, such bald and unsubstantiated contentions of MPPMCL ought to be rejected in totality.*



**Observations:**

The Commission has considered funding of capital cost in accordance with the Regulation 33 of MPERC (Terms & Conditions for Determination of Generation Tariff), Regulations, 2020. However, the Commission has not considered any additional capitalization in this order therefore, no equity and loan addition is considered during the control period.

Further, the base rate of Return On Equity has not been grossed up with MAT and same shall be dealt with at the time of truing up exercise in true-up petition for the respective year based on the actual tax payment basis based on the Annual Audited Accounts.

**MPPMCL Reply**

20. In Paras 38 and 39, the Petitioner has given basis for computing Weighted Average Rate of Depreciation and listed them for FY 2019-20 to FY 2023-24. For this purpose, Closing Gross Fixed Assets as on 31.03.2019 is taken as per Fixed Asset Register for FY 2018-19 based on "Previous Indian GAAP". It is most humbly submitted that as admitted by the Petitioner, the accounts of the Project are now being audited on the basis of "Ind AS" and not on the basis of "Previous Indian GAAP" therefore while computing weighted average rate of depreciation the current Accounting Standards may only be applied.

**Petitioner's Reply:**

*It is submitted that MB Power has claimed depreciation for the MYT Period considering the Opening Gross Fixed Assets as on 01.04.2019 (i.e. Closing Gross Fixed Assets as on 31.03.2019 as per Fixed Asset Register for FY 2018-19) based on IGAAP Accounting Standards and the Depreciation Schedule as per Appendix-I to Tariff Regulations 2020. It is further submitted that this Hon'ble Commission in its earlier Orders dated 12.06.2019 and 01.07.2019 in Petition Nos. 51 of 2018 and 57 of 2018 respectively (filed by MBPL before this Hon'ble Commission respectively for true-up of tariff of Unit-1 and Unit-2 of the Project for FY 2017-18) had duly acknowledged a variance of (-) Rs.113.24 Crore in the value of Gross Fixed Assets ("GFA") as on 31.03.2018 on account of transition in accounting standards from IGAAP to IND AS and the same variance of (-) Rs.113.24 Crore is getting reflected in the value of Opening GFA as on 01.04.2019-24. It is submitted that Capital Cost based on historical cost is being consistently considered and allowed by Regulatory Commissions*

including this Hon'ble Commission for determination of tariff and not on fair value basis (as in the case of IND AS) as introduced by Companies Act, 2013. Accordingly, MB Power has claimed Depreciation in the present Petition, considering capital cost based on IGAAP Accounting Standards after due reconciliation in this regard clearly depicting the changes in presentation of Capital Cost in Annual Audited Accounts due to transition from IGAAP to IND AS.

It is submitted that there is no consequential impact on tariff being claimed in the present Petition due to transition in accounting standards from IGAAP to IND AS. In this regard it is pertinent to note the observations of Hon'ble Tribunal in Judgment dated 13.06.2007 passed in Appeal No. 139 of 2006 & batch matters titled NTPC Ltd vs CERC & Ors: -

*"It is clear from the abovementioned Clause 18 of the CERC Regulations that additional capitalization after the date of commercial operation is recognized as part of the capital expenditure. **Historical cost does not literally mean that the cost on the date of the commercial operation. The term historical cost is used so as to distinguish it from 'book value' or 'the replacement cost'**. The cost of maintenance spares limited to 1% of the historical cost corresponds to the plant and equipment and installations which are required to be maintained. **If the cost of additional equipment is not included in the historical cost, how spares for the additional equipment be procured for maintenance of the additional equipment.** In this view of the matter, the CERC needs to examine afresh in the light of the aforesaid observations."*

*[Emphasis Supplied]*

*In view of the above it is humbly requested that this Hon'ble Commission may consider the depreciation as claimed by MB Power considering the value of Gross Fixed Assets based on IGAAP Accounting Standards instead of IND AS Accounting Standards, as being consistently done by this Hon'ble Commission while truing-up tariff of Unit-1 and Unit-2 of the Project so far.*

**Observation:**

In Appendix I of MPERC Tariff Regulations, 2020 provided the depreciation Rate of various assets. The petitioner has filed the year-wise Asset-cum-Depreciation register for the project. The rate of depreciation on assets considered in the aforesaid Asset-cum-Depreciation register are in accordance to the rates of depreciation specified in Appendix-I of MPERC Tariff Regulations, 2020.

However, the Commission has considered same GFA during the control period as admitted in last true-up orders for Unit No. 1 and 2 of the project therefore, the rate of depreciation as considered in last true-up orders has been considered in this order.

With regard to accounting standard, as submitted by the petitioner there is no consequential impact on tariff being claimed in the present Petition due to transition in accounting standards from IGAAP to IND AS.

### **MPPMCL Comment**

21. In Para 41 and 42, the Petitioner has given computation of Operation and Maintenance Expenses. It is most humbly prayed that the O & M expenses may be allowed strictly in accordance with Regulations 40 of 2020 Tariff Regulations. The separate claim of additional of O & M Expenses for Emission Control System (ECS) during FY 2022-23 and FY 2023-24 is strongly opposed as the same is not in accordance with Regulation 40 of 2020 Tariff Regulations. In this context, it is also prayed that the submissions made of the present Reply may also be considered.
  
22. In Paras 43 to 45, the Petitioner has given basis and computation of Interest on Working Capital. It is most humbly prayed that the Interest on Working Capital may kindly be allowed strictly in accordance with Regulation 38.1 of 2020 Tariff Regulations. In this context, the claim of “Cost of Reagent (Limestone) towards Stock of Operation of Emission Control System” for FY 2022-23 and FY 2023-24 is strongly opposed, as there is no provision for the same in 2020 Tariff Regulations. Therefore, it is most humbly prayed that this Hon’ble Commission may graciously be pleased to reject the same.

In Para 49, the Petitioner has worked out GSHR. Also, in Para 50, the Petitioner has prayed for allowing additional 1% percentage increase in GSHR post installation of ECS over and above normative GSHR. It is humbly submitted that there is no provision for any such increase of GSHR in 2020 Tariff Regulations. Therefore, it is most humbly prayed that GSHR may kindly be allowed only as per Regulation 49.3 (C) of 2020 Tariff Regulations. In Paras 52, referring to the provisions of Regulation 49.3 (E) of 2020 Tariff Regulations, the Petitioner has indicated the basis for taking Auxiliary Energy Consumption (AEC) as 6.25%. In Para 53, the Petitioner has given vague reasoning for claiming additional 1.75% AEC post implementation of ECS, thus claiming total AEC of 8%. However, there is no provision for additional AEC over and above normative

value provided in 2020 Tariff Regulations. Therefore, it is most humbly prayed that Auxiliary Energy Consumption may kindly be allowed only as per Regulation 49.3 (E) of 2020 Tariff Regulations

### **Petitioner's Reply**

*It is submitted that pursuant to MoEFCC Notification dated 07.12.2015 and Central Pollution Control Board ("CPCB") directions dated 11.12.2017, MB Power is mandated to install various Emission Control Systems in its Project in compliance of the Revised Emission Standards. It is submitted that apart from the Capital Expenditure required for installation of such ECS, MB Power will also incur substantial operational expenditure on recurring basis post installation of such ECS. Therefore, operation and maintenance of such Emission Control Systems will impact various Normative components of tariff, thereby resulting in: -*

- (a) Recurring Operational Expenditure during the term of the PPA i.e., increase in Operation and Maintenance ("O&M") expenses, increase in Working Capital requirement due to additional cost of Reagents thereby resulting in increase in Interest on Working Capital etc.*
- (b) Increase in Auxiliary Energy Consumption ("AUX") and Gross Station Heat Rate ("GSHR") of the Project.*
- (c) Increase in Fixed Charges and Energy Charges on account of the above factors.*
- (d) Disruption in power generation during the installation phase of such ECS.*
- (e) Loss of Fixed cost recovery during the shutdown period.*

*Accordingly, MB Power in the present MYT Petition has claimed: -*

- (a) Additional O&M Expenses for operating the Emission Control Systems during FY 2022-23 and FY 2023-24.*
- (b) Cost of Reagents (Limestone) and other consumables towards operating the Emission Control Systems for FY 2022-23 and FY 2023-24 leading to increase in Working Capital requirement thereby resulting in increase in Interest on Working Capital during FY 2022-23 and FY 2023-24.*
- (c) Additional 1% increase in GSHR post installation of Emission Control Systems over and above Normative GSHR during FY 2022-23 and FY 2023-24.*
- (d) Additional AUX of 1.75% post installation of Emission Control Systems over and above Normative AUX of 6.25% during FY 2022-23 and FY 2023-24.*

It is submitted that the impact on operational parameters of tariff (i.e. both Fixed and Energy Charges) of the Project on account of installation and operation of Emission Control Systems is allowed as pass-through in tariff in terms of the 2<sup>nd</sup> Proviso to Regulation 3.1(5), Regulation 6.3, 16.2, 2<sup>nd</sup> Proviso to Regulation 18.1, Regulation 31.4, 44.1 and 46.1 of Tariff Regulations 2020: -

“(5) 'Auxiliary Energy Consumption' or 'AUX' .....

**Provided further that auxiliary energy consumption for compliance of revised emission standards, sewage treatment plant and external coal handling plant (jetty and associated infrastructure) shall be considered separately.**

**6.3 In case of emission control system is required to be installed in existing generating station or unit thereof to meet the revised emission standards, an application/petition shall be filed for determination of tariff (capacity charges or energy charge or both) after installation of such system based on the actual capital expenditure incurred duly certified by the Auditor along with all necessary details and documents.**

**16.2 The capacity charges for additional capitalization and energy charges, on account of implementation of revised emission standards in existing generating station or new generating station, as the case may be, shall be determined by the Commission separately.**

18. Energy Charges....

**Provided further that the energy charges, if any, on account of meeting the revised emission standards in case of a thermal generating station shall be determined separately by the Commission.**

**31.4 After completion of the implementation of revised emission standards, the generating company shall file a petition for determination of tariff. Any expenditure incurred or projected to be incurred and admitted by the Commission after prudence check based on reasonableness of the cost and impact on operational parameters shall form the basis of determination of tariff.**

**44.1 The energy charge in respect of the thermal generating Stations shall comprise of landed cost of coal (primary fuel), cost of secondary fuel oil consumption and landed cost of reagents on account of implementation of the revised emission standards.**

**46.1 Where specific reagents such as Limestone, Sodium Bi-Carbonate, Urea or Anhydrous Ammonia are used during operation of emission control system for**

*meeting revised emission standards, the landed cost of such reagents shall be determined based on normative consumption and purchase price of the reagent through competitive bidding, applicable statutory charges and transportation cost.”*

[Emphasis Supplied]

In view of the above regulatory provisions it is unequivocal that: -

- (a) Additional O& M Expenses, Interest on Working Capital, AUX and GSHR etc. for compliance of Revised Emission Standards is required to be considered and allowed over and above their Normative values provided in the Regulations.
- (b) Post installation of Emission Control Systems, in addition to primary and secondary fuel, Energy Charges shall also comprise of the landed cost of Reagents and other consumables and the same is required to be allowed and considered as a pass through.

The Hon'ble Tribunal in its Judgment dated 28.08.2020 passed in Appeal No. 21 of 2019 held that all cost and expenses including all allied cost like taxes, duties etc., incurred by the generating company in relation to procurement, installation, commissioning, Operation & Maintenance of the FGD system must be reimbursed to the generator:

*“140. In the light of our discussion and reasoning, we are of the opinion that the impugned Orders, dated 21.12.2018 and 09.01.2019 challenged in both the appeals deserve to be set aside and accordingly set aside by allowing the appeals.*

- a) *The MoEF& CC Notification dated 07.12.2015 is a Change in Law event under PPAs in question having regard to the facts and circumstances of the case of the Appellants.*
- b) ***The installation and operation of the FGD and associated system to comply with emission levels of SO<sub>2</sub> is Change in Law and additional expenditure for the same including all allied cost like taxes, duties etc., has to be included as Additional Capital Cost to be incurred by the Appellants.***
- c) *In case technology for installing and operating SNCR and/or any other appropriate technology is mandated in future for complying with the emission levels of NO<sub>x</sub> in terms of Notification of 2015, it also amounts to Change in Law event.*
- d) *The Respondent-Commission is directed to **devise a mechanism for payment of above amounts** by the procurers to both the Appellants **towards additional cost and other expenses in relation to procurement, installation, commissioning, operation and maintenance of FGD for SO<sub>2</sub>** as approved by the concerned authority, after prudence check.*

- e) *Appellants are entitled for carrying cost in terms of provisions of the PPAs to bring the seller-Appellants to the same economic position as if such Change in Law event has not occurred.”*

[Emphasis Supplied]

*Even the Central Electricity Authority in its report dated 05.03.2020 (issued to MB Power) has recommended that installation of FGD system in MB Power’s Project will result in additional AUX and additional cost towards Reagents to be used in the FGD System/ Emission Control Systems.*

*In view of the above, it is submitted that MB Power’s claim towards additional O&M Expenses, GSHR, AUX, cost of Reagents (Limestone) and other consumables etc. leading to increase in Interest on Working Capital requirement etc. ultimately resulting in increase in tariff (i.e. both Fixed and Energy Charges) of the Project on account of installation and operation of Emission Control Systems during FY 2022-23 and FY 2023-24 of the MYT Period is in accordance with the regulatory framework provided under Tariff Regulations 2020, Hon’ble Tribunal’s Judgment and CEA’s recommendation report.*

**Observations:**

Since, the Commission has not considered any additional capitalization at this stage related to Emission Control Systems in this MYT Order, hence, no additional O&M expenses, GSHR, AUX, Cost of Reagents and other consumables in this order are allowed on account of proposed expenditure to be incurred for installation of Emission Control Systems for FY 2022-23 and FY 2023-24. This expenditure related to Emission Control Systems will be examined separately at the time of truing up exercise in true up petition of relevant year. Therefore, the O&M expenses and other operating parameters have been considered in accordance with the provisions under Tariff Regulations, 2020.

**MPPMCL Comment**

In Para 54, referring to Regulation 18.1, Regulation 19 and Regulation 38.2 of 2020 Tariff Regulations, the Petitioner has given the basis for considering Landed Cost and Gross Calorific Value (GCV) of coal as received primary and secondary fuel. It is most humbly prayed that the Landed Cost and Gross Calorific Value (GCV) of as received primary and secondary fuel may kindly be allowed only in accordance with relevant Regulations.

### **Petitioner's Response**

*The contents of MPPMCL's Reply are a matter of record and hence merit no response. It is submitted that Landed Cost and Gross Calorific Value ("GCV") of "as received" primary and secondary fuel has been claimed in terms of Tariff Regulations 2020 and the same ought to be allowed.*

### **Observations:**

Landed Cost and Gross Calorific Value ("GCV") of "as received" primary and secondary fuel has been considered in terms of the Tariff Regulations 2020.

### **MPPMCL Comment**

23. In Para 55, the Petitioner has given reason for considering cost of Reagent (Limestone) and other associated costs to be incurred for operation of ECS from FY 2023-24 onwards while considering Energy Charges. It is most humbly prayed that Landed Cost of Reagent (if any) may kindly be allowed strictly in accordance with Regulation 46 of 2020 Tariff Regulations.
  
24. In Para 56, the Petitioner has given summary of Energy Charges for the MYT Period in tabular format. In this the Petitioner has also claimed substantial expenses under heading "**Limestone Stock and other consumables towards operation of Emission Control System**" for FY 2022-23 and FY 2023-24. The Petitioner has not provided any basis for claiming these amounts. It is most humbly prayed that Energy Charges for MYT Period may only be allowed strictly in accordance with Regulation 43 to 46 of 2020 Tariff Regulations.

### **Petitioner's Reply**

*It is submitted that Regulation 46 of Tariff Regulations 2020 allows recovery of the landed cost of Reagents such as Limestone, Sodium Bi-Carbonate, Urea or Anhydrous Ammonia and other consumables used for operating the Emission Control Systems to be installed in the Project for meeting the Revised Emission Standards. Hence, MB Power's claim for the cost of Reagents (Limestone) and other associated costs to be incurred for operation of ECS from FY 2023-24 onwards is in accordance with Regulation 46 of Tariff Regulations 2020.*

### **Observations:**



The Commission has not considered any additional capitalization related to Emission Control Systems at this stage in this order hence, no recovery of the landed cost of Reagents such as Limestone in this order is allowed on account of proposed expenditure to be incurred for installation of Emission Control Systems during control period.

### **MPPMCL Comment**

25. In Para 59 and 60 the Petitioner has prayed for allowance of Statutory Charges. It is most humbly prayed that only those Statutory Charges which are allowable under 2020 Tariff Regulations may be allowed, the decisions of other State Electricity Commissions relied upon by the Petitioner may not be treated as precedents.

### **Petitioner's Reply**

*It is submitted that Regulation 65.2 of Tariff Regulations 2020 allows recovery of electricity duty, cess and water charges. However, there may be certain other statutory charges, duties and taxes being levied upon MB Power, which may not be recognized under Tariff Regulations 2020. Thus, MB Power has not been able to recover the same.*

*It is submitted that such statutory charges are uncontrollable in nature and are directly linked with generation of electricity from the Project and hence ought to be allowed to be recovered by MB Power by way of pass-through in tariff. Hon'ble Tribunal in judgment dated 15.02.2011 passed in Appeal No. 173 of 2009 titled **Tata Power Company Limited vs. Maharashtra Electricity Regulatory Commission & Ors** ("**Tata Judgment**") held that statutory expenses are uncontrollable factor and generators should be allowed pass through of such expenses: -*

***"28. It cannot be disputed that it is a statutory expense and hence it has to be construed as uncontrollable. The State Commission in its MYT order had approved the O&M expenses which did not envisage the FBT. As FBT was levied subsequently, it will not be proper to compare the approved O&M expenses with the actual O&M expenses. The correct approach would be to compare the actual O&M expenses without FBT with the approved expenditure, compute the gains and loss and then add the FBT paid by the Appellant to allow for the pass through for uncontrollable factors."***

*[Emphasis Supplied]*

*It is submitted that under the cost-plus regime, any increase in input cost of generation is considered as an automatic pass through in tariff subject to prudence check by this*

Hon'ble Commission. The Hon'ble Tribunal in various cases has held that Tariff is reflection of costs and unless there is imprudence in the manner in which cost is incurred the expenditures of the generator under Section 62 PPA should be passed on. Reliance is placed upon the following judgments:-

- (a) Appeal No. 170 of 2010 - **Madhya Pradesh Power Generation Company Limited vs. MPERC &Ors:** -

“There is no difference with Mr.Ramachandran’s submission that while determining the tariff, the Commission has to bear in mind the principles laid down in Section 61 and that the tariff has to be determined on cost plus basis so that a reasonable return on investment ensures to the investors.”

- (b) Appeal No. 273 of 2007 -**Damodar Valley Corporation vs. CERC &Ors:** -

“Cost of electricity would also include actual cost of supply of electricity plus reasonable profit of the utility, since as per principle enshrined in clause (b) of Section 61, the generation, transmission, distribution and supply of electricity are to be conducted on commercial principles.”

It is submitted that various other Electricity Regulatory Commissions (**ERCs**) allow recovery of statutory charges, taxes and duties on actuals as pass through in tariff. Relevant Regulations/Tariff Orders passed by other ERCs are as under: -

- (a) Regulation 47(1) of Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff according to Multi-year Tariff Principles and Methodology and Procedure for determination of Expected revenue and Tariff and Charges) Regulations, 2012:

“3. The Statutory Taxes and Duties shall be recoverable on reimbursement basis, as per actual.”

- (b) Ld. Uttar Pradesh Electricity Regulatory Commission by Multi Year Tariff Order for FY 2009-10 to 2013-14 passed in respect of state thermal generating company allowed recovery of the following cess, charges, taxes etc: -

“In addition to the above tariff UPRVUNL is allowed to recover the payment of statutory charges like water cess, cost of water, **payment to Pollution Control Board, rates and taxes, FBT and Regulatory Fee paid to the Commission, on production of details of actual payments made and duly supported with the certificate of the Statutory Auditors.** The Petitioner has claimed certain additional charges as variable charges towards other fuel related costs, station supplies, lubricants and consumables critical to the generating stations as separate pass through on actuals. The same is allowed for the consideration period of MYT subject

*to verification of audited accounts at the time when true up would be considered by the Commission.”*

*In view of the above it is submitted that this Hon’ble Commission may be pleased to allow MB Power to recover these statutory charges on actual incurred basis.*

**Observations:**

Regulation 65 of the MPERC Generation Tariff Regulations, 2020 provides as under, *“The following fees, charges and expenses shall be reimbursed directly by the beneficiary in the manner specified herein:*

- 1. The application filing fee and the expenses incurred on publication of notices in the application for approval of tariff, may in the discretion of the Commission, be allowed to be recovered by the generating company directly from the beneficiaries:*
- 2. The Commission may, for the reasons to be recorded in writing and after hearing the affected parties, allow reimbursement of any fee or expenses, as may be considered necessary.*
- 3. SLDC Charges and Transmission Charges as determined by the Commission shall be considered as expenses, if payable by the generating stations.*
- 4. RLDC/NLDC charges as determined by the Central Commission shall also be considered as expenses, if payable by the generating station.*
- 5. Electricity duty, cess and water charges if payable by the Generating Company for generation of electricity from the power stations to the State Government, shall be allowed by the Commission separately and shall be trued-up on actual.”*

Accordingly, the statutory charges have been considered in accordance to Regulation 65 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020.

**Annexure-II**

**Petitioner's Response on the comments offered by the Stakeholder along with the observations:**

**Stakeholder Comment:**

The Additional capitalization Claimed in true-up petitions for Unit No. 1 and 2 of the project for FY 2018-19 was requested not to be allowed. Therefore, it is requested that the capital expenditure approved as on 31.03.2018 should be the basis of the present petition.

**Petitioner's Reply**

*The contents of the Objector's submission are baseless and denied. The Objector has contended that the Additional Capitalization claimed in Petition Nos. 21 of 2020 and 22 of 2020 (i.e., True-up of Tariff for FY 2018-2019 for Unit-1 and Unit-2 respectively of the Project) shall be denied and since Order in the said Petitions are pending consideration, only the capital expenditure approved as on 31.03.2018 may be accepted as the basis of the present Petition. It is submitted that the present Petition has been filed for determination of MYT of the Project for the Period FY 2019-20 to FY 2023-24. Allowance of Additional Capital Expenditure for FY 2018-19 is not an issue in the present Petition since the same is pending decision of this Commission under Petition Nos. 21 of 2020 and 22 of 2020 ("True-up Petitions") and the respective final Order(s) in these True-up Petitions have already been reserved by this Hon'ble Commission.*

*In the present MYT Petition, for the purpose of tariff determination for the period FY 2019-20 to FY 2023-2024, MB Power has claimed the opening Capital Cost of the Project as on 31.03.2019 (i.e., Rs. 8082.79 Crore), which includes: -*

- (a) Capital Cost of the Project as on 31.03.2018 (i.e. Rs. 7,983.63 Crore) already admitted by this Hon'ble Commission by its Orders dated 12.06.2019 passed in Petition No. 51 of 2018 and 01.07.2019 passed in Petition No. 57 of 2018; and*
- (c) Additional Capital Expenditure already incurred by MB Power during FY 2018-19 for Unit-1 (Rs. 32.81 Crore) and Unit 2 (Rs. 66.35 Crore) of the Project, which is based on the claims made in the True-up Petitions.*

*It is submitted that the Additional Capital Expenditure for the Project claimed during the MYT Period i.e. FY 2019-20 to FY 2023-24 can only be estimated based on the closing Capital Cost of the Project as on 31.03.2019. It is to be appreciated that not including the Additional Capital Expenditure already incurred on the Project during FY 2018-2019 in the opening Capital Cost of the Project as on the date of commencement of MYT Period i.e. 01.04.2019 would essentially result in under recovery of tariff to MB Power, which is contrary to the principles enshrined in Section 62 of the Electricity Act, 2003. Hence, the same has been*

*included in the opening Capital Cost of the Project as on 01.04.2019 and the same may be kindly considered by this Hon'ble Commission.*

**Observation:**

To work out the opening capital cost as on 1<sup>st</sup> April' 2019 in this MYT Order, the Commission has considered the closing Gross Fixed Assets (combined closing capital cost of both Unit No 1 and Unit No 2) as on 31<sup>st</sup> March' 2019 as admitted in its true up order issued on 08<sup>th</sup> February' 2021 and 10<sup>th</sup> February' 2021 for FY 2018-19 (in Petition No 21 & 22 of 2020) respectively as a base figure for 1<sup>st</sup> April' 2019 in accordance to the provisions under Regulations, 2020.

**Stakeholder Comment:**

It is observed that MB Power was directed to approach the Commission for approval of Additional Capitalization of all works beyond Cut-off Date based on actuals. However, in the present Petition, MB Power has claimed approx. a sum of ₹1260 crore in towards proposed and estimated expenditure for the period from FY 2019-20 to FY 2023-24 which is contrary to the Order dated 27.04.2019. It is requested from the Commission that no additional capital expenditure should be allowed after the cut-off date in this order.

**Petitioner's Reply:**

*The Objector has contended that in terms of this Hon'ble Commission Order dated 27.04.2019 passed in Petition No. 18 of 2019, MB Power was directed to approach the Hon'ble Commission for approval of Additional Capitalization of all works beyond Cut-off Date based on actuals. However, in the present Petition, MB Power has claimed approx. a sum of ₹1260 crore in the name of proposed and estimated expenditure for the period from 2019-20 to 2023-24 which is contrary to the Order dated 27.04.2019.*

*It is submitted that MB Power had earlier filed Petition No. 18 of 2019 before this Hon'ble Commission praying for extension of Cut-off-Date of the Project on account of anticipated spilling over of certain works beyond the then existing Cut-off-Date of 31.03.2019, for reasons beyond the control of MB Power.*

*This Hon'ble Commission by Order dated 27.04.2019 disposed-off the said Petition No. 18 of 2019 observing that in terms of Regulation 4.1(I) of the MPERC Tariff Regulations 2015, Cut-off-Date of the Project may be extended after due prudence check of the documentary evidence establishing that such spilled over works could not be capitalized within the Cut-off-Date for the reasons beyond the control of MB Power. Further, liberty was granted to MB Power to approach this Commission with actual additional capitalization of all works beyond*

Cut-off-Date as per the Annual Audited Accounts along with all details and documents while filing the True-up Petition for respective financial year: -

“8. The case was fixed for motion hearing on 23rd April, 2019 wherein Ld. Counsel of the petitioner while stating the relevant provisions of MPERC (Terms & Conditions for determination of Generation Tariff) Regulation, 2015 reiterated the contention in the petition. **Having heard the petitioner and on perusal of contents in the subject petition, the Commission has noted that in terms of Regulation 4.1 (I) of aforesaid Regulations, the cut-off date of a project may be extended by the Commission after exercising prudence check based on the documentary evidence for establishing that capitalization could not be made within cut-off date for the reasons beyond the control of the petitioner.** The Commission expressed during the hearing that the works which are mentioned in the subject petition shall be completed and capitalized during FY 2019-20 or FY 2020-21 as per contention of the petitioner. **Thus, the additional capitalization of all such works shall be claimed by the petitioner in its true-up petitions for relevant year along with all requisite documents.** Therefore, this is not the appropriate stage to decide the prayer made at Sr. No. (a) and (c) in para 41 of the subject petition. In response to aforesaid, Ld. Counsel of petitioner pressed on its prayer (b) of the subject petition which states that “In the alternative, grant liberty to the Petitioner to approach this Hon’ble Commission at the appropriate stage for capitalization of Additional Capital Expenditure as stated in the Petition due to reasons beyond the control of the Petitioner.

In view of the above, it is submitted that MB Power’s prayer for extension of Cut-off-Date was not rejected by this Hon’ble Commission rather, liberty was granted to MB Power to approach this Hon’ble Commission along with all details and documents for approval of such additional capitalization. Accordingly, the present MYT Petition has been filed on 29.06.2020 based on estimated Additional Capital Expenditure during MYT Period i.e. FY 2019-20 to FY 2023-24 in accordance with the mandate of Regulation 6.2 of the MPERC Tariff Regulations 2020, which provides the mechanism for filing of an Application/Petition by an existing Generating Company (like MB Power) for determination of Multi-year tariff for the period FY 2019-2024:

“6.2 In case of an existing generating station or unit thereof, **the application for determination of Multi-year tariff shall be made by the generating company** within a period of 60 days from the date of notification of these Regulations or as directed by the Commission whichever is earlier, **based on** admitted capital cost including additional capital expenditure already admitted in last true up

**order of the Commission and estimated additional capital expenditure for the respective years for the tariff period 2019-24 in accordance with the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020:**

*Provided that the application shall contain details of underlying assumptions for projected capital cost and admitted capital expenditure, where applicable.”*

Thus, in terms of Regulation 6.2, the MYT Petition has to be filed by the generating company based on Additional Capital Expenditure already admitted by the Commission and estimated Additional Capital Expenditure during the MYT Period of FY 2019-20 to FY 2023-24. It may kindly be noted that filing of actual Additional Capital Expenditure by the Petitioner during a financial year is essentially required to be done only at the time of filing Tariff True-up Petition for that financial year in terms of Regulations 9.4, 9.7 & 9.8 of the MPERC Tariff Regulations 2020 and not in the present MYT Petition.

Even this Hon'ble Commission by Order dated 27.04.2019 has directed MB Power to file details of actual Additional Capitalization of all works beyond Cut-off Date while filing the True-up Petition for respective financial year: -

*“10. In view of above provisions under MPERC Tariff Regulations, 2015, it is observed that for considering the actual additional capitalization beyond cut-off date of the project, detailed examination of actual capital expenditure of each work beyond cut-off date and the reasons for delay in capitalization of all such works beyond cut-off date shall be required by the Commission in terms of Regulation 4.1(l) and 20.2 of MPERC Tariff Regulations, 2015. Hence, the subject petition cannot be examined and decided by the Commission at this stage. Therefore, the petitioner is directed to approach the Commission with actual additional capitalization of all works beyond cut-off date as per the Annual Audited Accounts along with all details and documents in terms of aforesaid Regulations **while filing the true-up petition for respective financial year.**”*

In view of the above, it is unequivocal that the present Petition has been filed in accordance with the MPERC Tariff Regulation 2020 as well as the Hon'ble Commission's Order dated 27.04.2019. Any submissions made by the Objector to the contrary merit no consideration by this Hon'ble Commission.

**Observation:**

By Order dated 27.04.2019 in Petition No. 18 of 2019, the Commission had granted liberty to the petitioner to approach the Commission for approval of any additional capitalization after the cut-off date as per the Annual Audited Accounts along with all details and

documents in terms of the applicable Tariff Regulations while filing the true-up petition for respective financial year. Therefore, detailed examination of actual capital expenditure of each work beyond cut-off date and the reasons for delay in capitalization of all such works beyond cut-off date shall be carried out in true-up petition for respective financial year. In this order, the Commission has not considered projected/proposed additional capitalization during the control period.

**Stakeholder Comment:**

It can be seen from para 28 of the petition that MB Power's claim of ₹896.74 Crore towards Additional Capital Expenditure for setting up Emission Control Systems is not in compliance with the mandate of Regulation 31 of the MPERC Tariff Regulations 2020 and the same shall be allowed only after MB Power implements the Emission Control Systems ("ECS").

**Petitioner's Reply:**

*The Objector has contended that MB Power's claim of ₹896.74 Crore towards Additional Capital Expenditure for setting up Emission Control Systems is not in compliance with the mandate of Regulation 31 of the MPERC Tariff Regulations 2020 and the same shall be allowed only after MB Power implements the Emission Control Systems ("ECS"). It is submitted that the above-mentioned contention of the Objector is completely misplaced and hence denied.*

*Regulations 28.1 and 31 of the MPERC Tariff Regulations 2020 provides the mechanism for claiming and approval of Additional Capital Expenditure beyond the original scope of work and on account of installation of ECS towards compliance of Revised Emission Standards for the purpose of determination of tariff during the MYT Period: -*

*"28. Additional Capitalization beyond the original scope:*

*28.1 The capital expenditure in respect of existing generating station incurred or projected to be incurred on the following counts beyond the original scope, may be admitted by the Commission, subject to prudence check:*

*(a) Liabilities to meet award of arbitration or for compliance of the order or directions of the any statutory authority, or order or decree of any court of law;*

*(b) Change in law or compliance of any existing law;*

*[..]*

*31. Additional Capitalization on account of Revised Emission Standards:*

*31.1 A generating company requiring to incur additional capital expenditure in the existing generating station for compliance of the revised emission standards shall*



share its proposal with the beneficiaries and file a petition before Commission for undertaking such additional capitalization.

31.2 The proposal under clause above shall contain details of proposed technology as specified by the Central Electricity Authority, scope of the work, phasing of expenditure, schedule of completion, estimated completion cost including foreign exchange component, if any, detailed computation of indicative impact on tariff to the beneficiaries, and any other information considered to be relevant by the generating company.

31.3 Where the generating company makes an application for approval of additional capital expenditure on account of implementation of revised emission standards, the Commission may grant approval after due consideration of the reasonableness of the cost estimates, financing plan, schedule of completion, interest during construction, use of efficient technology, and such other factors as may be considered relevant by the Commission.

31.4 After completion of the implementation of revised emission standards, the generating company shall file a petition for determination of tariff. Any expenditure incurred or projected to be incurred and admitted by the Commission after prudence check based on reasonableness of the cost and impact on operational parameters shall form the basis of determination of tariff.”

In terms of the regulatory framework stipulated above, the following is noteworthy:-

- (a) Additional Capital Expenditure in respect of an existing generating station incurred or projected to be incurred on account of Change in Law or compliance of any existing law, shall be admitted by the Hon'ble Commission [Regulation 28.1 of the MPERC Tariff Regulations 2020].
- (b) A generating company required to incur Additional Capital Expenditure for compliance of the Revised Emission Standards shall share its proposal with the beneficiaries (providing all details) and file a Petition before this Hon'ble Commission for undertaking such additional capitalization [Regulation 31.1 of the MPERC Tariff Regulations 2020].
- (c) Upon an Application made by the generation company this Hon'ble Commission can grant approval of the Additional Capital Expenditure to be incurred on account of implementation of Revised Emission Standards after due consideration of the reasonableness of the cost estimates (i.e., cost on projected basis). Thereafter, final tariff determination shall take place on the basis of such approved/admitted expenditure (incurred or projected to be incurred) [Regulations 31.3 and 31.4 of the MPERC Tariff Regulations 2020].

*It is submitted that the present Petition for determination of Multi Year Tariff based on the “Projected/Estimated Cost” of installation of ECS (on account of Change in Law and towards compliance of Revised Emission Standards prescribed by MoEFCC) is in accordance with the mandate of Regulation 6.2 read with Regulations 28.1 and 31 of the MPERC Tariff Regulations 2020 for the following reasons: -*

- (a) While filing the present MYT Petition, MB Power is mandated to provide details of all estimated Additional capital expenditure to be incurred during the respective financial years of the MYT Period of FY 2019-20 to FY 2023-24. Accordingly, based on the estimate of completion of work regarding installation of ECS, MB Power in its MYT Petition has provided such details and claimed such associated expenditure in the respective financial years (i.e. Rs. 448.37 Crore each in FY 2021-22 and FY 2022-23).*
  - (b) Additional Capital Expenditure on estimated basis is admissible while determination of Multi-Year Tariff.*
  - (c) In compliance of Regulation 31.1 and 31.2, MB Power has: -*
    - (i) Shared its proposal (for installation of ECS in compliance of the Revised Emission Standards) with MPPMCL vide its various communications from time to time including MB Power’s letters to MPPMCL dated 05.09.2019 and 18.09.2020 providing various details pertaining to the scope of the work, estimated completion cost and proposed technology as specified by Central Electricity Authority (“CEA”) along with a copy of CEA’s recommendation dated 05.03.2020.*
    - (ii) Filed the present Petition seeking approval of this Hon’ble Commission for undertaking the necessary works for compliance with the Revised Emission Standards and the associated capital and operational cost to be incurred by MB Power.*
- MB Power’s letters dated 05.09.2019 and 18.09.2020 written to MPPMCL has already been placed before this Hon’ble Commission by way of MB Power’s Rejoinder dated 23.11.2020.*
- (d) It is submitted that prior regulatory approval of this Hon’ble Commission for installation of ECS and its associated capital and operational cost is necessary in order to obtain/deploy additional funds including debt funds, which will not be sanctioned by the lenders in the absence of regulatory certainty on recovery of such cost. This position has been discussed and affirmed by: -*

- (i) *The Hon'ble Appellate Tribunal for Electricity ('Tribunal') in its Judgment dated 28.08.2020 passed in Appeal No. 21 of 2019 titled Talwandi Sabo Power Ltd. v. Punjab State Electricity Regulatory Commission & Anr [Para 139].*
  - (ii) *Hon'ble Tribunal Judgment dated 13.11.2020 passed in Appeal No. 101 of 2020 titled Lalitpur Power Generation Company Limited v. UPERC & Anr.*
  - (iii) *Ld. Central Electricity Regulatory Commission's Order dated 23.04.2020 passed in Petition No. 446/MP/2019 titled Sasan Power Limited vs MP Power Management Company Limited & Ors: -*
  - (iv) *Ministry of Power's Office Memorandum dated 20.04.2020.*
  - (v) *Indian Banking Association (IBA) letter dated 08.08.2018 to Association of Power Producers (APP) highlighting their inability to fund Power sector for installation of FGD/ Emission Control Systems.*
- (f) *The present Petition is in consonance with commercial principles and the twin objective of ensuring financial viability and consumer interest as MB Power is seeking approval of the cost, which is a statutory expense being uncontrollable in nature and has to be mandatorily incurred towards compliance to a Statute, which shall be subject to a due two-level Prudence Check by this Hon'ble Commission during adjudication of the present Petition and also during year-wise tariff true-up exercise. In view of the above, it is clearly evident that MB Power has claimed Additional Capital Expenditure for the ECS in terms of Regulation 31 of the MPERC Tariff Regulations 2020.*

**Observation:**

The Commission observed that the additional capitalization claimed by the petitioner during the control period is required to be scrutinized on several counts specified in the Tariff Regulations 2020. Based on the information made available by the petitioner, this exercise shall be carried out while undertaking true-up for the respective year based on Annual Audited Accounts and other requisite details in this regard. Therefore, the additional capitalization claimed by the petitioner has not been considered in this order. The petitioner is at liberty to approach the Commission for approval of additional capitalization at the appropriate stage based on the actual expenditure incurred and duly reconciled with the Annual Audited Accounts in accordance to MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.

**Stakeholder Comment:**

MB Power by over invoicing Rs.1300 Crore on procurement of capital equipment for Anuppur Plant has overstated the capital costs of its 1200 MW Project for which the

investigation is pending with the Enforcement Directorate. It is requested that MB Power should be directed to provide details regarding the investigation ongoing and no additional capital expenditure should be allowed on the same.

**Petitioner's Reply:**

*The Objector has made bald allegations without substantiating with any documentary evidence(s) stating that MB Power by over invoicing Rs.1300 Crore on procurement of capital equipment has overstated the capital costs of its 1200 MW Project for which the investigation is pending with the Enforcement Directorate. This allegation of the Objector is vehemently denied for the following reasons:*

- (i) There has been no invoicing by MB Power*
- (ii) Neither has any case been registered against MB Power nor any investigation is being conducted by Enforcement Directorate with regard to the alleged over invoicing of Rs. 1300 Crore on procurement of capital equipment of the Project which is the subject matter of the present Petition.*
- (iii) Such such bald allegations made by the Objector are mere conjectures and surmises since:-*
  - (a) It is not supported by any documentary evidence to prove its legitimacy.*
  - (b) No Affidavit has been filed by the Objector to depose the statements made before this Hon'ble Commission.*
  - (c) It is only with the mala-fide intention to delay the tariff proceedings to the prejudice of MB Power and it is a mere after thought since despite the public notice for furnishing comments, the comments have been filed only a couple of days prior to the public hearing.*

*The Objector has not provided any material evidence, facts and figures to establish that the Capital Cost and Additional Capital Expenditure of the Project, as approved by the Hon'ble Commission are imprudent or MB Power has overstated the same. Such averments of the Objector have no basis either in fact or in law and ought to be disregarded by this Hon'ble Commission. In fact, the Objector by filing such frivolous objections and by making unfounded statements regarding pending investigation before any authority for the Project is misleading this Hon'ble Commission. Such conduct of the Objector merits no consideration by this Hon'ble Commission.*

*This Hon'ble Commission by Order dated 01.12.2017 passed in Petition No. 68 of 2016 and Order dated 29.11.2018 passed in Petition No. 10 of 2018 has already approved the Capital Cost of the Project after conducting the due prudence check. The said Orders have not been challenged before any Appellate forum and hence the same have attained finality and as*

such the terms of these Orders cannot now be varied/ altered in the present MYT proceedings. Hence, in so far as the objections now being raised by the Objector qua Capital Cost of the Project are concerned, the previous Orders of the Hon'ble Commission approving the same have attained finality and any objections in this regard merit no consideration of this Hon'ble Commission.

The cost of the Project is well within the benchmark norms prescribed by the Hon'ble Commission and Ld. CERC. All investments made by MB Power are strictly done in compliance with the provisions of Companies Act. Further, the accounts of MB Power are audited by the renowned Independent Statutory Auditor(s) and accepted and approved by the Statutory Tax Authorities during Income Tax Assessments.

The frivolous and unsubstantiated allegations made by the Objector on the prudence check carried out by the Hon'ble Commission while admitting the Capital Cost of the Project only seek to undermine the powers of the Hon'ble Commission.

Another glaring discrepancy in submission made by the Objector is that the Objector has not affirmed the contents of the submission by way of an Affidavit and therefore, the same is liable to be rejected. The Hon'ble Supreme Court by its Judgment in *A. K. K. Nambiar vs Union Of India & Anr* (1969) 3 SCC 864 has laid down the importance of verification of Affidavit and stated that verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for such allegations. Therefore, the Hon'ble Commission ought not consider any averments/allegations made by the Objector, which are not verified/affirmed by way of an Affidavit. The relevant extract of the Judgment is reproduced as below: -

**"8. The appellant made allegations against the Chief Minister of Andhra Pradesh and other persons some of whose names were disclosed and some of whose names were not disclosed. Neither the Chief Minister nor any other person was made a party. The appellant filed an affidavit in support of the petition. Neither the petition nor the affidavit was verified. The affidavits which were filed in answer to the appellant's petition were also not verified. **The reason for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of, rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether 'it will be safe to act on such affidavit evidence. In the present****

*case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence.”*

**Observation:**

The claim of additional capitalization filed in subject petition shall be dealt with by the Commission at appropriate stage while undertaking true-up exercise of respective year based on Annual Audited Accounts and other requisite details in this regard in terms of Regulation 9.4 of the Tariff Regulations, 2020.

**Stakeholder Comment:**

It is observed that MB Power has claimed Return on Equity (“ROE”) after grossing up with MAT@ 17.47% and the incidence of MAT should not be allowed while computing ROE as MAT is allowed on actuals in accordance with the Tariff Regulations, 2020.

**Petitioner’s Reply:**

*The Objector has contended that MB Power has claimed Return on Equity (“ROE”) after grossing up with MAT@ 17.472% and the incidence of MAT should not be allowed which computing ROE. Such a contention of the Objector is absolutely misplaced and denied. As brought out in the above paragraphs, the present MYT Petition has been filed claiming year-wise MYT Tariff on the projected basis during the MYT Period of FY 2019-20 to FY 2023-24. Further, the Petitioner’s Project has been under Commercial Operations for the last 5 years now. The Petitioner now expects to earn annual profits and pay year-wise applicable Tax including MAT during the MYT Period of FY 2019-20 to FY 2023-24. during the MYT Period of FY 2019-20 to FY 2023-24. Accordingly, the year-wise ROE has been grossed up by MAT in the present Petition.*

**Observation:**

Regulation 35.1 of the Regulations, 2020 provides that the base rate of return on equity shall be grossed up with the effective tax rate of the respective financial year. For FY 2019-20 onwards, the effective tax rate shall be considered on the basis of actual tax paid in the respective financial year based on Annual Audited Accounts. Therefore, the Return on equity has been worked out in this order by applying base rate of return (without grossing up with the MAT) in accordance to the Regulations, 2020.

The petitioner has been directed to file the details of actual tax Payment by the petitioner in light of the Annual Audited Accounts with the true-up petitions of each year of the control period.

**Stakeholder Comment:**

Due to worldwide Covid-19 pandemic, Government of India/State Government and other private companies have retrenched expenses of salary/DA and other benefits payable to their employees/officers or these dues are stabilized, which is one of the basis for tariff escalation every year. Therefore, the Hon'ble Commission shall stabilize the Operation & Maintenance ("O&M") expenses as it was in 2019-20 (i.e., not provide the annual escalation). The Objector has further requested the Hon'ble Commission to refuse additional O&M expenses of ₹1.49 lacs per MW as claimed by MB Power towards the cost of operating the Emission Control Systems from FY 2022-23 onwards.

**Petitioner's Reply:**

*The Objector has contended that due to worldwide Covid-19 pandemic, Government of India/State Government and other private companies have retrenched expenses of salary/DA and other benefits payable to their employees/officers or these dues are stabilized, which is one of the main basis for tariff escalation every year. Therefore, the Hon'ble Commission shall stabilize the Operation & Maintenance ("O&M") expenses as it was in 2019-20 (i.e., not provide the annual escalation). The Objector has further requested the Hon'ble Commission to refuse additional O&M expenses of ₹1.49 lacs per MW as claimed by MB Power towards the cost of operating the Emission Control Systems from FY 2022-23 onwards. It is submitted that the above-mentioned contention of the Objector is wrong and denied.*

*It is submitted that the O&M Expenses have been claimed considering the norms for the MYT Period as specified in Regulation 40.2 of the MPERC Tariff Regulations 2020. Further, the computation of O&M Expenses claimed for the MYT Period is provided at Para 42 of the present Petition.*

*It is a settled position that O&M expenses are provided to the generating companies on normative basis (and not on actual basis) in terms of the MPERC Tariff Regulations 2020. Accordingly, despite its actual O&M expenses being significantly higher, MB Power has restricted claim of annual O&M expenses to their normative levels in line with the provisions of the MPERC Tariff Regulations 2020.*

*The aforesaid position has been upheld by the Hon'ble Tribunal in Judgment dated 04.05.2016 passed in Appeal No. 148 of 2015 titled NTPC Limited vs Uttar Pradesh Power Corporation Limited & Ors, wherein it was held that O&M expenses which is one of the components of tariff is a complete normative package (i.e., based on norms and not actuals). It is possible that under recovery of one of the elements of O&M may be offset against over-*

recovery of other elements of O&M. Hence, any one element of O&M charges cannot be considered in isolation. Hence, the contention of the Objector being at variance with the regulatory framework ought to be rejected.

Further, the additional O&M expenses claimed/ incurred by the generating companies (i.e. MB Power in the present Petition) towards operating the Emission Control Systems is to be allowed as pass through in tariff in terms of the MPERC Tariff Regulations 2020 and Hon'ble Tribunal's Judgment dated 28.08.2020 passed in Appeal No. 21 of 2019, as detailed in the subsequent paragraphs of this Reply.

**Observation:**

In the subject MYT order, the annual operation and maintenance expenses are considered as per the norms specified under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020. The petitioner's claim for additional O&M expenses towards the cost of operating the Emission Control Systems from FY 2022-23 onwards is not considered at this stage in this order.

**Stakeholder Comment:**

Since bill against the purchased electricity is paid by MPPMCL within 30 days as per the PPA dated 05.01.2011; it would be just and in public interest to reduce the period of essential components such as cost for limestone for Interest on Working Capital at proportionate level.

**Petitioner's Reply**

*The Objector has contended that since bill against the purchased electricity is paid by MPPMCL within 30 days as per the PPA dated 05.01.2011; it would be just and in public interest to reduce the period of essential components for Interest on Working Capital at proportionate level. The above-mentioned contention of the Objector is wrong, misplaced and hence denied.*

*In the present MYT Petition, MB Power has claimed Interest on Working Capital strictly in accordance with Regulation 38.1(A) of the MPERC Tariff Regulations 2020. The components of Interest on Working Capital are provided under the MPERC Tariff Regulations 2020 and the same is allowed on normative basis to all generating companies including MB Power. Hence, such baseless contentions of the Objector, which are at variance with the established norms and regulatory principle, ought to be rejected.*



**Observation:**

In the subject MYT order, the interest on working capital is considered as per the norms specified under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020. The cost of limestone for Interest on Working Capital is not considered in this order.

**Stakeholder Comment:**

MB Power's claim for additional 1% increase in Gross Station Heat Rate and 1.75% increase in Auxiliary Energy Consumption on account of implementation of Emission Control Systems from FY 2022-23 onwards shall not be allowed at present for want of standard/enabling provisions under the Tariff Regulations 2020.

**Petitioner's Reply:**

*The Objector has contended that MB Power's claim for additional 1% increase in Gross Station Heat Rate and 1.75% increase in Auxiliary Energy Consumption on account of implementation of Emission Control Systems from FY 2022-23 onwards shall not be allowed at present for want of standard/enabling provisions under the Tariff Regulations 2020. The above-mentioned contention of the Objector is wrong and denied.*

*It is submitted that pursuant to MoEFCC Notification dated 07.12.2015 and Central Pollution Control Board ("CPCB") directions dated 11.12.2017, MB Power is mandated to install various Emission Control Systems ("ECS") in its Project in compliance of the Revised Emission Standards. It is submitted that apart from the Capital Expenditure required for installation of such ECS, MB Power will also incur substantial operational expenditure on recurring basis post installation of such ECS. Therefore, operation and maintenance of such Emission Control Systems will impact various Normative components of tariff, thereby resulting in: -*

- (a) Recurring Operational Expenditure during the term of the PPA i.e., increase in Operation and Maintenance expenses, increase in Working Capital requirement due to additional cost of Reagents thereby resulting in increase in Interest on Working Capital etc.*
- (b) Increase in Auxiliary Energy Consumption ("AUX") and Gross Station Heat Rate ("GSHR") of the Project.*
- (c) Increase in Fixed Charges and Energy Charges on account of the above factors.*
- (d) Disruption in power generation during the installation phase of such ECS.*
- (e) Loss of Fixed cost recovery during the shutdown period.*

*Accordingly, MB Power in the present MYT Petition has claimed: -*

- (a) Additional O&M Expenses for operating the Emission Control Systems during FY 2022-23 and FY 2023-24.
- (b) Cost of Reagents (Limestone) and other consumables towards operating the Emission Control Systems for FY 2022-23 and FY 2023-24 leading to increase in Working Capital requirement thereby resulting in increase in Interest on Working Capital during FY 2022-23 and FY 2023-24.
- (c) Additional 1% increase in GSHR post installation of Emission Control Systems over and above Normative GSHR during FY 2022-23 and FY 2023-24.
- (d) Additional AUX of 1.75% post installation of Emission Control Systems over and above Normative AUX of 6.25% during FY 2022-23 and FY 2023-24.

It is submitted that the impact on operational parameters of tariff (i.e. both Fixed and Energy Charges) of the Project on account of installation and operation of Emission Control Systems is allowed as pass-through in tariff in terms of the 2<sup>nd</sup> Proviso to Regulation 3.1(5), Regulation 6.3, 16.2, 2<sup>nd</sup> Proviso to Regulation 18.1, Regulation 31.4, 44.1 and 46.1 of the MPERC Tariff Regulations 2020: -

“(5) **'Auxiliary Energy Consumption' or 'AUX'** .....

**Provided further that auxiliary energy consumption for compliance of revised emission standards, sewage treatment plant and external coal handling plant (jetty and associated infrastructure) shall be considered separately.**

**6.3 In case of emission control system is required to be installed in existing generating station or unit thereof to meet the revised emission standards, an application/petition shall be filed for determination of tariff (capacity charges or energy charge or both) after installation of such system based on the actual capital expenditure incurred duly certified by the Auditor along with all necessary details and documents.**

**16.2 The capacity charges for additional capitalization and energy charges, on account of implementation of revised emission standards in existing generating station or new generating station, as the case may be, shall be determined by the Commission separately.**

18. Energy Charges....

**Provided further that the energy charges, if any, on account of meeting the revised emission standards in case of a thermal generating station shall be determined separately by the Commission.**

**31.4 After completion of the implementation of revised emission standards, the generating company shall file a petition for determination of tariff. Any expenditure incurred or projected to be incurred and admitted by the Commission after**

**prudence check based on reasonableness of the cost and impact on operational parameters shall form the basis of determination of tariff.**

**44.1 The energy charge in respect of the thermal generating Stations shall comprise of landed cost of coal (primary fuel), cost of secondary fuel oil consumption and landed cost of reagents on account of implementation of the revised emission standards.**

46.1 Where specific reagents such as Limestone, Sodium Bi-Carbonate, Urea or Anhydrous Ammonia are used during operation of emission control system for meeting revised emission standards, the landed cost of such reagents shall be determined based on normative consumption and purchase price of the reagent through competitive bidding, applicable statutory charges and transportation cost.”

In view of the above regulatory provisions it is unequivocal that: -

- (a) Additional O&M Expenses, Interest on Working Capital, AUX and GSHR etc. for compliance of Revised Emission Standards is required to be considered and allowed over and above their Normative values provided in the Regulations.
- (b) Post installation of ECS, in addition to primary and secondary fuel, Energy Charges shall also comprise of the landed cost of Reagents and other consumables and the same is required to be allowed and considered as a pass through.

The Hon'ble Tribunal in its Judgment dated 28.08.2020 passed in Appeal No. 21 of 2019 held that all cost and expenses including all allied cost like taxes, duties etc., incurred by the generating company in relation to procurement, installation, commissioning, Operation & Maintenance of the FGD system must be reimbursed to the generator: -

“140. In the light of our discussion and reasoning, we are of the opinion that the impugned Orders, dated 21.12.2018 and 09.01.2019 challenged in both the appeals deserve to be set aside and accordingly set aside by allowing the appeals.

- a) The MoEF& CC Notification dated 07.12.2015 is a Change in Law event under PPAs in question having regard to the facts and circumstances of the case of the Appellants.
- b) **The installation and operation of the FGD and associated system to comply with emission levels of SO<sub>2</sub> is Change in Law and additional expenditure for the same including all allied cost like taxes, duties etc., has to be included as Additional Capital Cost to be incurred by the Appellants.**
- c) In case technology for installing and operating SNCR and/or any other appropriate technology is mandated in future for complying with the emission levels of NO<sub>x</sub> in terms of Notification of 2015, it also amounts to Change in Law event.

- d) *The Respondent-Commission is directed to **devise a mechanism for payment of above amounts** by the procurers to both the Appellants towards **additional cost and other expenses in relation to procurement, installation, commissioning, operation and maintenance of FGD for SO2** as approved by the concerned authority, after prudence check.*
- e) *Appellants are entitled for carrying cost in terms of provisions of the PPAs to bring the seller-Appellants to the same economic position as if such Change in Law event has not occurred.”*

*Even the CEA Authority in its report dated 05.03.2020 has recommended that installation of FGD system in MB Power’s Project will result in additional AUX and additional cost towards Reagents to be used in the FGD System/ Emission Control Systems.*

*In view of the above, it is submitted that MB Power’s claim towards additional O&M Expenses, increase in Gross Station Heat Rate and Auxiliary Energy Consumption, cost of Reagents (Limestone) and other consumables etc. leading to increase in Interest on Working Capital requirement etc. ultimately resulting in increase in tariff (i.e. both Fixed and Energy Charges) of the Project on account of installation and operation of ECS during FY 2022-23 and FY 2023-24 of the MYT Period is in accordance with the regulatory framework provided under the MPERC Tariff Regulations 2020, Hon’ble Tribunal’s Judgment and CEA’s recommendation report.*

**Observation:**

Since, the Commission has not considered any additional capitalization related to Emission Control Systems in this MYT Order, hence, no additional increase in GSHR and AUX in this order are allowed on account of Emission Control Systems for FY 2022-23 and FY 2023-24. Parameters related to Emission Control Systems will be analysed separately after installation of the ECS.

**Stakeholder Comment:**

It is observed that the cost of coal (i.e., ₹ 3409 per metric ton) as claimed by MB Power is exaggerated estimation without support of any valid document. MB Power has deliberately not enclosed bills issued by Coal Company/railway transport bill/other expenses etc. of last three months prior to April 2019 i.e., from January 2019 to March 2019.

**Petitioner’s Reply:**

The Objector has contended that the cost of coal (i.e., ₹3409 per metric ton), as claimed by MB Power is exaggerated estimation without support of any valid document. MB Power has deliberately not enclosed bills issued by Coal Company/railway transport bill/other expenses etc. of last three months prior to April 2019 i.e., from January 2019 to March 2019. It is submitted that the above-mentioned contention of the Objector is completely wrong and hence denied.

It is submitted that the landed cost of coal claimed in the present MYT Petition has been strictly calculated based on the actual weighted average fuel price and Gross Calorific Values of coal for the three months (i.e., January 2019, February 2019 and March 2019) preceding the first month (i.e., April 2019) as stipulated under Regulation 18.1, Regulation 19 & Regulation 38.2 of the MPERC Tariff Regulations 2020. Further, MB Power has submitted the due documentary evidences in support of its above claim along with the present MYT Petition,

Notwithstanding, the above it is a settled position of law that under a Section-62 PPA (like Petitioner's PPA with MPPMCL) the actual landed cost of fuel incurred by the generating company is a pass through in tariff. In this regard reliance is placed upon the following Judgments: -

- (a) Hon'ble Appellate Tribunal for Electricity ("Tribunal") Judgment dated 23.03.2015 passed in O.P No. 3 of 2012 titled 'Indian Biomass Power Association Vs. Ministry of Power, Govt. of India & Anr' [Para 10]
- (b) Hon'ble Tribunal Judgment dated 19.09.2014 passed in Appeal No. 207 of 2013 titled 'Rana Sugars Limited vs. Punjab State Electricity Regulatory Commission &Ors' [Para No. 23]
- (c) Hon'ble Tribunal Judgment dated 30.01.2013 passed in Appeal No. 34 of 2012, titled 'Maharashtra State Power Generation Company Limited vs. Maharashtra Electricity Regulatory Commission &Ors' [Para 39]

In light of the above, it is submitted that the contentions of the Objector are baseless, unsubstantiated and deserve to be rejected by this Hon'ble Commission.

**Observation:**

The Landed Cost of Coal has been worked out by the Commission based on the details and documents (Bills/invoices raised by the coal companies) filed by the petitioner and considered in this order in accordance with the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.

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