

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION**

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



**Petition No. 07 of 2018**

**PRESENT:**

**Dr. Dev Raj Birdi, Chairman**

**Mukul Dhariwal, Member**

**Anil Kumar Jha, Member**

**IN THE MATTER OF:**

**Determination of Multi-Year Tariff for the 2X660 MW Super Critical Coal Based Thermal Power Station at Nigrie, District Singrauli, Madhya Pradesh for the control period of FY 2016-17 to FY 2018-19 under Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.**

**AND IN THE MATTER OF:**

**M/s Jaiprakash Power Ventures Ltd., Noida (U.P.)**

**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 29<sup>th</sup> November' 2018)

1. M/s Jaiprakash Power Ventures Ltd. (hereinafter called “the petitioner”) has filed the subject petition on 05<sup>th</sup> February' 2018 for determination of generation tariff under the Multi-year Tariff framework in respect of its 2X660 MW Super Critical Coal Based Thermal Power Station at Nigrie, District Singrauli, Madhya Pradesh for the control period of FY 2016-17 to FY 2018-19 under Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.
2. The subject petition was filed under Section 62 and Section 86(1) (a) of the Electricity Act, 2003 and based on Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 (hereinafter called “the Regulations, 2015”).
3. Subsequently, by affidavit dated 20<sup>th</sup> March' 2018, the petitioner also filed an Interlocutory Application No. IA No. 4/2018 in petition No. 07/2018 for condonation of Delay in filing the subject Petition.
4. The Nigrie Thermal Power Station under the subject petition comprises of two generating Units of 660 MW each. Date of Commercial Operation (CoD) of both Units of the petitioner’s power plant are as given below:

**Table 1: CoD of Unit No.1 & 2**

S. No.	Unit	Installed Capacity (MW)	Date of Commercial Operation
1.	Unit No. 1	660 MW	3 <sup>rd</sup> September' 2014
2.	Unit No. 2	660 MW	21 <sup>st</sup> February' 2015

5. The petitioner executed long term Power Purchase Agreement (PPA) on 5<sup>th</sup> January' 2011 with M.P. Power Management Company Ltd., (hereinafter called “MPPMCL” or “Respondent No. 1”) for supply of 30% power of the installed capacity of the Project at regulated tariff determined by the Madhya Pradesh Electricity Regulatory Commission (hereinafter called “the Commission” or “MPERC”). The petitioner has also executed another Power Purchase Agreement on 6<sup>th</sup> September' 2011 with the Government of Madhya Pradesh for supply of 7.5% of the net power generated at only variable charges determined by the Commission.

6. A brief background of the subject petition is given below:
- i) Vide order dated 26<sup>th</sup> September' 2014 in petition No. 03/2014 ,the Commission determined the provisional tariff of Unit No. 1 Nigrie power station from its CoD (i.e., 3<sup>rd</sup> September' 2014) to 31<sup>st</sup> March' 2016 based on the actual capital expenditure certified by the Auditor. The provisional tariff for Unit No. 2 was not determined by the Commission as Unit No. 2 was not synchronized by that time.
  - ii) Subsequently, the petitioner filed an Interlocutory Application (IA No. 1) in aforesaid petition No. 03/2014 for determination of provisional tariff for Unit No. 2 from its CoD to 31<sup>st</sup> March' 2016. Vide order dated 31<sup>st</sup> March' 2015 in IA No. 1 in Petition No. 03/2014, the commission determined provisional tariff of Unit No. 2 from its CoD (i.e., 21<sup>st</sup> February' 2015) to 31<sup>st</sup> March' 2016.
  - iii) Hon'ble Supreme Court of India, vide Judgment dated 25<sup>th</sup> August' 2014 read with Order dated 24<sup>th</sup> September' 2014 had cancelled allotment of 204 coal blocks with effect from 31<sup>st</sup> March' 2015. The allocation of Amelia (North) Coal Mine to Madhya Pradesh Jaypee Minerals Ltd. also stood cancelled.
  - iv) Vide letter dated 18<sup>th</sup> May' 2015, Govt. of Madhya Pradesh, Energy Department issued directives to the Commission under Section 108 of the Electricity Act for down ward revision of energy charges in aforesaid matter.
  - v) Vide order dated 28<sup>th</sup> January' 2016 in SMP No. 49 of 2015, the Commission had redetermined the Energy Charges for petitioner's Nigrie power project in light of above directions and other documents issued by Govt. of India in this matter.
  - vi) Vide order dated 24<sup>th</sup> May' 2017 in Petition No. 72/2015, the Commission determined final tariff from CoD of Unit No. 1 to 31<sup>st</sup> March' 2015 based on the Annual Audited Accounts. The tariff for FY 2015-16 was determined on provisional basis, subject to true-up based on Annual Audited Accounts.
  - vii) Aggrieved with the aforesaid order dated 24<sup>th</sup> May' 2017, the petitioner has filed an Appeal No. 244 of 2017 with the Hon'ble Appellate Tribunal for Electricity and same is *subjudice* before the Hon'ble Appellate Tribunal for Electricity.

- viii) Further, vide order dated 20<sup>th</sup> July' 2018, the Commission determined the true-up of generation tariff for FY 2015-16 based on the Annual Audited Accounts for FY 2015-16.
- ix) Aggrieved with the aforesaid true-up order dated 20<sup>th</sup> July' 2018, the petitioner has filed an Appeal No. 293/2018 with the Hon'ble Appellate Tribunal for Electricity. The aforesaid Appeal is also *subjudice* before the Hon'ble Tribunal.
7. In the subject petition filed on 05<sup>th</sup> February' 2017, the petitioner broadly submitted the following:
- a) *Pursuant to the terms of the Memorandum of Understanding dated 16<sup>th</sup> January' 2007 and Implementation Agreement dated 12<sup>th</sup> December' 2007, the Petitioner set up the Project at Nigrie, District Singrauli, Madhya Pradesh.*
- b) *Consequently, the Petitioner entered into a long-term Power Purchase Agreement with Respondent No. 1 on 05.01.2011. Under the Power Purchase Agreement dated 05.01.2011, the Petitioner is required to supply 30% of the installed capacity of the Project to the Respondent No. 1 at a tariff determined by this Commission.*
- c) *The Petitioner and Respondent No. 1 further entered into a second Power Purchase Agreement on 06.09.2011 for supply of 7.5% of the net power from the Project to the Respondent No. 1 at variable charges/cost (the Power Purchase Agreements referred to herein as "PPAs"). The power supplied by the Petitioner to the Respondent No. 1 under the PPAs ensures the benefit of Respondent No. 2 to Respondent No. 4 herein, who are the distribution licensees engaged in the business of distribution and supply of electricity in the state of Madhya Pradesh.*
- d) *Whilst the Petitioner was in the process of executing the Project, the Hon'ble Supreme Court of India, on the issue of the validity of coal blocks allotted by the Screening Committee of the Central Government as also the allotments made through Government dispensation route, examined in a batch of proceedings [W.P.(CrI) No.120 of 2012] wherein, the Hon'ble Supreme Court of India declared majority of allocation of coal blocks made by the Central Government since 1993 as arbitrary and illegal vide its judgement dated 25.08.2014 and order dated 24.09.2014 in M.L. Sharma v. The Principal Secretary and Others,(2014), and thus, cancelled the allotment of 204 coal blocks allotted through such route. The*

Amelia (North) coal block was among the 204 blocks cancelled vide the foregoing judgement. Consequently, the allotment in favour of Madhya Pradesh State Mining Corporation Limited (MPSMCL) stood cancelled.

- e) Pursuant to the cancellation of the blocks, the Central Government promulgated the Coal Mines (Special Provisions) Ordinance, 2014 and the Coal Mines (Special Provisions) Rules, 2014 (hereinafter referred to as the "Rules") which provided for auction and allotment of the various cancelled coal blocks. The Ordinance and the Rules provided for the appointment of a 'Nominated Authority' to conduct the tender process to auction the various de-allocated coal mines.
- f) The Ministry of Coal issued order dated 26.12.2014 specifying the methodology for fixing floor/reserve price for the auction and allotment of coal mines/blocks. It provided for the auction to be conducted vide the methodology of 'reverse bidding' wherein the bidders were required to bid below the ceiling price of CIL fixed at the Run of Mine (hereinafter referred to as the "RoM") price of equivalent grade. In effect, the Coal Order provided for the possibility of a winning bid of 'zero'. The same was nothing but a notional value in view of the peculiar nature of the bid, which was premised on the efficiency in the mining operations, as the RoM price when understood in the commercial sense, being contingent on several expenses like labor, maintenance of machines etc. can never be 'zero' in absolute terms.
- g) Vide Corrigendum dated 31.01.2015, the Nominated Authority clarified that in the event of a bid of 'zero', the selection of the preferred bidder shall be on the basis of the highest 'Additional Premium' quoted by it on the basis of the quantum of coal extracted.
- h) The Petitioner, in dire need of the Amelia (North) coal block since its power plant was premised on the supply from the said block and investment of Rs. 11,700 Crores was jeopardized on account of its cancellation, bid a price of 'zero' at the auction with the aim to get the Amelia coal block and emerged as the successful bidder as it quoted an Additional Premium of Rs. 612 per tonne.
- i) It is pertinent to mention that at the time of Bidding for Amelia (North) coal block (17.02.2015), Nigrie Plant was generating and the Mine [Amelia (North)] was also functional. Thus, JPVL was left with no option but to ensure availability of fuel/coal for its Project, which was established on the basis of tender conditions for bidding

for Amelia (North) coal block.

- j) Pursuant to tender and e-auction process conducted in accordance with the Coal Mines (Special Provisions) Rules, 2014, the Petitioner was declared as the successful bidder for Amelia (North) coal mine. Accordingly, the Coal Mine Development and Production (hereinafter referred to as "CMDP") Agreement was executed on 02.03.2015 and subsequently 'Vesting Order' was issued to the Petitioner on 23.03.2015.
- k) Subsequent to its successful bid, the Petitioner entered into the CMDP Agreement dated 02.03.2015 with the Nominated Authority. The said agreement stipulated the fixed monthly payment of Rs. 100 per tonne alongwith an additional premium of Rs. 612 per tonne with respect to the quantum of coal extracted every month and payment of fixed amount relating to land and mine infrastructure & cost of obtaining permits/approvals.
- l) Subsequently, the Petitioner filed Petition No. 72 of 2015 on 07.12.2015 before the Hon'ble Commission for determination of tariff for supply of power from the Project from 03.09.2014 to 31.03.2015.
- m) Pursuant to filing Petition No. 72 of 2015, the Hon'ble Commission on several occasions directed the Petitioner to file additional information pertaining to the submissions in the Petition. The said additional information were sought by the Hon'ble Commission vide its letters dated 04.03.2016, 22.08.2016, 04.11.2016, 31.12.2016 and 23.02.2017.
- n) The Hon'ble Commission after deliberation on its part approved the Final Tariff for FY 2014-15 and Provisional Tariff for FY 2015-16 vide Order dated 24.05.2017 subject to be Trued Up as per the annual audited accounts of FY 2015-16.
- o) The Petitioner has challenged certain portions of the Order dated 24.05.2017 in Appeal No. 244 of 2017 before the Hon'ble Appellate Tribunal of Electricity on 21.07.2017 (hereinafter referred to as the "Tariff Appeal").
- p) The Petitioner has also filed a True Up petition, bearing Petition No. 41 of 2017, before this Commission along with details of additional capital expenditure incurred by the Petitioner during FY 2015-16 based upon the capital cost as determined by the Hon'ble Commission vide order dated 24.05.2017.

8. With the above submission, the petitioner prayed the following:
- (a) Determine the Generation Tariff of the Project for FY 2016-17, FY 2017-18 and FY 2018-19 as claimed in Para 10 in terms of the Additional Capital Expenditure incurred / proposed to be incurred by the Petitioner as enumerated in Paras 6 to 8 above;
- (b) Allow the recovery of the filing fees paid to the Hon'ble Commission and also the publication expenses from the beneficiaries.
- (c) Condone any inadvertent/omissions/rounding off differences/ shortcomings and permit the Petitioner to add/alter this filing and make further submissions as may be required at latter stages.
9. The petitioner filed a copy of the Annual Audited Accounts of Jaypee Nigrie Thermal Power Plant (JBTPP), Balance Sheet of Amelia Coal Mines and the Consolidated Balance Sheet of Jaypee Power Ventures Limited (JPVL) as on 31<sup>st</sup> March' 2017
10. In the subject petition, the petitioner claimed the following Annual Capacity (fixed) Charges and Energy (variable) Charges for both the Units for the control period of FY 2016-17 to FY 2018-19.

**Table 2: Annual Capacity Fixed Charges claimed in the Petition**

S. No.	Particulars	Unit	FY 2016-17	FY 2017-18	FY 2018-19
	<b>Capacity Charge or Fixed Charge</b>				
1	Depreciation	Rs in Crores	587.01	602.25	610.88
2	Interest on Loan	Rs in Crores	860.55	872.28	817.58
3	Return on Equity	Rs in Crores	513.81	531.17	543.08
4	Interest on Working Capital	Rs in Crores	126.69	117.40	116.51
5	O & M Expenses	Rs in Crores	214.76	228.36	242.62
5A	O & M Expenses (400 kV Transmission Line & Bay)	Rs in Crores	1.22	1.27	1.33
6	Secondary fuel oil cost	Rs in Crores	-	-	-
7	Lease rent payable for Land (yearly)	Rs in Crores	0.44	0.44	0.44
<b>8</b>	<b>Total Fixed Cost (Capacity Charge)</b>	<b>Rs in Crores</b>	<b>2,304.49</b>	<b>2,353.17</b>	<b>2,332.44</b>
<b>9</b>	<b>No of days applicable for the period</b>	<b>Days</b>	<b>365</b>	<b>365</b>	<b>365</b>
<b>10</b>	<b>Total Capacity Charges for applicable days</b>	<b>Rs in Crores</b>	<b>2,304.49</b>	<b>2,353.17</b>	<b>2,332.44</b>
11	Less:-Non-Tariff Income	Rs in Crores	2.16		
<b>12</b>	<b>Net Capacity Charges</b>	<b>Rs in Crores</b>	<b>2,302.33</b>	<b>2,353.17</b>	<b>2,332.44</b>
13	Foreign Exchange Rate Variation (Claimed on the basis of actual loss on Repayment)	Rs in Crores	15.60	45.38	-

<b>14</b>	<b>Total Capacity Charges inclusive of FERV for applicable days</b>	<b>Rs in Crores</b>	<b>2,317.93</b>	<b>2,398.54</b>	<b>2,332.44</b>
<b>15</b>	<b>32.43% of Annual Capacity Charges</b>	<b>Rs in Crores</b>	<b>751.70</b>	<b>777.85</b>	<b>756.41</b>

11. The Commission has examined the subject petition in accordance with the provisions under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 and Annual Audited Accounts of Jaypee Nigrie Thermal Power Station for FY 2016-17, Annual Audited Accounts of Jaypee Power Ventures Ltd. for FY 2016-17, Asset Cum Depreciation Register and all other documents placed on record for determination of generation tariff under MYT framework. The Commission has also examined the subject MYT petition in light of the comments/suggestions offered by the Respondent No. 1 (MPPMCL) / other stakeholders and the response of petitioner on the same.

### **Procedural History**

12. Motion hearing on the Interlocutory Application in the subject matter was held on 15<sup>th</sup> May' 2018, wherein the petitioner made out sufficient cause for delay in filing the subject petition. Vide Commission's order dated 17<sup>th</sup> May' 2018, the delay in filing the subject petition was condoned and the IA No. 04/2018 in Petition No. 07/2018 was disposed of.
13. Thereafter, Motion hearing in the subject petition was held on 05<sup>th</sup> June' 2018. Vide Commission's order dated 05<sup>th</sup> June' 2018, 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 25<sup>th</sup> June' 2018.
14. On preliminary scrutiny of the subject petition, vide Commission's letter dated 23<sup>rd</sup> June' 2018, 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 12<sup>th</sup> July' 2018.
15. During the course of the hearing held on 17<sup>th</sup> July' 2018, the Commission observed that Respondent No.1 (MPPMCL) sought two weeks' time extension for submission of its response/comments on the subject petition. The Commission also observed that the petitioner has not filed its reply to the information gaps communicated to it by the Commission.



16. Vide order dated 17<sup>th</sup> July' 2018, the Respondent No. 1 was asked to file its response on the subject petition by 06<sup>th</sup> August' 2018 after serving a copy of the same on other side without any further delay. The petitioner was also asked to file its rejoinder within two weeks thereafter. The petitioner was directed to file its reply to the information gaps communicated to it by the Commission within a weeks' time.
17. By affidavit dated 14<sup>th</sup> July' 2018 (received on 17<sup>th</sup> July' 2018), the petitioner filed its reply to the issues raised by the Commission. Issue-wise response of petitioner to all information gaps/requirement of additional information and documents sought by the Commission is mentioned in **Annexure 1** of this order.
18. By affidavit dated 06<sup>th</sup> August' 2018, Respondent No. 1 filed its comments/response on the subject petition. By affidavit dated 21<sup>st</sup> August' 2018, the petitioner filed rejoinder to the reply/comments filed by Respondent No. 1. The petitioner's responses on each comment offered by the Respondent No. 1 is mentioned in the **Annexure- II** of this order.
19. The public notice for inviting comments/suggestions from stakeholders was published on 04<sup>th</sup> September' 2018 in the following newspapers:
  - i. Dainik Jagran (Hindi), Bhopal
  - ii. Dainik Jagran (Hindi), Rewa
  - iii. The Times of India ( English), Bhopal
  - iv. The Times of India (English), Indore.
20. The Commission received the comments from the stakeholders. By affidavit dated 6<sup>th</sup> October' 201, the petitioner filed its response on each issue raised by the stakeholders. The response of the petitioner on the comments/objections filed by the stakeholders is mentioned in **Annexure III** of this order.
21. The public hearing in the subject petition was held on 09<sup>th</sup> October' 2018 wherein the representatives of the petitioner, Respondent No.1 and one stake holder appeared.

**Capital Cost**

**Petitioner's submission**

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

*"The capital cost, as on 31.03.2015, determined by the Commission vide Order dated 24.05.2017 is as hereunder:-*

**(Amount in Rs.Crores)**

<b>Sl. No.</b>	<b>Particulars</b>	<b>Amount</b>
1	Land	25.74
2	BTG	4,830.90
3	BOP	1,605.22
4	Civil	1,513.33
<b>5</b>	<b>Total Hard Cost</b>	<b>7,975.19</b>
6	Establishment Charges	268.13
7	Start Up Fuel	221.82
8	Interest during Constructions (IDC)	2,282.68
9	Interest During Construction (IDC) on Debt Component of Unallocated portion from 03-09-2014 to 20-02-2015	29.69
10	Foreign Exchange Rate Variation	(91.95)
11	Liquidated Damages	(120.77)
<b>12</b>	<b>Total Soft Costs (6 to 11)</b>	<b>2589.62</b>
<b>13</b>	<b>Total Capital Cost (5+11)</b>	<b>10,564.80</b>

*The details of capital addition in the generating station and Amelia mines during FY 2015-16, which has also been mentioned in the True Up Petition No. 41 of 2017 filed before the Hon'ble Commission, is reproduced as hereunder:-*

**(Amount in Rs. Crores)**

<b>Sl. No.</b>	<b>Particulars</b>	<b>Addition in Generating Station during FY 2015-16</b>			<b>Addition in Amelia Mines during FY 2015-16</b>	<b>Total Addition during FY 2015-16</b>
		<b>Addition</b>	<b>Adjustments / Deletions</b>	<b>Net Addition</b>		
1	Land	11.63		11.63	1.11	12.74
2	BTG	14.40		14.40		14.40
3	BOP	7.71	13.02	(5.31)	250.86	245.55
4	Civil	0.41		0.41	81.16	81.57
<b>5</b>	<b>Total</b>	<b>34.15</b>	<b>13.02</b>	<b>21.13</b>	<b>333.13</b>	<b>354.26</b>

6	Intangible Assets				217.46	217.46
7	Cost of ownership of Mining Rights				145.39	145.39
<b>8</b>	<b>G. Total</b>	<b>34.15</b>	<b>13.02</b>	<b>21.13</b>	<b>695.98</b>	<b>717.11</b>

After making the additions as mentioned above, the total capital cost incurred upto 31.03.2016 is as hereunder:-

(Amount in Rs. Crores)

Sl. No.	Particulars	Generating Station upto 31.03.2016	Amelia (Mines) upto 31.03.2016	Total Capital Cost upto 31.03.20016
1	Land	37.37	1.11	38.48
2	BTG	4,845.30		4,845.30
3	BOP	1,599.91	250.86	1,850.77
4	Civil	1,513.74	81.16	1,594.90
<b>5</b>	<b>Total Hard Cost</b>	<b>7,996.32</b>	<b>333.13</b>	<b>8,329.45</b>
6	Establishment Charges	268.13		268.13
7	Start Up Fuel	221.82		221.82
8	Interest during Constructions	2,282.68		2,282.68
9	Interest During Construction (IDC) on Debt Component of Unallocated portion from 3.09.2014 to 20.02.2015	29.69		29.69
10	Foreign Exchange Rate Variation	(91.95)		(91.95)
11	Liquidated Damages	(120.77)		(120.77)
<b>12</b>	<b>Total Soft Costs (6 to 11)</b>	<b>2589.62</b>	<b>0.00</b>	<b>2589.62</b>
13	Intangible Assets		217.46	217.46
14	Cost of ownership of Mining Rights		145.39	145.39
<b>15</b>	<b>Total Capital Cost (5+12+13+14)</b>	<b>10,585.93</b>	<b>695.98</b>	<b>11,281.91</b>

### Provisions Under Regulations

23. With regard to capital cost of the existing project , Regulation 15.3 of MPERC ( Terms & Conditions for Determination of Generation Tariff) Regulations, 2015 provides that:

*“The Capital cost of an existing project shall include the following:*

- (a) the capital cost admitted by the Commission prior to 1.4.2016 duly trued up by excluding liability, if any, as on 1.4.2016;*
- (b) additional capitalization and de-capitalization for the respective year of tariff as determined in accordance with Regulation 20; and*
- (c) expenditure on account of renovation and modernization as admitted by the Commission in accordance with Regulation 21.”*

### Commission’s Analysis

24. In the subject petition, the petitioner considered capital cost of Rs. 10564.80 Crore as on 31<sup>st</sup> March’ 2015 as admitted by the Commission in final tariff order dated 24<sup>th</sup> May’ 2017 in Petition No. 72 of 2015 along with the net additional capitalization of Rs. 21.13 Crore during FY2015-16 as filed by it in true-up petition No. 41 of 2017.
25. The petitioner filed true-up petition for FY 2015-16 based on the Annual Audited Accounts. In the aforesaid true-up petition, the petitioner claimed net additional capitalization of Rs. 21.13 Crore as on 31<sup>st</sup> March’ 2016 in Nigrie Power Station. Hence, the capital cost of Rs. 10585.93 Crore as on 31<sup>st</sup> March’ 2016 was claimed by the petitioner in the subject petition as opening capital cost of power station in the subject petition.
26. Regulation 15.3 of the Regulations, 2015 provides that, *The Capital cost of an existing project shall include the the capital cost admitted by the Commission prior to 1.4.2016 duly trued up by excluding liability, if any, as on 1.4.2016”.*
27. Subsequently, vide Order dated 20<sup>th</sup> July’ 2018, the Commission issued true-up order for Nigrie Power Station for FY 2015-16 based on the Annual Audited Accounts for FY 2015-16. In the aforesaid true-up order, the Commission has approved capital cost of Rs. 10585.56 Crore as on 31<sup>st</sup> March’ 2016.
28. To arrived at the opening capital cost as on 01<sup>st</sup> April’ 2016 in this order, the Commission has considered the closing Gross Fixed Assets of Rs. 10585.56 Crore as on 31<sup>st</sup> March’ 2016 (as admitted in its true-up order dated 20<sup>th</sup> July’ 2018 for FY

2015-16) as the opening figure for capital cost as on 01<sup>st</sup> April' 2016 in light of the Regulations, 2015.

**Additional capitalization**

**Petitioner's Submission:**

29. Regarding the additional capitalization during the control period, the petitioner submitted the following:

5.1 *The details of additional capital cost incurred by the Petitioner during FY 2016-17 as per the actual audited accounts for FY 2016-17 is as hereunder:*

**(Amount in Rs. Crores)**

Sl. No.	Particulars	Addition in Generating Station during FY 2016-17			Addition in Amelia Mines during FY 2016-17			Total Addition during FY 16-17
		Addition	Adjustments/Deletions	Net Addition	Addition	Adjustments/Deletions	Net Addition	
1	Land	0.01		0.01	0.12		0.12	0.13
2	BTG	172.25		172.25			-	172.25
3	BOP	5.60	3.71	1.88	0.57	1.32	(0.75)	1.13
4	Civil	-		-	10.79		10.79	10.79
5	<b>Total</b>	<b>177.86</b>	<b>3.71</b>	<b>174.15</b>	<b>11.47</b>	<b>1.32</b>	<b>10.15</b>	<b>184.30</b>
6	Intangible Assets						-	-
7	Cost of ownership of Mining Rights				145.85		145.85	145.85
8	<b>G. Total</b>	<b>177.86</b>	<b>3.71</b>	<b>174.15</b>	<b>157.31</b>	<b>1.32</b>	<b>155.99</b>	<b>330.14</b>

5.2 *It is respectfully submitted that the Petitioner has de-capitalized assets amounting to Rs. 3.71 Crores in the Generating Station and Rs. 1.32 Crores in Amelia coal mines during FY 2-16-17. It is submitted that these downward adjustments have been taken into account while computing the capital cost for the FY 2016-17.*

5.3 *The details of additional capital cost proposed to be incurred by the Petitioner during FY 2017-18 is as hereunder:*

(Amount in Rs. Crores)

Sl. No.	Particulars	Proposed Addition in Generating Station during FY 2017-18			Proposed Addition in Amelia Mines during FY 17-18	Total Addition during FY 2017-18
		Addition	Adjustments/ Deletions	Net Addition		
1	Land	-		-	-	-
2	BTG	7.78		7.78	-	7.78
3	BOP	82.88		82.88	2.11	84.98
4	Civil	18.87		18.87	-	18.87
5	<b>Total</b>	<b>109.53</b>	<b>-</b>	<b>109.53</b>	<b>2.11</b>	<b>111.64</b>
6	Intangible Assets			-	-	-
7	Cost of ownership of Mining Rights			-	145.67	145.67
8	<b>G. Total</b>	<b>109.53</b>	<b>-</b>	<b>109.53</b>	<b>147.78</b>	<b>257.31</b>

5.4 It is further submitted that the actual expenditure to be incurred during FY 2017-18 shall be available only after finalization and audit of books pertaining to FY 2017-18.

5.5 It is respectfully submitted that the entire expenditure relating to the Project excluding Amelia coal mine shall be incurred by the end of FY 2017-18 and the Petitioner has no plans to incur any additional capital expenditure during FY 2018-19 as on the date of filing the instant Petition. However, the Petitioner seeks liberty to submit claims regarding additional capital expenditure to be incurred during FY 2018-19 on unpaid liabilities. Any claim regarding addition in capital expenditure during FY 2018-19, if any, shall be made at the time of True Up for FY 2018-19.

### Provision under Regulation

30. With regard to additional capitalization, Regulation 20 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides that:

#### **20 Additional Capitalization**

20.1 The capital Expenditure Incurred or projected to be Incurred, on the following counts within the original scope of work, after the Date of Commercial operation and up to cut-off date may be admitted by the Commission, subject to prudent check:

- (a) Undischarged liabilities
- (b) Works deferred for execution
- (c) liabilities to meet award of arbitration or for compliance of order or decree of a court,
- (d) Change in Law,
- (e) Procurement of initial capital spares within the original scope of work, subject to the provisions of Regulation 19

*Provided that the details of works included in the original scope of work along with estimates of expenditure, un-discharged liabilities and works deferred for execution shall be submitted along with the application for Tariff.*

### **Commission's Analysis**

31. In the subject petition, the petitioner filed the additional capitalization of Rs. 177.86 Crore and de-capitalization of Rs. 3.71 Crore during FY 2016-17 for Jaypee Nigrie Thermal Power Plant, thus net additional capitalization of Rs. 174.15 Crore is claimed by the petitioner. The petitioner also claimed net additional capitalization of Rs. 155.99 Crore during FY 2016-17 in Amelia Coal Mines. In para 6.1 of the petition, the petitioner filed the details and reasons for additional capitalization incurred during FY 2016-17.
32. The petitioner also filed the proposed additional capitalization of Rs 109.53 Crore in Nigrie power station and Rs. 147.78 Crore in Amalia Coal Mine during FY 2017-18. In para 7.1 of the petition, the petitioner submitted the details and reasons for proposed additional capitalization claimed during FY 2017-18. In FY 2018-19, no additional capitalization in Nigrie power station is claimed by the petitioner. However in para 8.1 of subject petition the petitioner claimed additional capital cost of Rs. 145.66 Crore during FY 2018-19 in Amelia Coal Mine on account the Additional Premium @ Rs. 612 per tone of coal to be received from Amelia Mine.
33. With regard to the additional capitalization filed in the subject petition, vide Commission's letter dated 23<sup>rd</sup> June' 2018, the petitioner was asked to file a comprehensive reply to the following issues with all relevant supporting documents.
  - a. Whether the addition of assets is on account of the reasons (i) to (v) in Regulation 20.1 and (a) to (i) in Regulation 20.3 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.

- b. Whether the assets capitalized during each year are under original scope of work. If so, all supporting documents establishing that the assets capitalized are under original scope of work be filed.
- c. Whether the additional capitalization is within the cut-off date of the project.
- d. What was the schedule date and anticipated date of completion of works under additional capitalization. The reasons for delay if any, in completion of works under additional capitalization be informed.
- e. Details of penalty/LD if any, imposed on the contractor for delay in completion of these works under additional capitalization be filed

34. By affidavit dated 14<sup>th</sup> July' 2018, the petitioner submitted the following:

*The Petitioner submits that the net additional capitalization of Rs 174.15 Crores (net of decapitalization of Rs 3.71 Crores) in Generating Station and Rs 155.99 Crores (net of decapitalization of Rs 1.32 Crores) during FY 2016-17 in Amelia Coal Mines fall within the norms specified under Regulation 20.1 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015. The said Regulation reads as under:-*

*“The Capital Expenditure incurred or projected to be incurred, on the following counts within the original scope of work, after the Date of Commercial Operation and up to cut-off date may be admitted by the Commission, subject to prudent check:*

- (a) *Undisclosed liabilities*
- (b) *Work deferred for execution*
- (c) *Liabilities to meet award of arbitration or for compliance of order or decree of a court,*
- (d) *Change in Law,*
- (e) *Procurement of initial spares within the original scope of work, subject to the provisions of Regulation 17.1(b)*

*Provided that the details of works included in the original scope of along with estimates of expenditure, un-discharged liabilities and works deferred for execution shall be submitted along with the application for Tariff.”*

*The Petitioner would humbly like to draw the kind attention of Hon'ble Commission in the light of the above Regulation that the said additional capitalization is within the original scope of the work of Rs 12,400/- Crores authorized by the Resolution*



*of Board of Directors dated May 30th, 2015 approving Final Project Cost attached herewith as Annexure-1 and is also within the prescribed cut-off date..*

*During FY 2016-17 & FY 2017-18, no liquidated damages/ penalties have been recovered from any contractors/ vendors.*

35. On perusal of the details and documents filed by the petitioner, the Commission has observed that the claim for additional capitalization during FY 2016-17 and FY 2017-18 in Nigrie thermal power station requires detailed examination on several counts specified in the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.
36. The petitioner also filed de- capitalization assets of Rs. 3.71 Crore at the generating station during FY 2016-17. The petitioner submitted that Rs. 3.53 Crore were reduced from capitalized assets of coal handling plant on accounts of refund received from Sales Tax Authorities. The petitioner also recovered Rs. 0.07 Crore from M/s Jyoti Structure Ltd. And Rs. 0.11 Crore from M/s Siemens Ltd. on final adjustments.
37. Regulation 8.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 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 1.4.2016 to 31.3.2019, duly audited and certified by the auditors.”*
38. In terms of the above and based on the information made available by petitioner, the claim of additional capitalization and de-capitalization filed in subject petition shall be dealt with by the Commission while undertaking true up exercise for FY 2016-17 and FY 2017-18 based on Annual Audited Accounts and other requisite details in this regard.
39. Accordingly, the same opening Gross Fixed Assets (GFA) as on 1<sup>st</sup> April' 2016 as admitted in last True-up order (in Petition No. 41 of 2017) by the Commission as on 31<sup>st</sup> March' 2016 is considered in this order.

**Debt: Equity:**

**Petitioner's Submission**

40. The petitioner submitted that the opening equity for FY 2015-16 has been retained as determined by the commission vide final tariff order dated 24<sup>th</sup> May' 2017. Further, addition in equity during FY 2015-16 is filed as per the claimed amount in Nigrie true-up petition for FY 2015-16. (Petition No. 41/2017).
41. For the additional capitalization proposed during FY 2016-17 and FY 2017-18, the petitioner considered normative debt:equity ratio i.e., 70:30 in terms of Regulations' 2015.

**Provisions under Regulations**

42. With regard to funding of the project, Regulation 25 of MPERC (Terms & Conditions for Determination of Generation Tariff), Regulations, 2015 provides that;

*25.1 For a project declared under commercial operation on or after 1.4.2016, the debt-equity ratio would be considered as 70:30 as on COD. 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.*

25.2 *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.*

25.3 *In case of the generating station declared under commercial operation prior to 1.4.2016, debt- equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2016 shall be considered.*

25.4 *In case of the generating station declared under commercial operation prior to 1.4.2016, but where debt: equity ratio has not been determined by the Commission for determination of tariff for the period ending 31.3.2016, the Commission shall approve the debt : equity ratio based on actual information provided by the generating company.*

25.5 *Any expenditure incurred or projected to be incurred on or after 1.4.2016 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 25.1 of this Regulation.*

### **Commission's Analysis**

43. Regulation 25.3 of MPERC (Terms & Conditions for Determination of Generation Tariff) Regulations' 2015 provides that " in case of generating station declared under Commercial Operation prior to 01<sup>st</sup> April' 2016, the debt equity ratio allowed by the Commission for determination of tariff for the period ending 31<sup>st</sup> March' 2016 shall be considered". Thus, the commission has considered the same opening equity and opening loan as on 01<sup>st</sup> April' 2016 which was the closing loan and equity admitted in true-up order for FY 2015-16 issued on 20<sup>th</sup> July' 2018 in Petition No 41/2017.
44. As mentioned in preceding part of this order, the Commission has not considered the proposed additional capitalization and de-capitalization during the control period in this order and the same shall be dealt with in true-up order for the respective year. Therefore, the equity balance of Rs. 2350.02 Crore and loan balance of Rs. 7532.00 Crore as on 31<sup>st</sup> March' 2016 as approved by the Commission in true-up order dated 20<sup>th</sup> July' 2018 for FY 2015-16 is considered as on 01<sup>st</sup> April' 2016 in this order.

### Annual Capacity (fixed) Charges

45. As per Regulation 27 of the MPERC (Terms and Conditions for Determination of General Tariff) Regulations, 2015, the Annual Capacity (fixed) Charges shall consist of the following components:
- Return on Equity;
  - Interest on Loan Capital;
  - Depreciation;
  - Interest on Working Capital;
  - Operation and Maintenance Expenses;

### Return on Equity

#### Petitioner's Submission

46. The petitioner filed the Return on Equity by grossing up the base rate of return with MAT during the control period of FY 2016-17 to FY 2018-19 as given below:

**Table 3: Return on Equity Claimed**

Sr. No	Particulars	Unit	FY 2016-17	2017-18	2018-19
1	Opening Equity	Rs. Cr.	2557.90	2656.95	2734.14
2	Equity Additions Normative	Rs. Cr.	99.05	77.19	43.70
<b>3</b>	<b>Closing Equity</b>	Rs. Cr.	<b>2656.95</b>	<b>2734.14</b>	<b>2777.84</b>
<b>4</b>	<b>Average Equity</b>	Rs. Cr.	<b>2607.43</b>	<b>2695.54</b>	<b>2755.99</b>
5	Base Rate of ROE	%	15.50%	15.50%	15.50%
6	Tax rate considered MAT	%	21.34%	21.34%	21.34%
7	Pre-Tax Rate of Return on Equity	%	19.71%	19.71%	19.71%
<b>8</b>	<b>Return on Equity</b>	Rs. Cr.	<b>513.81</b>	<b>531.17</b>	<b>543.08</b>

### Provisions in the Regulation:

47. With regard to Return on Equity, Regulation 30 and 31 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides that:

#### **30. Return on Equity:**

*"30.1 Return on equity shall be computed in rupee terms, on the equity base capital determined in accordance with Regulation 25.*

*30.2 Return on equity shall be computed at the base rate of 15.5% for thermal generating stations and hydro generating stations.*

Provided that

- (a) *in case of Projects commissioned on or after 1<sup>st</sup> April, 2016, an additional return of 0.5% shall be allowed if such Projects are completed within the timeline specified in Appendix-I :*
- (b) *the additional return of 0.5% shall not be admissible if the Project is not completed within the timeline specified above for reasons whatsoever.*
- (c) *the rate of return of a new project shall be reduced by 1% 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):*
- (d) *as and when any of the above requirements are found lacking in a generation station based on the report submitted by the respective SLDC/RLDC, ROE shall be reduced by 1% for the period for which the deficiency continues:*

**31. Tax on Return on Equity:**

31.1 *The base rate of return on equity as allowed by the Commission under Regulation 30 shall be the shall be grossed up with the effective tax rate for the Year respective financial years. 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 i.e., income of non generation business shall not be considered for the calculation of “effective tax rate”.*

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

$$\text{Rate of pre-tax return on equity} = \text{Base rate} / (1-t)$$

*Where t is the applicable tax rate in accordance with Regulation 31.1 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:

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 2016-17 is Rs 1000 Crore.

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

(c) Effective Tax Rate for the year 2016-17 =  $\text{Rs } 240 \text{ Crore} / \text{Rs } 1000 \text{ Crore} = 24\%$

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

31.3 The 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 2016-17 to 2018-19 on actual gross income of any financial year shall be trued-up every 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 truing up, shall be allowed to be recovered or refunded to beneficiaries on year to year basis.”

#### **Commission’s Analysis:**

48. Equity balances as on 31<sup>st</sup> March’ 2016 as admitted by the Commission in the true-up order dated 20<sup>th</sup> July’ 2018 for FY 2015-16 is considered as the base figures for opening equity balance as on 01<sup>st</sup> April’ 2016. However, the Commission has not considered the proposed additional capitalization during the control period and its corresponding equity in this order. Therefore, the equity balance as on 01<sup>st</sup> April’ 2016 shall remain unchanged during the control period.
49. On scrutiny of the petition, it was observed that the petitioner claimed Return on Equity by grossing up the base rate with MAT. Vide letter dated 23<sup>rd</sup> June’ 2018, the petitioner was asked to explain the reasons along with supporting documents or grossing up the base rate with MAT for claiming RoE during FY 2016-17.

50. In response, by affidavit dated 14<sup>th</sup> July' 2018 the petitioner submitted that **“the grossing up rate of return with MAT was inadvertently claimed for FY 2016-17”**.
51. Regulation 31.1 of the Regulations, 2015 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 2016-17 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.
52. In terms of the above Regulation, the Commission shall deal with the tax liability for FY 2017-18 and FY 2018-19 based on the Annual Audited Accounts during true-up exercise for each financial year. Accordingly, while computing the Return on Equity in this order, the Commission has not considered the grossing up of the base rate of return with MAT for FY 2016-17 as per petitioner's contention and for FY 2017-18 and FY 2018-19, the base rate of return @ 15.5 % is considered subject to true-up as given below:

**Table 4 : Return on Equity**

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	2018-19
1	Opening Equity	Rs. Cr.	2350.02	2350.02	2350.02
2	Equity Additions	Rs. Cr.	0.00	0.00	0.00
<b>3</b>	<b>Closing Equity</b>	<b>Rs. Cr.</b>	<b>2350.02</b>	<b>2350.02</b>	<b>2350.02</b>
<b>4</b>	<b>Average Equity</b>	<b>Rs. Cr.</b>	<b>2350.02</b>	<b>2350.02</b>	<b>2350.02</b>
5	Base Rate of ROE	%	15.50%	15.50%	15.50%
<b>6</b>	<b>Return on Equity</b>	Rs. Cr.	<b>364.25</b>	<b>364.25</b>	<b>364.25</b>

53. The petitioner is directed to file the details of actual tax status of Jaiprakash Power Ventures Ltd. as well as Nigrie Thermal Power Station in light of the respective Annual Audited Accounts with the true-up petitions of each year of the control period.

### Interest on Loan Capital

#### Petitioner's submission:

54. In form TPS 13A, the petitioner claimed the Interest on loan as given below:

**Table 5: Interest on Loan claimed**

Sr. No.	Particulars	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Net Opening Loan as on 31 <sup>st</sup> March	Rs. Cr.	7988.70	7632.79	7210.66
2	Add: Increase in Normative Loan	Rs. Cr.	231.10	180.11	101.96
3	Less: Normative Repayment during the year	Rs. Cr.	587.01	602.25	610.88

4	Closing Normative Loan	Rs. Cr.	7632.79	7210.66	6956.19
<b>5</b>	<b>Average Normative Loan</b>	Rs. Cr.	<b>7810.74</b>	<b>7421.72</b>	<b>6956.19</b>
6	Wt. average Rate of Interest	%	11.02%	11.75%	11.75%
<b>7</b>	<b>Interest on Normative loan</b>	Rs. Cr.	<b>860.55</b>	<b>872.28</b>	<b>817.58</b>

### **Provisions in Regulation**

55. With regard to interest and finance charges, Regulation 32 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides that:

*“32.1 The loans arrived at in the manner indicated in Regulation 25 shall be considered as gross normative loan for calculation of interest on loan.*

*32.2 The normative loan outstanding as on 1.4.2016 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2016 from the gross normative loan.*

*32.3 The repayment for the Year of the Tariff period 2016-19 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 up to the date of de-capitalisation of such asset.*

*32.4 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 annual depreciation allowed.*

*32.5 The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio after proving 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.*

*32.6 The interest on loan shall be calculated on the normative average loan of the Year by*



*applying the weighted average rate of interest.*

32.7 *The Generating Company shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the Beneficiaries and the net savings shall be shared between the Beneficiaries and the Generating Company, in the ratio of 2:1.*

32.8 *The changes to the terms and conditions of the loans shall be reflected from the date of such re-financing.*

32.9 *In case of dispute, any of the parties may make an application in accordance with the MPERC (Conduct of Business) Regulation, 2004, as amended from time to time:*

*Provided further that beneficiaries shall not withhold any payment on account of the interest claimed by the generating company during the pendency of any dispute arising out of re-financing of loan.*

**Commission's analysis:**

56. Loan balances (as on 31<sup>st</sup> March' 2016) admitted in the True-up order dated 20<sup>th</sup> July' 2018 by the Commission is considered as the base figures for opening loan balance as on 01<sup>st</sup> April' 2016. However, the Commission has not considered the proposed additional capitalization during the control period 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.

57. In form TPS 13 of the petition, the petitioner worked out the actual weighted average rate of interest of all the lending agencies during FY 2016-17. The petitioner worked out the weighted average rate of interest for FY 2016-17 @ 11.02%. The petitioner also worked out the weighted average rate of interest for FY 2017-18 and FY 2018-19 on projected basis. The weighted average rate of interest for FY 2016-17 as worked out by the petitioner based on the actual repayment during FY 2016-17 is considered. However, the same weighted average rate of interest as worked out by the petitioner for FY 2016-17 is provisionally considered for the remaining period in this order. The repayment of loan for each financial year is considered equal to depreciation of respective year as per the provisions under Regulations, 2015.

58. Based on the above, the interest on loan is worked out during the control period as given below:

**Table 6: Interest on Loan Allowed**

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Opening Loan	Rs. Cr.	7532.00	6995.31	6458.62
2	Loan Additions during the year	Rs. Cr.	0.00	0.00	0.00
3	Repayment of Loan equal to dep.	Rs. Cr.	536.69	536.69	536.69
4	Closing Loan	Rs. Cr.	6995.31	6458.62	5921.94
5	Average Loan	Rs. Cr.	7263.66	6726.97	6190.28
6	Weighted Average Rate of Interest	%	11.02%	11.02%	11.02%
7	<b>Annual Interest amount on Loan</b>	<b>Rs. Cr.</b>	<b>800.28</b>	<b>741.15</b>	<b>682.02</b>

59. The petitioner is directed to file actual weighted average rate of interest in respect of each lending agency along with supporting documents while filing the true-up petitions for each year of the control period.

### Depreciation

#### Petitioner's submission:

60. In form TPS 11 and 12, the petitioner submitted the opening Gross Fixed Assets, additions during the year, closing Gross Fixed Assets and depreciation for control period from FY 2016-17 to FY 2018-19 as given below:

**Table 7: Depreciation Claimed**

Sr. no.	PARTICULARS	FY 2016-17	FY 2017-18	FY 2018-19
1	Opening Gross Fixed Assets	11,281.91	11,612.05	11,869.36
2	Assets Addition during the year	330.14	257.31	72.83
2	Closing Gross Fixed Assets	11,612.05	11,869.36	11,942.19
3	Average Gross Fixed Assets	11,446.98	11,740.71	11,905.77
4	Weighted Average Rate of Depreciation (%)	<b>5.13%</b>	<b>5.13%</b>	<b>5.13%</b>
5	<b>Depreciation for the period</b>	<b>587.01</b>	<b>602.25</b>	<b>610.88</b>
6	Cumulative Depreciation at the end of the period	1,321.92	1,923.84	2,534.72
7	Less:-Cumulative Depreciation Adjustment on account of de-capitalization	0.33	-	-
8	Net Cumulative Depreciation at the end of the period	1,321.59	1,923.84	2,534.72

#### Provisions of the Regulation:

61. With regard to depreciation, Regulation 33 of MPERC (Terms and Conditions for

Determination of Generation Tariff) Regulation, 2015 provides that:

*“33.1 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.*

*33.2 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. Depreciation shall be chargeable from the first year at the commercial operation.*

*33.3 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 stations, the salvage value shall be as provided in the agreement signed by the developers with the State Government for creation of the site:*

*Provided further that the capital cost of the assets of the hydro generating station for the purpose of computation of depreciable 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 generating station or generating unit shall not be allowed to be recovered at a later stage during the useful life and extended life.*

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

*33.4 Land other than 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.

33.5 Depreciation shall be calculated annually based on 'Straight Line Method' and at rates specified in Appendix-II to these Regulations for the assets of the generating station:

*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 Date of Commercial operation shall be spread over the balance Useful life of the assets.*

33.6 In case of the existing Projects, the balance depreciable value as on 1.4.2016 shall be worked out by deducting the cumulative depreciation as admitted by the Commission up to 31.3.2013 from the gross depreciable value of the assets.

33.7 The rate of Depreciation shall be continued to be charged at the rate specified in Appendix-II till cumulative depreciation reaches 70%. Thereafter the remaining depreciable value shall be spread over the remaining life of the asset such that the maximum depreciation does not exceed 90%.

33.8 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.”

33.9 The generating company shall submit the details of proposed capital expenditure during the fag end of the project (five years before the useful life) 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.

33.10 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:-**

62. Gross Fixed Assets as on 31<sup>st</sup> March' 2016 as admitted by the Commission in the true-up Order for FY 2015-16 is considered as the base figures of Gross Fixed

Assets as on 01<sup>st</sup> April' 2016. However, the proposed additional capitalization and de-capitalization during control period and its corresponding depreciation has not been considered in this order. Therefore, the Gross Fixed Assets as on 01 April' 2016 shall remain same for the entire control period.

63. The petitioner filed the Asset-cum depreciation register for FY 2016-17 along with the petition. On perusal of the details under Asset-cum-depreciation register, it was observed that the petitioner worked out the weighted average rate of depreciation by considering the additional capitalization during FY 2016-17.
64. As the additional capitalization during FY 2016-17 is not considered in this order and same shall be dealt with in the true-up petition for respective year based on the Annual Audited Accounts. Therefore, the Commission has considered the same weighted average rate of depreciation @ 5.07% in this order as considered in the true-up order dated 20<sup>th</sup> July' 2018 for FY 2015-16.
65. The same cumulative depreciation as on 31<sup>st</sup> March' 2016 admitted by the Commission in true-up order dated 20<sup>th</sup> July' 2016 is considered as opening cumulative depreciation in this order.
66. Based on above, the depreciation worked out in this order is as given below:-

**Table 8: Depreciation Admitted**

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Opening Gross Fixed Assets	Rs Cr.	10585.56	10585.56	10585.56
2	Assets Addition during the year	Rs Cr.	0.00	0.00	0.00
3	Closing Gross Fixed Assets	Rs Cr.	10585.56	10585.56	10585.56
4	Average Gross Fixed Assets	Rs Cr.	10585.56	10585.56	10585.56
5	Weighted Average Rate of depreciation	%	5.07%	5.07%	5.07%
<b>6</b>	<b>Annual Depreciation</b>	<b>Rs Cr.</b>	<b>536.69</b>	<b>536.69</b>	<b>536.69</b>
<b>7</b>	<b>Cumulative Depreciation</b>	<b>Rs Cr.</b>	<b>1240.24</b>	<b>1776.93</b>	<b>2313.61</b>

## Operation & Maintenance Expenses

### Petitioner's Submission

67. The petitioner filed the Operation and Maintenance expenses for FY 2016-17 to FY 2018-19 as given below:

**Table 9: Operation & Maintenance Expenses claimed (Rs. in Crore)**

Sr No.	Particular	FY 2016-17	FY 2017-18	FY 2018-19
1	Annual O&M expenses	214.76	228.36	242.62

**Provision in Regulations:-**

68. Regarding the norms for operation & maintenance expenses of thermal power stations, regulation 35.1 to 35.6 of MPERC (Terms & conditions for Determination of Generation Tariff) Regulations, 2015, provides as under:

*35.1 Operation and Maintenance Expenses for thermal and hydro power stations for the Tariff period shall be determined based on normative O&M expenses specified by the Commission in these Regulations. The normative operation and maintenance expenses for the thermal generating stations are specified separately for the thermal power stations commissioned on or before 31.03.2012 and the power stations commissioned on or after 01.04.2012. The normative operation and maintenance expenses are also specified separately for the existing and new projects.*

*35.2 The cost components for employee expenses, repair & maintenance expenses and administrative and general expenses are considered as per Regulations 35.7 to 35.8 and 35.10 to 35.11 of these Regulations. The Operation and Maintenance expenses including employee expenses, repair and maintenance expenses, and administrative and general expenses, for the power stations commissioned prior to 01.04.2012 are derived by considering the average of these expenditures for past four years (i.e. FY2010-11 to FY2013-14) as per Annual Audited Accounts. The average expenditure of the aforesaid four years is considered as base opening figure for FY 2012-13. Thereafter, the figures of O&M expenditure are derived upto FY 2015-16 by applying the annual escalation rate specified for the relevant year in the applicable Regulations.*

*35.3 The O&M expenses for the subsequent years shall be determined by escalating the expenses of the base year i.e. FY 2015-16, as determined above with the escalation factor @ 6.30% and @ 6.64% for thermal power stations and hydro power stations respectively as considered by the Central Commission in its Tariff Regulations, 2014 for the respective financial years to arrive at permissible O&M expenses for each year of the Control Period.. Provided that in case, the*

generating stations which have come in operation on or after 01.04.2012, the O&M expenses shall be as specified at Regulation 35.8 for New generating stations.

35.4 In respect of M.P. Power Generating Company Ltd., the employee expenses considered in the above Operation and Maintenance expenses are excluding the pension and other terminal benefits. The funding of pension and other terminal benefit in respect of personnel including existing pensioner's of the Board and the pensioner's of M.P. Power Generating Company Ltd. shall be allowed in accordance with MPERC (Terms and Conditions for allowing pension and terminal benefits liabilities of personal of the board and successor entities) Regulation's, 2012 (G-38 of 2012).

35.5 Increase in O&M charges on account of war, insurgency or changes in laws, or like eventualities where the Commission is of the opinion that an increase in O&M charges is justified, may be considered by the Commission for a specified period.

35.6 Any saving achieved by a generating company in any Year shall be allowed to be retained by it. The generating company shall bear the loss if it exceeds the targeted O&M expenses for that Year.

69. The norms for Operation and Maintenance Expenses for thermal generating units commissioned on or after 01/04/2012 are prescribed under Regulation 35.7 of the Regulations, 2015 for the generating Unit of "600 MW and above" for control period FY 2016-17 to FY 2018-19. These norms are as given below:

**Table 10: Norms for O&M Expenses (Rs. lakh/MW/Year)**

Units (MW)	FY 2016-17	FY 2017-18	FY 2018-19
600 and above	16.27	17.30	18.38

### Commission's Analysis

70. For Thermal Power Station, the Commission has worked out the Annual Operation and Maintenance Expenses as per the norms prescribed under aforesaid Regulations, 2015 for the control period FY 2016-17 to FY 2018-19 as given below:

**Table 11: O& M Expenses for Generating Unit**

Particular	Units	FY 2016-17	FY 2017-18	FY 2018-19
Generating Unit Capacity	MW	1320	1320	1320
Per MW O&M Expenses Norms	Rs in Lakh/MW	16.27	17.30	18.38
<b>Annual O&amp;M expenses</b>	<b>Rs in Crore</b>	<b>214.76</b>	<b>228.36</b>	<b>242.62</b>

71. The petitioner has also claimed the Operation & Maintenance expenses for dedicated transmission lines & Bay over and above the abone norms provided in MPERC tariff Regulations, 2015. The aforesaid O&M expenses claimed for dedicated transmission Line and Bays are based on the transmission Regulations as given below:

**Table 12: Statement of O & M expenses of Transmission Line & Bay (Rs. in Crores)**

Sl. No.	Particulars		FY 2016-17	FY 2017-18	FY 2018-19
1	O&M Expenses of 400kV Transmission Line	161x2=322 ckt km	1.03	1.07	1.12
2	O&M Expenses of 400kV Bay	2 Nos of 400kV Bay	0.19	0.20	0.21
	<b>Total O&amp;M Expenses</b>		<b>1.22</b>	<b>1.27</b>	<b>1.33</b>

72. On perusal of the aforesaid claim, the Commission observed that despite of disallowance of O&M expenses on transmission line and Bay by the Commission in all earlier orders, the petitioner has claimed separate O&M expenses of transmission lines & Bay over and above the norms prescribed in MPERC Generation Tariff Regulations, 2015. The petitioner has claimed separate O&M expenses for dedicated transmission system on the basis of norms prescribed under MPERC( Terms & Condition for determination of Transmission tariff) Regulations,. The petitioner also filed Appeals with Hon'ble Appellate Tribunal for Electricity on this issue.

73. Vide Letter dated 23<sup>rd</sup> June' 2018, the petitioner was asked to explain the reasons for claiming separate O&M expenses of such a dedicated transmission line, the cost of which has been appropriately considered in the capital cost of its power plant.

74. By affidavit dated 14<sup>th</sup> July' 2018, the petitioner submitted the following:

(1) *It is respectfully submitted that this Hon'ble Commission whilst rejecting the Petitioners' claim regarding the O&M expenses relating to transmission line and bay has failed to consider that as per the terms and conditions of the PPAs*



entered into with Madhya Pradesh Power Management Company Limited (MPPMCL), it is the procurers liability / responsibility to arrange for the evacuation of power from the bus bar of the Project. To this extent, relevant extracts of the PPA have been reproduced below for ease of reference:

*“Delivery Point shall mean the ex-bus point of the power station at the power station switch yard...*

**Satisfaction of Conditions subsequent by the Procurer....**

*i)The Procurer shall have obtained open access and/ or connectivity for evacuation of the Scheduled Energy from the delivery Point at lease 60 (sixty) days prior to the commissioning of the first unit*

*ii)The Procurer shall have established the necessary evacuation infrastructure beyond the delivery point required for evacuation of the Scheduled Energy at least 210 days prior to the commissioning of the first unit....*

**4.2 Procurers Obligations...**

*i)The Procurer shall have obtained open access and/ or connectivity for evacuation of the Scheduled Energy from the delivery Point at lease 60 (sixty) days prior to the commissioning of the first unit*

*ii)The Procurer shall have established the necessary evacuation infrastructure beyond the delivery point required for evacuation of the Scheduled Energy at least 210 days prior to the commissioning of the first unit....”*

*(2) It is submitted that even though the responsibility for setting up the evacuation infrastructure was part of MPPMCLs’ obligation, the same was carried out by the Petitioner at the request of the MPPMCL, therefore forms part of the Project and Petitioner would be entitled to recover the O&M cost for the dedicated transmission line.*

*(3) It is pertinent to note that the transmission line set up by the Petitioner is clearly covered by Section 2(72) of the Electricity Act, 2003. It accomplishes the function of a dedicated transmission line by carrying power from the source of generation to Satna sub-station. Therefore, the Petitioner is entitled to the capital*

cost of the transmission line so erected in addition to the O&M costs associated with the said transmission line as the same is owned, operated and maintained by the Petitioner.

(4) It is respectfully submitted that by disallowing the O&M costs of the dedicated transmission line, this Hon'ble Commission has allowed MPPMCL to enjoy a benefit / advantage at the cost of the Petitioner.

(5) The Petitioner performed an action beneficial to MPPMCL under the PPA and is entitled to be compensated for the costs associated with undertaking the same.

(6) Therefore, the Learned Commission erred in disallowing the O&M costs of the dedicated transmission line to the Petitioner as the same would result in a significant drop in the Return on Equity allowed in the tariff of the Petitioner and the Project would not be commercially viable.

(7) It is submitted that this Hon'ble Commission may kindly appreciate that that dedicated transmission line essentially carries out the functions of a transmission line and therefore should be entitled to O&M expenses at par with what is prescribed for other transmission lines, especially in view of the fact that the line was originally planned to be developed by the MPPMCL.

(8) It is respectfully submitted that the Electricity Act, the National Electricity Policy and the Tariff Policy require that consumer interest is protected while ensuring financial viability and growth of the power sector. It is submitted that the twin objectives of financial viability/sustainability and consumer interest are the cornerstone of the electricity sector. In exercise of powers under Section 3 of the Act, the Central Government on 12.02.2005, prepared and published the National Electricity Policy. The following relevant provisions of the National Electricity Policy are mentioned below for kind consideration:-

“5.5.1- There is an urgent need for ensuring recovery of cost of service from consumers to make the power sector sustainable.

5.8.4 - Capital is scarce. Private sector will have multiple options for investments. Return on investment will, therefore, need to be provided in a manner that the

sector is able to attract adequate investments at par with, if not in preference to, investment opportunities in other sectors. This would obviously be based on a clear understanding and evaluation of opportunities and risks. An appropriate balance will have to be maintained between the interests of consumers and the need for investments.

5.8.5 - All efforts will have to be made to improve the efficiency of operations in all the segments of the industry. Suitable performance norms of operations together with incentives and disincentives will need to be evolved along with appropriate arrangement for sharing the gains of efficient operations with the consumers. This will ensure protection of consumers' interests on the one hand and provide motivation for improving the efficiency of operations on the other.

5.8.7 It will be necessary that all the generating companies, transmission licensees and distribution licensees receive due payments for effective discharge of their operational obligations as also for enabling them to make fresh investments needed for the expansion programs. Financial viability of operations and businesses would, therefore, be essential for growth and development of the sector. Concerted efforts would be required for restoring the financial health of the sector. For this purpose, tariff rationalization would need to be ensured by the SERCs. This would also include differential pricing for base, intermediate and peak power.”

(9) Further, the Electricity [Removal of Difficulty] (fifth) Order, 2005 clearly provides that a generating company shall not be required to obtain license under the Electricity Act, 2003 for establishing, operating or maintaining a dedicated transmission line. Section 10 of the Electricity Act 2003 mandates the Generating Company to establish, operate and maintain the Dedicated Transmission Lines. Therefore, any cost incurred with regards to such activity must be adequately recovered so that the Generator can effectively run its business of power generation. This is primarily based on the rationale that the dedicated transmission line built by the generating company forms part of transmission line. The Hon'ble Tribunal in its Judgment dated 23.05.2012 in Appeal No. 145 of 2011 titled Tamil Nadu Electricity Board and Ors v. M/s Ind Barath Thermal Power Ltd and Ors. has held as below: -

(10) “14.....On the contrary, Section 10 of the 2003 Act mandates that

*generating company shall establish, operate and maintain the dedicated transmission lines connected therewith in accordance with the provisions of this Act. Thus, the Section 10 of the 2003 Act becomes mandatory by which the generating company is mandated to construct its own dedicated transmission lines which connect the substation of the Appellant”*

*In view of the aforementioned it is submitted that this Hon’ble Commission may kindly allow the recovery of O&M expenses relating to the transmission lines and bay.*

75. With regard to above claim of the petitioner seeking separate O&M expenses for dedicated transmission line/ system over and above the O&M norms provided in MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, the Commission has noted the following:
- (i) There were no norms of separate O&M expenses for dedicated transmission lines in MPERC Tariff Regulations 2009 and 2012. The petitioner had never filed any objection/ comments regarding norms or separate O&M norms for dedicated transmission lines. The petitioner had also not challenged the aforesaid Regulations in any Forum.
  - (ii) In the Petitions for determination of provisional generation tariff for its Unit No. 1 and 2, the petitioner had not claimed any separate O&M expenses for the dedicated transmission lines of its project. The tariff for both units was provisionally determined by the Commission strictly in accordance with the O&M norms provided in MPERC Tariff Regulations 2012 wherein no O&M expenses was considered separately for dedicated transmission lines.
  - (iii) The Commission on 21.12.2015 issued the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 for the next control period of FY 2016-17 to FY 2018-19 and the same was notified in official Gazette on 01.01.2016. The norms of O&M expenses for each year of the control period in respect of generating unit/power plant as a whole are provided in aforesaid Regulations and O&M expenses for dedicated transmission line were not provided separately in the said Regulations. It is pertinent to note that the petitioner had neither challenged these MPERC Tariff Regulations, 2015 also before any forum. Hence, the provisions for O&M norms under MPERC Tariff Regulations, 2015 have attained finality.

- (iv) The Commission has already considered the expenditure incurred on the construction of dedicated transmission line/system as part of the capital cost of Petitioner's power plant and allowed corresponding Return on Equity, interest charges and depreciation in the Annual Fixed Charges determined in final tariff Order. The claim of petitioner seeking separate O&M expenses over and above O&M norms provided in Tariff Regulations, 2015 is against the provisions of the Tariff Regulations, 2015. The petitioner has claimed the O&M expenses for dedicated transmission line in terms of MPERC Transmission Tariff Regulations whereas the subject petition is for determination of generation tariff of petitioner's power project in accordance with MPERC Generation Tariff Regulations in the capacity of petitioner as the generating company.
- (v) It is further observed that the dedicated transmission line is neither a transmission line in terms of sub-section (72) of Section 2 of the Electricity Act' 2003 nor it is a distribution system connecting the point of a connection to the installation of consumer in terms of sub-section (19) of Section 2 of the Electricity Act, 2003. The O&M expenses of a transmission line are part of the Annual Fixed Cost (AFC) determined by the Commission under section 62 of the Electricity Act, 2003 for a transmission licensee whereas, the subject petition cannot be considered for determination of AFC for the transmission line under section 62 of the Electricity Act, 2003. The cost of dedicated transmission line has thus been considered in the capital cost of the generating station and the tariff of the said generating station has been determined in terms of the Tariff Regulations which do not provide for any O&M expenses of dedicated transmission line separately.
- (vi) On perusal of the O&M expenses recorded in Annual Audited Accounts for FY 2016-17, it is observed that the actual O&M expenses of the Petitioner's power plant are less than the O&M expenses allowed in this Order based on O&M norms provided in the Regulations'2015. The petitioner has actually incurred total O&M expenses of Rs 76.82 Crore in FY 2016-17 whereas, the O&M expenses of Rs 214.76 Crore are allowed in this Order as per norms provided in Regulations'2015.
- (vii) In view of all aforesaid and consistently following the approach of this Commission on this issue in all earlier Orders, the claim of petitioner seeking separate O&M expenses of dedicated transmission line over and above the norms/provisions in MPERC Tariff Regulations,2015 is not considered by the Commission in this Order.

76. On this issue of disallowance separate O&M expenses for dedicated transmission line/system, the same petitioner has filed several Appeals before the Hon'ble Tribunal for Electricity in respect of its Nigrie and Bina power plant. All Appeals are pending adjudication before the Hon'ble APTEL.

### Interest on Working Capital

#### Petitioner's submission

77. The petitioner filed the interest on working capital for control period from FY 2016-17 to FY 2018-19 in accordance with Regulations 2015. Further the rate of interest on working capital has been taken on normative basis and considered as the bank rate as on 1.4.2016 (Base rate 9.30% + 350 bps) for the tariff period 2016-19. The calculation of Interest on Working Capital as filed by the petitioner :-

**Table 13: Interest on working Capital claimed (Rs. In Crores)**

Sr. No.	Particulars	FY 2016-17	FY 2017-18	FY 2018-19
1	Cost of Coal/Lignite	268.34	223.61	223.61
2	Cost of Secondary Fuel Oil	3.04	2.68	2.68
3	Maintenance Spares (Transmission Lines & Bay)	0.24	0.25	0.27
4	O & M expenses (Transmission Lines & Bay)	0.10	0.11	0.11
5	O & M Expenses	17.90	19.03	20.22
6	Maintenance Spares	42.95	45.67	48.52
7	Receivables	657.22	625.83	614.82
<b>8</b>	<b>Total Working Capital</b>	<b>989.79</b>	<b>917.18</b>	<b>910.22</b>
<b>9</b>	<b>Interest on allowed Working Capital</b>	<b>12.80%</b>	<b>12.80%</b>	<b>12.80%</b>
<b>10</b>	<b>Total Interest on Working Capital</b>	<b>126.69</b>	<b>117.40</b>	<b>116.51</b>

#### Provisions in Regulation:

78. With regard to interest on working capital Regulation 34 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulation, 2015 provides that:

*34.1 "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) Cost of coal for 30 days 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 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 the Operation & maintenance expenses specified in Regulation 35 ;
- (e) Receivables equivalent to two months 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.

34.2 *The cost of fuel shall be based on the landed cost incurred (taking into account normative transit and handling losses) by the Generating Company and Gross Calorific Value of the fuel as per actual 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.”*

34.3 *“Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.04.2016 or on 1<sup>st</sup> April of the year during the tariff period 2016-17 to 2018-19 in which the generating station or a unit thereof, is declared under commercial operation, whichever is later.*

34.4 *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:**

79. 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 for two months**

80. Vide Commission’s letter dated 23<sup>rd</sup> June’ 2018, the petitioner was asked to explain the basis of the cost of coal for 60 days considered in the subject petition against the

provisions under Regulations, 2015. The petitioner was also asked to explain the basis with all supporting documents for arriving at the rate of interest on working capital.

81. By affidavit dated 14<sup>th</sup> July' 2018, the petitioner submitted the following:
- I. *“Petitioner’s Plant is a non-pit-head generating station. Therefore, as per Regulation 34.1(1)(a), cost of coal towards stock for 30 days for non-pit-head generating station for generation corresponding to the normative annual plant availability factor or the maximum coal stock storage capacity whichever is lower, is allowed to be covered in working capital;  
(Here, the Petitioner humbly wishes to add that the coal stock storage capacity of Petitioner’s Plant is more than five lacs tonne which is more than enough to generate energy for more than 30 days at GSHR of 2195 kCal/kWh and GCV of 4200 kCal/kg at 85% of PLF)*
  - II. *As per Regulation 34.1(1)(b), cost of coal for 30 days for generation corresponding to the normative annual plant availability factor, is also allowed to be covered in working capital.  
For the reasons cited above, the Petitioner has considered cost of coal for 60 days (30 days for stock for generation corresponding to the normative annual plant availability factor and for cost of coal for 30 days for generation corresponding to the normative annual plant availability factor).”*
82. It is observed from the above reply, that the petitioner has storage capacity of more than one month. Accordingly, as per above Regulations, the Commission has considered cost of coal towards stock for 30 days for non-pit head generating stations for generation and cost of coal for 30 days for generation corresponding to the normative annual plant availability factor. Therefore, the cost of coal for 60 days has been considered for working capital purpose.
83. The weighted average rate of coal has been computed from the details filed by the petitioner by affidavit dated 14<sup>th</sup> July' 2018 at Annexure 15 for the preceding three months i.e., December' 15 to February' 16. Since the petitioner informed that there was no coal supply from Amelia Mines in the month of March' 16 that is why there is no information supplied for the month of March. The Commission has therefore considered the weighted average rate of preceding three months from **Dec' 15 to February' 16** in this order.



84. GCV of coal for FY 2016-17 has been computed from the information furnished by the petitioner on received basis for the preceding three months Dec'15 to February'16. The Petitioner also filed the laboratory test reports for GCV on received basis for aforesaid preceding three months in this regard. Accordingly, the two months cost of coal for working capital is as under:

**Table 14: Computation of 2 months cost of coal for working capital**

Particular	Units	FY 2016-17	FY 2017-18	FY 2018-19
Installed Capacity of the Unit	MW	1320	1320	1320
Gross Station Heat Rate	kCal/kWh	2200.00	2200.00	2200.00
Gross Generation	MUs	9828.72	9828.72	9828.72
Gross Calorific Value of Coal	kCal/Kg	3664.09	3664.09	3664.09
Sp. Coal Consumption	kg/kWh	0.6039	0.6039	0.6039
Annual Coal Consumption	MT	5935448	5935448	5935448
Coal Stock for 60 days	MT	975690	975690	975690
Rate of Coal	Rs./MT	861.72	861.72	861.72
<b>Coal Cost (Two months stock)</b>	<b>Rs in Cr.</b>	<b>84.08</b>	<b>84.08</b>	<b>84.08</b>

**(b) Secondary Fuel Oil Cost**

85. The petitioner filed the cost of secondary fuel oil based on the fuel oil procured during FY 2016-17. The petitioner submitted the details of different fuel oil procured and worked out the weighted average rate of secondary fuel oil.
86. Regulation 34.1 (c) of the Regulations, 2015 provides that, in case of use of more than one secondary fuel oil, cost of fuel oil shall be provided for the main secondary fuel oil.
87. In the subject petition, the petitioner worked out weighted average rate of HFO as Rs. 20666.61/KL for FY 2016-17 to FY 2018-19 based on the landed price of secondary fuel oil purchased during the year. The same weighted average rate of HFO is considered in this order. Accordingly, the cost of two months' main fuel oil stock at normative availability is worked out as given below:

**Table 15: Cost of Main Secondary Fuel Oil for 2 Months availability**

Particular	Units	FY 2016-17	FY 2017-18	FY 2018-19
Installed Capacity of the Unit	MW	1320	1320	1320
NAPAF	%	85.00%	85.00%	85.00%
Gross Generation	MUs	9828.72	9828.72	9828.72
Normative Specific Oil Consumption	ml/kWh	0.50	0.50	0.50

Quantity of Sec Fuel Oil required	KL	4914.36	4914.36	4914.36
Two months' stock of main fuel oil (HFO)	KL	819.06	819.06	819.06
Weighted Avg. Rate of Secondary Fuel Oil (HFO)	Rs./KL	20,666.61	20,666.61	20,666.61
<b>Oil Cost ( Two Months Stock)</b>	<b>Rs. in Crore</b>	<b>1.69</b>	<b>1.69</b>	<b>1.69</b>

**(c) O&M Expenses**

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

**Table 16: O&M Expenses for 2 Months (Rs. in Crore)**

Financial Years	FY 2016-17	FY 2017-18	FY 2018-19
Annual O&M Expenses	214.76	228.36	242.62
O&M Expenses for one month	17.90	19.03	20.22

**(d) Maintenance Spares**

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

**Table 17: Maintenance Spares (Rs. in Crore)**

Financial Years	FY 2016-17	FY 2017-18	FY 2018-19
Annual O&M Expenses	214.76	228.36	242.62
<b>20% of O&amp;M Expenses</b>	<b>42.95</b>	<b>45.67</b>	<b>48.52</b>

**(e) Receivables**

90. Receivables for thermal power stations are worked out equivalent to two months' of Capacity (Fixed) charges and Energy Charges worked out on the basis of Normative Annual Plant Availability Factor as given below:

**Table 18: Receivables for two months (Rs. in Crores)**

Particular	FY 2016-17	FY 2017-18	FY 2018-19
Variable Charges- two months	87.19	87.19	87.19
Fixed Charges- two months	331.49	323.63	315.69
<b>Receivables- two months</b>	<b>418.67</b>	<b>410.81</b>	<b>402.88</b>

91. With regard to the rate of interest on working capital, Regulation 34.3 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:

“34.3 Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.4.2016 or as on 1st April of the year during the tariff period 2016-17 to 2018-19 in which the generating station or a unit thereof, is declared under commercial operation, whichever is later.

92. The State Bank of India Base rate applicable/ prevailing as on 05.10.2015 (up to 1st April 2016) is 9.30% + 3.50% = 12.80%. Accordingly, interest rate of 12.80% is considered for FY 2016-17. Further, the base rate as on 01.04.2017 and 01.04.2018 are 9.10% and 8.70% respectively. Accordingly, base rate for the year 2017-18 is worked out as 9.10% + 3.50% = 12.60% and base rate for the year 2018-19 is worked out as 8.70% + 3.50% = 12.20%.
93. Based on the above, the interest on working capital for FY 2016-17 to FY 2017-18 and 2018-19 is determined as given below:

**Table 19: Interest on Working Capital Allowed**

Sr. No.	Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Cost of coal for two months	Rs Cr.	84.08	84.08	84.08
2	Cost of fuel oil for two months	Rs. Cr.	1.69	1.69	1.69
3	O&M Charges for one month	Rs. Cr.	17.90	19.03	20.22
4	Maint. Spares 20% of the O&M charges	Rs. Cr.	42.95	45.67	48.52
5	Receivables for two months	Rs. Cr.	418.67	410.81	402.88
6	Total working capital	Rs. Cr.	565.30	561.29	557.39
7	Applicable rate of interest	%	12.80	12.60	12.20
<b>8</b>	<b>Interest on working capital</b>	<b>Rs. Cr.</b>	<b>72.36</b>	<b>70.72</b>	<b>68.00</b>

### Non-Tariff Income

#### Petitioner’s Submission:

94. The petitioner has filed non-tariff income of Rs. 2.61 Crore during FY 2016-17. The petitioner has not filed any projected non tariff income in the petition for FY 2017-18 and FY 2018-19, .

#### Provisions in Regulation:

95. Regulation 53 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides that

53.1 “Any income being incidental to the business of the generating company derived from sources, including but not limited to the disposal of assets, income from investments, rents, income from sale of scrap other than the decapitalized /written off assets, income from advertisements, interest on advances to suppliers/contractors, income from sale of fly ash/rejected coal, and any other miscellaneous receipts other than income from sale of energy shall constitute the non -tariff/other income

53.2 The amount of Non-Tariff /Other Income relating to the Generation Business as approved by the Commission shall be deducted from the Annual Fixed Cost in determining the Annual Fixed Charge of the Generation Company:

*Provided that the Generation Company shall submit full details of its forecast of Non-Tariff Income to the Commission in such form as may be stipulated by the Commission from time to time. Non- tariff income shall also be Trued-up based on audited accounts.”*

**Commission’s analysis:**

96. Vide Commission’s letter dated 23<sup>rd</sup> June’ 2018, the petitioner was asked to file projected non-tariff/other income during FY 2017-18 to FY 2018-19 in accordance with the Regulation 53 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.

97. By affidavit dated 14<sup>th</sup> July’ 2018, the petition has submitted the following regarding Non-tariff Income:

*Non-Tariff income for FY 2016-17 & FY 2017-18 on actual basis & for FY 2018-19 on approximate basis (average of FY 2016-17 & FY 2017-18 is furnished as under:-*

**(Rs. in Crores)**

<b>Year</b>	<b>Non-Tariff Income</b>	<b>Basis</b>
2016-17	2.16	On Actual Basis
2017-18	3.64	On Actual Basis
2018-19	2.90	Average of above

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

**Table 20: Non-Tariff Income**

**(Rs. in Crore)**

Year	Non-Tariff Income
FY 2016-17	2.16
FY 2017-18	3.64
FY 2018-19	2.90

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

### **Lease/Hire Purchase Charges**

100. In the subject petition, the petitioner claimed Rs. 0.44 Crore as yearly lease rent payable for FY 2016-17 to FY 2018-19.

### **Commission's Analysis.**

101. The petitioner claimed Rs. 0.44 Crore against lease rent payable for land during the year. Vide Commission's letter dated 23<sup>rd</sup> June" 2018, the petitioner was asked to inform under what provisions of MPERC Tariff Regulations, 2015, these expenses are claimed by the petitioner.

102. By affidavit dated 14<sup>th</sup> July' 2018, the petitioner submitted the following:

*It is submitted that the Petitioner is paying lease rent on account of Land Lease which is a part of the Project. On this basis, the Petitioner has prayed the payable lease rent to be allowed while arriving at AFC. The requisite challans and details thereof for FY 2016-17 are attached as Annexure-4.*

103. In view of the above and considering details and documents placed on record, the Commission has considered the lease rent of Rs. 0.44 Crore as claimed by the petitioner for FY 2016-17 to FY 2018-19 in this order in light of the Annual Audited Accounts.

### **Foreign Exchange Rate Variation (FERV)**

#### **Petitioners Submission**

104. The petitioner claimed FERV on the basis of actual loss incurred on repayment of during FY 2016-17 anf FY 2017-18 which is Rs 15.60 Crore and Rs. 45.38 Crore,

respectively. The petitioner mentioned that the final figure shall arrive only at the end of the respective financial year.

### **Provisions under Regulations**

105. Regarding Foreign Exchange Rate variation of the project, Regulation 50 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides that:

#### **50. Foreign Exchange Rate Variation:**

*50.1 The generating company may hedge foreign exchange exposure in respect of the interest on foreign currency loan and repayment of foreign loan acquired for the generating station in part or in full in the discretion of the generating company.*

*50.2 As and when the petitioner enters into any hedging based on its approved hedging policy, the petitioner should communicate to the beneficiaries concerned about its hedging decision within thirty days of entering into such hedging transaction(s).*

*50.3 Every generating company shall recover the cost of hedging of foreign exchange rate variation corresponding to the normative foreign debt, in the relevant year on year-to-year basis as expense in the period in which it arises and extra rupee liability corresponding to such foreign exchange rate variation shall not be allowed against the hedged foreign debt.*

*50.4 To the extent the generating company is not able to hedge the foreign exchange exposure, the extra rupee liability towards interest payment and loan repayment corresponding to the normative foreign currency loan in the relevant year shall be permissible provided it is not attributable to the generating company or its suppliers or contractors.*

*50.5 Every generating company shall recover the cost of hedging and foreign exchange rate variation on year-to-year basis as income or expense in the period in which it arises.*

106. Regulation 51 of MPERC (terms & Conditions for determination of Generation Tariff) Regulations, 2015 further provides that

**51. Recovery of cost of hedging or Foreign Exchange Rate Variation:**

*Recovery of cost of hedging or foreign exchange rate variation shall be made directly by the generating company from the beneficiaries without making any application before the Commission: Provided that in case of any objections by the beneficiaries to the amounts claimed on account of cost of hedging or foreign exchange rate variation, the generating company may make an appropriate application before the Commission for its decision.*

**Commission's Analysis**

107. With regard to Foreign Exchange Rate Variation (FERV), it is observed that the petitioner in its petition filed an amount of Rs.15.60 Crore towards FERV loss during FY 2016-17 and Rs. 45.38 Crore in FY 2017-18.
108. Vide Commission's letter dated 23<sup>rd</sup> June' 2018, the petitioner was asked to explain / justify the claimed amount of FERV during FY 2016-17 and FY 2017-18. The petitioner was also asked to provide complete details of the aforesaid claim of FERV in terms of Regulation 50 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations 2016.
109. In response, by affidavit dated 14<sup>th</sup> July, the petitioner submitted its justification in support of its claim of FERV.
110. Regulation 51 of the Regulations 2015 provides that the recovery of cost of hedging or foreign exchange rate variation shall be made directly by the generating company from the beneficiaries without making any application before the Commission. The aforesaid Regulation further provides that in case of any objections made by the beneficiaries to the amounts claimed on account of cost of hedging or foreign exchange rate variation, the generating company may make an appropriate application before the Commission for its decision.
111. In view of the above, the petitioner is entitled to recover/reimburse any loss/profit on account of FERV and hedging on foreign loan directly from the beneficiary. The petitioner shall provide all details/documents for recovery of any cost of hedging and FERV from the beneficiary.

### Normative Annual Plant Availability Factor

112. Normative Annual Plant Availability Factor for recovery of Annual Capacity (fixed) Charges is 85% as per MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations 2015.

### Summary of Annual Capacity (fixed) Charges

113. The Annual Capacity (fixed) Charges for each year of the control period FY 2016-17 to FY 2018-19 determined in this order are summarized as given below:

**Table 21: Summary of Annual Capacity (fixed) Charges**

S. No.	Particulars	Unit	FY 2016-17	FY 2017-18	FY 2018-19
1	Return on Equity	Rs. Crore	364.25	364.25	364.25
2	Interest on Loan	Rs. Crore	800.28	741.15	682.02
3	Depreciation	Rs. Crore	536.69	536.69	536.69
4	Interest on Working Capital	Rs. Crore	72.36	70.72	68.00
5	O & M Expenses	Rs. Crore	214.76	228.36	242.62
6	Lease rent payable for Land (yearly)	Rs. Crore	0.44	0.44	0.44
7	Annual capacity (fixed) charges	Rs. Crore	1,988.78	1,941.61	1,894.01
8	Less: Non-Tariff Income	Rs. Crore	2.16	3.64	2.90
<b>9</b>	<b>Net AFC (after adjusting Other Income)</b>	<b>Rs. Crore</b>	<b>1,986.62</b>	<b>1,937.97</b>	<b>1,891.11</b>
10	AFC corresponding to 30% of the installed capacity of the Unit	Rs. Crore	<b>595.98</b>	<b>581.39</b>	<b>567.33</b>

114. The aforesaid Annual Capacity Charges have been computed based on norms specified under the Regulations, 2015. 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 Regulations 36.2 to 36.4 of the Regulations, 2015.



## Energy (Variable) Charges

### Petitioner's submission:

115. While claiming the Energy charges, the petitioner considered parameters like Gross Station Heat Rate and Auxiliary Consumption, Specific fuel oil consumption, transit loss for FY 2017-18 and FY 2018-19 based on the provisions under MPERC (Terms and conditions for Determination of Generation Tariff) Regulations, 2015. However, the parameters for FY 2016-17, the petitioner considered the actual values instead of norms provided in Regulations, 2015. The details of the Energy Charges claimed by the petitioner are as given below:

**Table 22: Energy Charges Rate Claimed**

Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
Capacity	MW	1320	1320	1320
NAPAF	%	85	85	85
Gross Generation at Generator Terminals	MUs	9828.72	9828.72	9828.72
Net generation at ex- bus	MUs	9242.03	9312.71	9312.712
Gross Station Heat Rate	kCal/kWh	2209.00	2200.00	2200.00
Sp. Fuel Oil Consumption	ml/kWh	0.655	0.50	0.50
Aux. Energy Consumption	%	5.97%	5.25%	5.25%
Transit Loss	%	0.80	0.80	0.80
Weighted average GCV of Oil	kCal/ltr.	10000.00	10000.00	10000.00
Price of oil(field)	Rs/ltr	31,310.47	36,300.95	36,300.95
Weighted average GCV of Coal (on received basis)	kCal/kg	3779.33	3834.16	3834.16
Weighted Average landed price of Coal	Rs./MT	2803.00	2379.00	2379.00
Heat Contributed from HFO	kCal/kWh	6.55	5.00	5.00
Heat Contributed from Coal	kCal/kWh	2202.45	2195.00	2195.00
Specific Coal Consumption	kg/kWh	0.583	0.572	0.572
Sp. Coal Consumption including Transit Loss	kg/kWh	0.588	0.500	0.500
Energy Charge from Coal	Rs Crore	1.633	1.362	1.362
Rate of Energy Charge from Oil	Rs./kWh	0.021	0.018	0.018
Total Energy Charges		1.654	1.380	1.380
<b>Rate of Energy Charge at ex-bus</b>	<b>Rs./kWh</b>	<b>1.759</b>	<b>1.457</b>	<b>1.457</b>

### Provisions in Regulation:

116. For determining the Energy charges (variable charges) of thermal power stations, Regulation 28 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulation, 2015 provides that,

28. Energy Charges:

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

117. Regulation 36.5, 36.6 and 36.7 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulation, 2015, further provides that:

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

(Energy charge rate in Rs./kWh) X {Scheduled energy (ex-bus) for a month in kWh.}

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

(i) For coal based stations

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

Where,

AUX= Normative Auxiliary Energy Consumption in percentage.

CVPF =(a) Weighted Average Gross Calorific Value of coal as received, in kCal per kg, for coal based stations.

CVSF = Calorific Value of secondary fuel, In kCal per ml.

ECR = Energy Charge Rate, in Rupees per kWh sent out.

GHR = Gross Station Heat Rate, in kCal per kWh.

LPPF =Weighted average Landed price of Primary Fuel, in Rupees per kg, per liter or per standard cubic meter, as applicable, during the month.(In case of blending of fuel from different from different sources, the weighted average landed price of primary fuel shall be arrived in proportion to blending ratio)

8SFC = Specific Fuel Oil Consumption, in ml/kWh

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

*36.7 The generating company shall provide to the beneficiaries of the generating station details of parameters of GCV and price of fuel 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 weighted average GCV of fuels as received shall be provided separately along with the bills of the respective month:*

*Provided further that a copy of the bills and details of parameters of GCV and price of fuel 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 for a period of a three months.*

**Commission's analysis:**

118. The MPERC Tariff Regulations, 2015 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.
119. 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 Trainst and Handling losses need to be considered as per norms under Tariff Regulations, 2015.

**Operating Parameters:**

120. The base rate of energy charges shall be determined based on the parameters like Gross Station Heat Rate, Auxiliary Energy Consumption, Specific Oil Consumption, Gross calorific value of fuel and other operating parameters prescribed under MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015.

121. On perusal of the details regarding Energy charges filed with the petition, it is observed that the petitioner has considered actual Gross Station Heat Rate 2209 Kcal/KWh for FY 2016-17 whereas for FY 2017-18 and FY 2018-19, the petitioner considered normative SHR in accordance with MPERC (Terms & conditions for determination of Generation Tariff), Regulations, 2015.
122. Regarding the Gross Station Heat Rate of thermal generating units, Regulation 39.3 (C)(a) of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015, provides as under:
- “(a) Existing Coal based thermal generating stations having COD on or after 1.4.2012 till 31.03.2016, (other than those covered under clause 39.2) shall be the heat rate norms approved during FY 2012-13 to FY 2015-16.*
123. The Units of 2 X 660 MW Nigrie Thermal Power Station achieved CoD on 03<sup>rd</sup> September’ 2014 and 21<sup>st</sup> February’ 2015 respectively which fall under the period mentioned in the aforesaid Regulations. Further, the Commission issued the final tariff order for Nigrie Thermal Power Station on 24<sup>th</sup> May’ 2017. In the aforesaid final tariff order, the Commission determined the Gross Station Heat Rate of 2200 Kcal/Kwh as per the provisions under the Regulations based on the operating parameters guaranteed by the manufacturer. The same norms of Station Heat Rate as approved by the Commission in the final tariff order dated 24<sup>th</sup> May’ 2017 is considered in this order also for the control period of FY 2016-17 to FY 2018-19.
124. Regarding Auxiliary Energy Consumption, it is observed that while claiming the Energy Charges, the petitioner considered the Actual Auxiliary consumption of 5.97% for FY 2016-17, whereas for FY 2017-18 and FY 2018-19, the petitioner considered normative Auxiliary Energy Consumption of 5.25% in accordance with the Regulations, 2015.
125. The claim of the petitioner for actual auxiliary consumption in FY 2016-17 has not been considered by the Commission and normative Auxiliary Energy Consumption of 5.25% as per Regulations, 2015 is considered in this order. Accordingly, auxiliary energy consumption for natural draft cooling tower of 5.25% is considered as per Regulation 39.3 (E) of the Regulations, 2015.
126. With regard to specific secondary fuel oil consumption, the petitioner considered the actual specific secondary fuel oil consumption of 0.655 ml/kWh for FY 2016-17

whereas for FY 2017-18 and FY 2018-19, the normative specific secondary fuel oil consumption of 0.50 ml/kWh is considered. The Commission has considered the normative specific secondary fuel oil consumption of 0.50 ml/kWh in accordance with Regulation 39.3 (D) of the Regulations, 2015 in this order for the control period from FY 2016-17 to FY 2018-19.

127. The Nigrie Thermal Power Station is non-pit head power station. Accordingly, the norms of 0.80% for transit and handling losses is considered as per Regulation 36.8 of the Regulations, 2015.

128. In view of above, the following operating norms as prescribed in Regulations, 2015 for the control period FY 2016-17 to FY 2018-19 is considered for determination of energy charges in this order:

<b>Particulars</b>	<b>Unit</b>	<b>Norms</b>
Gross Station Heat Rate	kCal/kWh	2200
Specific Oil Consumption	ml/kWh	0.50
Aux. Energy Consumption	%	5.25%
Transit losses	%	0.80%

**Gross Calorific Value of Coal:**

129. With regard to GCV of coal for Coal based Thermal Power Stations, Regulation 36.6 (a) of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, provides that weighted average gross calorific value of coal “**as received**” in kCal per kg shall be considered for determination of energy charges. The aforesaid Regulation further provides that in case of blending of fuel from different sources, the weighted average GCV of primary fuel shall be arrived in proportion to blending ratio.

130. From the petition, the Commission observed that the petitioner filed Energy charges based on the actual annual weighted average GCV of coal for FY 2016-17 and FY 2017-18 (till Decmeber’ 2017). For FY 2018-19, the petitioner considered the same GCV as considered for FY 2017-18 in the petition.

131. Vide Commission’s letter dated 23<sup>rd</sup> June’ 2018, the petitioner was asked to file the weighted average GCV of coal “**as received basis**” for three preceding months in terms of Regulation 36.6 of the MPERC Tariff Regulations, 2015. The petitioner was also asked to file the 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. By affidavit dated 15<sup>th</sup> November' 2018, the petitioner filed weighted average GCV on received basis for preceeding three months along with month-wise laboratory coal analysys report as given below:

**Table 23: Weighted Average GCV of Coal**

Month	Qty of Coal Consumed (MT)	GCV	Weighted average	Weighted Average GCV(Kcal/Kg)
December'15	402239.22	3748.5	1507793716	
January'16	399444.97	3666.56	1464588949	
February'16	216227.66	3502.51	757339541	
	1017911.85		3729722207	<b>3664.092</b>

132. Accordingly, weighted average GCV for the month of Dec' 2015, Jan' 2016 and Feb' 2016 worked out above is considered while determining the Energy Charges for the control period of FY 2016-17 to FY 2018-19.

133. Hence, GCV of 3664.092 Kcal/Kwh is considered for determination of energy charges for the control period FY 2016-17 to FY 2018-19 in this order.

**Landed Cost of Coal:**

134. Regarding the landed cost of coal, Regulation 36.8 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as follows:

*“The landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, transportation cost by rail/road or any other means and for the purpose of computation of energy charge, and in case of coal shall be arrived at after considering normative transit and handling losses as percentage of the quantity of coal dispatched by the coal supply company during the month as given.....”*

135. Vide order dated 28<sup>th</sup> January' 2016 in SMP No. 49 of 2015, the Commission has redetermined Energy Charges for petitioner's power project based on the landed price of coal determined in para 97 of the aforesaid order. In para 89 of said order It is mentioned that the fixed rate of Rs. 100/MT shall be subject to escalation as per clause 9.2 of Coal Mine Development and Production Agreement (CMDPA).

136. In view of the above, vide letter dated 23<sup>rd</sup> June' 2018, the petitioner was asked to submit the following details:

- a) *The month-wise landed price of coal and GCV of coal considered by the petitioner for claiming Energy Charges from the procurer (MPPMCL) during January' 2016 to March' 2018.*
- b) *Detailed break-up of various components for arriving at landed price of coal in excel sheet for each month during January' 2016 to March' 2018.*
- c) *The copies of bills raised by JPVL to MPPMCL towards Energy Charges during January' 2016 to March' 2018.*
- d) *Based on above, the landed price of coal claimed in the subject petition be submitted with all cost components.*

137. By Affidavit dated 14<sup>th</sup> July' 2018, the petitioner submitted the following:

*"Regarding escalation in Fixed Rate of Rs 100/- PMT it is humbly submitted that no escalation in the Fixed Rate has yet been notified by Ministry of Coal.*

- a. *Month wise landed price of coal considered by the Petitioner for claiming Energy Charges from the procurer (MPPMCL) during January 2016 to March 2018 is submitted with the additional submission.*
- b. *Detailed break up of various components of arriving at landed price of coal from Amelia Coal Mines for PPA Generation for each month during December '15 to March '18 is attached as Annexure-15. Landed Cost of Cost arrived in such manner has been used to calculate ECR & Coal Cost as described in Reply to Para xiv for the purpose of Working Capital only. It is further mentioned that the breakup of Coal Cost Considered for Claiming Energy Charges (Passed through Components) from Procurer (MPPMCL) is also given in the same Annexure.*
- c. *The summary of bills raised from January '16 to March '18 to the Procurer for the supply of electricity is attached as Annexure-16. However, copies of electricity bills as are being furnished in a CD attached as Annexure-16.1.*

138. On perusal of the aforesaid details filed by the petitioner, it was observed that the petitioner in its additional submission filed the month-wise detailed break-up of coal cost components for the month of December' 2015 to February' 2016 in line with the Coal cost components considered by the Commission while revising the energy charges in order dated 28<sup>th</sup> January' 2016, in SMP No. 49 of 2015. The petitioner also submitted that the same landed price of coal is considered while claiming the energy charges from procurer.

139. However, while determining the energy charges rate in this order the Commission has considered the normative transit and handling losses in determining the specific coal consumption for energy charge rate. Therefore, the price of coal is considered prior to normative transit and handling losses. The weighted average coal price considered in this order is for preceding three months from December' 2015 to February' 2016 because the petitioner stated that there was no coal supplied from the Amelia Coal Mines in the month of March' 2016. Hence, the Weighted Average Price of Coal is worked out given below:

**Table 24: Weighted Average Price of Coal**

Sr. No	Particulars	Unit	December '15	January '16	February '16
1	Bill Quantity	Rs./MT	4,02,239.22	3,99,444.97	2,16,227.66
2	Pit Head ROM Price	Rs./MT			
3	Surfacr Transportation charges	Rs./MT	31.03	31.03	31.03
4	Sizing & Crushing Charges	Rs./MT	61.01	61.01	61.01
5	High Capacity Loading Charges	Rs./MT	21.75	21.75	21.75
6	<b>Basic price</b>	Rs./MT	<b>113.79</b>	<b>113.79</b>	<b>113.79</b>
7	Royalty @ 14% of Rs 700/-/Rs. 810 (wef 30-5-2016)(G-11 Grade Coal)	Rs./MT	98.00	98.00	98.00
8	Stowing Excise Duty	Rs./MT	10.00	10.00	10.00
9	Bid Price	Rs./MT	100.00	100.00	100.00
10	MPGATVA @ 5% on Basic price	Rs./MT	5.69	5.69	5.69
11	Excise Duty	Rs./MT	21.61	21.61	21.61
12	Clean Energy Cess	Rs./MT	200.00	200.00	200.00
13	MP Forest Transit Fees	Rs./MT	7.00	7.00	7.00
14	<b>Invoice Value(For the purpose of Pass through)</b>	Rs./MT	<b>556.09</b>	<b>556.09</b>	<b>556.09</b>
15	*RLY Freight	Rs./MT	289.31	290.33	287.39
16	*Incidental Charges (Unloading Charges)	Rs./MT	16.44	16.20	16.34
17	<b>Total purchase cost/Tonne for the purpose of claiming Energy Charges from Procurer</b>	Rs./MT	<b>861.84</b>	<b>862.63</b>	<b>859.83</b>

*\*Railway Freight and incidental charges are worked out basis on the details/information provided by the petitioner on actual basis.*

140. Accordingly, the weighted average price of coal of **Rs. 861.72/ MT** is worked out by considering the weighted average of preceeding three month's in this order.



**Landed Cost of secondary fuel oil:**

141. Vide letter dated 23<sup>rd</sup> June' 2018, the Commission observed that the petitioner has filed the detailed calculation for arriving the wt. average rate of secondary fuel oil. On perusal of the aforesaid details, the following was observed:

- a) The petitioner has worked out the wt. average rate of secondary fuel oil based on LDO/HFO consumption during FY 2016-17 and For FY 2017-18 ((till Dec. 2017) and the same has been considered while determining the Energy Charges. As per Regulation 36.6(a) of MPERC Tariff Regulations, 2015, the wt. average landed price of secondary fuel oil is required.
- b) 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, 2015.
- c) The petitioner was also asked to file the supporting documents (Bills/ invoices) in respect of price of oil purchased by the petitioner to worked out landed price secondary fuel oil purchased during preceding three months in accordance with the provisions under the Regulation, 2015 along with invoices in respect of oil purchased.

142. By affidavit dated 14<sup>th</sup> July' 2018, the petitioner submitted the following:

- a. *It is very humbly submitted that the Petitioner has calculated the weighted average rate of secondary fuel based on the receipts of the LDO/HFO during FY 2016-17 & FY 2017-18 (till Dec'17) not on the basis of the consumption as suggested by the Hon'ble Commission.*

*However, weighted average landed price of the secondary fuel for the preceding three months (i.e. January'15 to March'16) is calculated as under:-*

<b>Month</b>	<b>Type of Oil</b>	<b>Quantity</b>	<b>Total Landed Cost</b>	<b>Average Rate/KL</b>
Jan-16	Light Diesel Oil (LDO)	0.00	-	
Jan-16	Heavy Fuel Oil (HFO)	0.00	-	
Feb-16	Light Diesel Oil (LDO)	947.26	<b>2,89,70,125.64</b>	30583.077
Feb-16	Heavy Fuel Oil (HFO)	1845.35	<b>3,81,37,135.04</b>	20666.613
Mar-16	Light Diesel Oil (LDO)	0.00	-	
Mar-16	Heavy Fuel Oil (HFO)	0.00	-	
<b>Total</b>		<b>2792.61</b>	<b>6,71,07,260.68</b>	<b>24,030.30</b>
<b>Weighted Average Landed Price/KL</b>				<b>24,030.30</b>

b. Bills of the Secondary Fuel purchased during the last three months (ie. Jan '16 to Mar '16) is attached herewith as Annexure-17.

143. In view of above, the rate of weighted average secondary fuel is worked out by the Commission based on the details filed by the petitioner as given below:

**Table 25:Wt. Average landed rate of secondary fuel oil preceding three months (Rs/KL)**

Particulars	Weighted average landed rate of secondary fuel oil preceding three months (Rs/KL)
LDO	30583.077
HFO	20666.613
<b>Secondary Fuel Oil (weighted average rate)</b>	<b>24,030.30</b>

144. Accordingly, the Energy Charges for the control period of FY 2016-17 to FY 2018-19 are worked out as given below:

**Table 26: Energy Charges determined in this order**

Particular	Unit	FY 2016-17	FY 2017-18	FY 2018-19
Capacity	MW	1320	1320	1320
NAPAF	%	85	85	85
Gross Generation at Generator Terminals	MUs	9828.72	9828.72	9828.72
Net generation at ex- bus	MUs	9312.71	9312.71	9312.712
Gross Station Heat Rate	kCal/kWh	2200.00	2200.00	2200.00
Sp. Fuel Oil Consumption	ml/kWh	0.50	0.50	0.50
Aux. Energy Consumption	%	5.25%	5.25%	5.25%
Transit Loss	%	0.80	0.80	0.80
Weighted average GCV of Oil	kCal/ltr.	10000.00	10000.00	10000.00
Price of oil(field)	Rs/ltr	24,030.30	24030.30	24,030.3
Weighted average GCV of Coal (on received basis)	kCal/kg	3664.03	3664.03	3664.03
Weighted Average landed price of Coal	Rs./MT	861.72	861.72	861.72
Heat Contributed from HFO	kCal/kWh	5.00	5.00	5.00
Heat Contributed from Coal	kCal/kWh	2195.00	2195.00	2195.00
Specific Coal Consumption	kg/kWh	0.592	0.592	0.592
Sp. Coal Consumption including Transit Loss	kg/kWh	0.604	0.604	0.604
Energy Charge from Coal	Rs Crore	0.520	0.520	0.520
Rate of Energy Charge from Oil	Rs./kWh	0.012	0.012	0.012
Total Energy Charges	Rs./kWh	0.532	0.532	0.532
<b>Rate of Energy Charge at ex bus</b>	<b>Rs./kWh</b>	<b>0.562</b>	<b>0.562</b>	<b>0.562</b>

145. 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 during the month. The above energy charges have been calculated for the purpose of calculation of two month's billing which is used for calculation of interest on working capital. However, the recovery of energy charges shall be made in accordance with Regulations 36.6 to 36.8 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015.

146. The Commission would like to mention in this order that the approach for determination of Energy Charge Rate (ECR) in MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 has been changed from GCV of coal on "as fired basis" to "as received basis" as specified by the Central Commission in CERC (Terms and Conditions of Tariff) Regulations, 2014 for determination of tariff of Generation Companies. In Writ Petition No. 1641 of 2014 Hon'ble High Court of Delhi vide its order dated 07.09.2015, directed the Central Commission to decide the issue i.e. at what stage the GCV of coal on "as received basis" should be measured. Vide order dated 25th June' 2016, in Petition No. 283/GT/2014 CERC decide the issue. The relevant portion of aforementioned CERC's order is extracted as under:

*55. The only practicable alternative is to take samples from the wagons either manually or by installing Hydraulic Auger at the suitable places. GUVNL vide affidavit dated 30.11.2015 has submitted the video recording of the samples of coal being collected from the railway wagon at the generating stations of GSECL, namely at Ukai TPS and Wanakbori TPS. They have also filed the laboratory testing procedure of the samples taken from the wagons/ Coal Rakes at Wanakbori TPS. From the examination of the video recording, it is observed that samplings of coal were being collected from the railway wagons using Hydraulic Auger. The process of taking samples was found to be smooth, capable of taking representatives samples from any depth of the wagon, from different locations without taking too much of time and the process appears to be same and reliable. GSECL has been successfully using the Hydraulic Auger for collection of samples from the top of the wagons and NTPC and other generating companies can adopt and improvise the protocol for collection of samples from the wagons. As regards the threat to the safety of the personnel, the issue has been discussed in detail in para 41 of this order and the safeguards suggested in the said para should be adopted."*

*“58. In view of the above discussion, the issues referred by the Hon’ble High Court of Delhi are decided as under:*

- (a) there is no basis in the Indian Standards and other documents relied upon by NPTC etc. to support their claim that GCV of coal on as received basis should be measured by taking samples after crusher set up inside the generating station, in terms of Regulation 30(6) of the 2014 Tariff Regulations.*
- (b) The samples for the purpose of measurement of coal on as received basis should be collected from the loaded wagons at the generating stations either manually or through the Hydraulic Auger in accordance with provisions of IS 436(Part 1/Section 1)-1964 before the coal is unloaded. While collecting the samples, the safety of personnel and equipment as discussed in this order should be ensured. After collection of samples, the sample preparation and testing shall be carried out in the laboratory in accordance with the procedure prescribed in IS 436 (Part 1/ Section 1)-1964 which has been elaborated in the CPRI Report to PSERC.”*

147. In view of above, the petitioner and Respondents are directed to ensure that the GCV of coal on “received basis” be considered in accordance with the above methodology decided by CERC. The petitioner and Respondents are also directed to ensure compliance with Regulation 36.7 to 36.10 of the Regulations, 2015, for appropriate billing and payment of Energy Charges. The landed cost of coal shall be worked out with the same approach as adopted by the Commission in its order dated 28<sup>th</sup> Janyary’ 2016 in SMP No. 49 of 2015.

### **Other Charges**

148. In the subject petition, the petitioner also prayed for recovery of the petition filing fees paid to the Commission and publication expenses from the beneficiaries.

149. Regarding the Application fee, publication expenses and other statutory charges, Regulation 52 of MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2015, 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 actuals.”*

150. In view of the above, the petitioner is allowed to recover the fee paid to MPERC and publication expenses as per Regulation 52 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 on submission of documentary evidence to the Respondent.

### **Implementation of the order**

151. The generation tariff under the Multi- Year Tariff framework for the control period from FY 2016-17 to FY 2018-19 is determined under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulation' 2015. The petitioner is directed to file true-up petitions for FY 2016-17 and FY 2017-18 based on the Annual Audited Accounts for the respective year, within one and half month from the date of issue of this order.

152. In exercise of the powers vested in it under Section 64 of the Electricity Act, 2003, the Commission directs that the generation tariff determined in this order shall be applicable from 1<sup>st</sup> April' 2016, and will continue to be operative till 31<sup>st</sup> March' 2019, under Multi Year Tariff Principles. The difference between the billing done in accordance with Regulation 7.11 (i) of the Tariff Regulations 2015 for the period starting from 01.04.2016 and the tariff determined in this order shall be recovered or refunded by the generating company in terms of Regulations 7.11(ii) of the Regulations 2015.

153. 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.

154. With the above directions, this Petition No. 07 of 2018 is disposed of.

**(Anil Kumar Jha)**  
**Member**

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

**(Dr. Dev Raj Birdi)**  
**Chairman**

**Date: 29<sup>th</sup> November' 2018**

**Place: Bhopal**

ANNEXURE I

**Commission's observations and the petitioner's response on the observations/queries raised by the Commission**

**Issue**

**A. Capital Cost and Additional Capitalization:**

- i. On perusal of the details and reasons stated in para 6.1 of the petition, it is noted that the addition of assets during FY 2016-17 in BTG and BOP equipments is basically on the ground that the bills for all such equipments were paid during FY 2016-17 whereas, the work for all such assets was executed in FY 2014-15. From the above said contention, it is clear that all equipments / assets under BTG and BOP had been put to use in FY 2014-15 and started generating revenue from project COD.

Therefore, the petitioner is required to explain the reasons for delay in capitalization of all such assets just for the reasons of making payments in FY 2016-17. The reply should be filed in light of prevailing Financial Accounting Principles.

**Petitioner's Submission**

*Reply to this Para has been clubbed with Reply to Para ii (d) below.*

**Issue:**

- ii. With regard to the additional capitalization filed in the subject petition, the petitioner is required to file a comprehensive reply to the following issues with all relevant supporting documents.
  - a. Whether the addition of assets is on account of the reasons (i) to (v) in Regulation 20.1 and (a) to (i) in Regulation 20.3 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulation, 2015.
  - b. Whether the assets capitalized during each year are under original scope of work. If so, all supporting documents establishing that the assets capitalized are under original scope of work be filed.

- c. **Whether the additional capitalization is within the cut-off date of the project.**
- d. **What was the schedule date and anticipated date of completion of works under additional capitalization. The reasons for delay if any, in completion of works under additional capitalization be informed. Details of penalty / LD if any, imposed on the contractor for delay in completion of these works under additional capitalization be filed.**

### **Petitioner's Submission**

*The Petitioner humbly submits that the net additional capitalization of Rs 174.15 Crores (net of decapitalization of Rs 3.71 Crores) in Generating Station and Rs 155.99 Crores (net of decapitalization of Rs 1.32 Crores) during FY 2016-17 in Amelia Coal Mines fall within the norms specified under Regulation 20.1 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015. The said Regulation reads as under:-*

*“The Capital Expenditure incurred or projected to be incurred, on the following counts within the original scope of work, after the Date of Commercial Operation and up to cut-off date may be admitted by the Commission, subject to prudent check:*

- (f) Undisclosed liabilities*
- (g) Work deferred for execution*
- (h) Liabilities to meet award of arbitration or for compliance of order or decree of a court,*
- (i) Change in Law,*
- (j) Procurement of initial spares within the original scope of work, subject to the provisions of Regulation 17.1(b)*

*Provided that the details of works included in the original scope of along with estimates of expenditure, un-discharged liabilities and works deferred for execution shall be submitted along with the application for Tariff.”*

*The Petitioner would humbly like to draw the kind attention of Hon'ble Commission in the light of the above Regulation that the said additional capitalization is within the original scope of the work of Rs 12,400/- Crores authorized by the Resolution of*



Board of Directors dated May 30th, 2015 approving Final Project Cost attached herewith as **Annexure-1** and is also within the prescribed cut-off date.

**Reply to Para I & Para ii (d)**

With reference to the observation of the Hon'ble Commission regarding addition of assets during FY 2016-17 in BTG and BOP as per details submitted in Para 6.1 of the Petition, it is humbly submitted that the main works were executed in FY 2014-15. However, in view of the complexities, numerous works and sub works and the high value of contracts, value of BTG contract being in excess of Rs.5000 Crores and that of BOP being in excess of Rs.1600 Crores, finishing works take time and contract closing negotiations and final account / work reconciliation spills over. The main quantum involved in the spill over is on account of negotiations and claims and counter claims on the issue of price variation claims, which was part of the works contract.

It is humbly submitted that as mentioned above, the main works were completed in FY 2014-15, however, finishing works and final negotiations / reconciliations take time because of which actual capitalisation spills over to next periods.

**Reply to Para ii(e)**

During FY 2016-17 & FY 2017-18, no liquidated damages/ penalties have been recovered from any contractors/ vendors.

**Issue:**

**B. Operation & Maintenance Charges on Transmission Lines & Bay:**

- iii. **Despite disallowance of O&M expenses on Transmission Line and Bay by the Commission in past orders, the petitioner has claimed O&M expenses of transmission lines and bay on the basis of norms prescribed under MPERC (Terms and Conditions for determination of Transmission Tariff) Regulations. The petitioner has also filed Appeals with Hon'ble Tribunal for Electricity on this issue.**

**In view of the above and in light of the MPERC(Terms and Condition for Determination of Generation Tariff) Regulations, 2015, the petitioner is required**

to explain the reasons for claiming O&M expenses of such a dedicated transmission line, the cost of which has been appropriately considered in the capital cost of its power plant.

#### **Petitioner's Submission**

(11) *It is respectfully submitted that this Commission whilst rejecting the Petitioner's' claim regarding the O&M expenses relating to transmission line and bay has failed to consider that as per the terms and conditions of the PPAs entered into with Madhya Pradesh Power Management Company Limited (MPPMCL), it is the procurers liability / responsibility to arrange for the evacuation of power from the bus bar of the Project. To this extent, relevant extracts of the PPA have been reproduced below for ease of reference:*

*“**Delivery Point** shall mean the ex-bus point of the power station at the power station switch yard...*

#### **Satisfaction of Conditions subsequent by the Procurer....**

- i) The Procurer shall have obtained open access and/ or connectivity for evacuation of the Scheduled Energy from the delivery Point at lease 60 (sixty) days prior to the commissioning of the first unit*
- ii) The Procurer shall have established the necessary evacuation infrastructure beyond the delivery point required for evacuation of the Scheduled Energy at least 210 days prior to the commissioning of the first unit....*

#### **4.2 Procurers Obligations...**

- i) The Procurer shall have obtained open access and/ or connectivity for evacuation of the Scheduled Energy from the delivery Point at lease 60 (sixty) days prior to the commissioning of the first unit*
- ii) The Procurer shall have established the necessary evacuation infrastructure beyond the delivery point required for evacuation of the Scheduled Energy at least 210 days prior to the commissioning of the first unit....”*

(12) *It is submitted that even though the responsibility for setting up the evacuation*

- infrastructure was part of MPPMCLs' obligation, the same was carried out by the Petitioner at the request of the MPPMCL, therefore forms part of the Project and Petitioner would be entitled to recover the O&M cost for the dedicated transmission line.*
- (13) *It is pertinent to note that the transmission line set up by the Petitioner is clearly covered by Section 2(72) of the Electricity Act, 2003. It accomplishes the function of a dedicated transmission line by carrying power from the source of generation to Satna sub-station. Therefore, the Petitioner is entitled to the capital cost of the transmission line so erected in addition to the O&M costs associated with the said transmission line as the same is owned, operated and maintained by the Petitioner.*
- (14) *It is respectfully submitted that by disallowing the O&M costs of the dedicated transmission line, this Hon'ble Commission has allowed MPPMCL to enjoy a benefit / advantage at the cost of the Petitioner. The Petitioner performed an action beneficial to MPPMCL under the PPA and is entitled to be compensated for the costs associated with undertaking the same.*
- (15) *Therefore, the Learned Commission erred in disallowing the O&M costs of the dedicated transmission line to the Petitioner as the same would result in a significant drop in the Return on Equity allowed in the tariff of the Petitioner and the Project would not be commercially viable.*
- (16) *It is submitted that this Hon'ble Commission may kindly appreciate that that dedicated transmission line essentially carries out the functions of a transmission line and therefore should be entitled to O&M expenses at par with what is prescribed for other transmission lines, especially in view of the fact that the line was originally planned to be developed by the MPPMCL.*
- (17) *It is respectfully submitted that the Electricity Act, the National Electricity Policy and the Tariff Policy require that consumer interest is protected while ensuring financial viability and growth of the power sector. It is submitted that the twin objectives of financial viability/sustainability and consumer interest are the cornerstone of the*

electricity sector. In exercise of powers under Section 3 of the Act, the Central Government on 12.02.2005, prepared and published the National Electricity Policy. The following relevant provisions of the National Electricity Policy are mentioned below for kind consideration:-

- “5.5.1 There is an urgent need for ensuring recovery of cost of service from consumers to make the power sector sustainable.
- 5.8.4 Capital is scarce. Private sector will have multiple options for investments. Return on investment will, therefore, need to be provided in a manner that the sector is able to attract adequate investments at par with, if not in preference to, investment opportunities in other sectors. This would obviously be based on a clear understanding and evaluation of opportunities and risks. An appropriate balance will have to be maintained between the interests of consumers and the need for investments.
- 5.8.5 All efforts will have to be made to improve the efficiency of operations in all the segments of the industry. Suitable performance norms of operations together with incentives and disincentives will need to be evolved along with appropriate arrangement for sharing the gains of efficient operations with the consumers. This will ensure protection of consumers’ interests on the one hand and provide motivation for improving the efficiency of operations on the other.
- 5.8.7 It will be necessary that all the generating companies, transmission licensees and distribution licensees receive due payments for effective discharge of their operational obligations as also for enabling them to make fresh investments needed for the expansion programs. Financial viability of operations and businesses would, therefore, be essential for growth and development of the sector. Concerted efforts would be required for restoring the financial health of the sector. For this purpose, tariff rationalization would need to be ensured by the SERCs. This would also include differential pricing for base, intermediate and peak power.”
- (18) Further, the Electricity [Removal of Difficulty] (fifth) Order, 2005 clearly provides that a generating company shall not be required to obtain license under the Electricity Act, 2003 for establishing, operating or maintaining a dedicated transmission line.

Section 10 of the Electricity Act 2003 mandates the Generating Company to establish, operate and maintain the Dedicated Transmission Lines. Therefore, any cost incurred with regards to such activity must be adequately recovered so that the Generator can effectively run its business of power generation. This is primarily based on the rationale that the dedicated transmission line built by the generating company forms part of transmission line. The Hon'ble Tribunal in its Judgment dated 23.05.2012 in Appeal No. 145 of 2011 titled Tamil Nadu Electricity Board and Ors v. M/s Ind Barath Thermal Power Ltd and Ors. has held as below: -

*“14.....On the contrary, Section 10 of the 2003 Act mandates that generating company shall establish, operate and maintain the dedicated transmission lines connected therewith in accordance with the provisions of this Act. Thus, the Section 10 of the 2003 Act becomes mandatory by which the generating company is mandated to construct its own dedicated transmission lines which connect the substation of the Appellant”*

*In view of the aforementioned it is submitted that this Hon'ble Commission may kindly allow the recovery of O&M expenses relating to the transmission lines and bay.*

**Issue:**

**C. Interest on Working Capital:**

- iv. With regard to cost of coal for working capital of thermal power stations, Regulation 34.1 (1) of MPERC (Terms and Conditions for determination of Generation Tariff) Regulation, 2015 provides as under :

***“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;***

***Cost of coal for 30 days for generation corresponding to the normative annual plant availability factor;”***

- v. In view of the above, the petitioner is required to explain the basis of coal cost for 60 days considered in the petition in light of the above provision under Regulations. The petitioner is required to explain the basis with all supporting document for arriving at the rate of interest on working capital.

**Petitioner's Reply to Para iv.**

*The Petitioner respectfully humbly submits that:-*

- III. *Petitioner's Plant is a non-pit-head generating station. Therefore, as per Regulation 34.1(1)(a), cost of coal towards stock for 30 days for non-pit-head generating station for generation corresponding to the normative annual plant availability factor or the maximum coal stock storage capacity whichever is lower, is allowed to be covered in working capital;*

*(Here, the Petitioner humbly wishes to add that the coal stock storage capacity of Petitioner's Plant is more than five lacs tonne which is more than enough to generate energy for more than 30 days at GSHR of 2195 kCal/kWh and GCV of 4200 kCal/kg at 85% of PLF)*

- IV. *As per Regulation 34.1(1)(b), cost of coal for 30 days for generation corresponding to the normative annual plant availability factor, is also allowed to be covered in working capital.*

*For the reasons cited above, the Petitioner has considered cost of coal for 60 days (30 days for stock for generation corresponding to the normative annual plant availability factor and for cost of coal for 30 days for generation corresponding to the normative annual plant availability factor).*

**Reply to Para v.**

Rate of interest claimed by the Petitioner for FY 2016-17 is 12.80% which is in conformity with the Regulation 34.3 to be read with Regulation 4.1(e) of Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) Regulations, 2015. Regulation 34.3 reads as under:

***“Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.4.2016 or as on 1st April of the year during the***

**tariff period 2016-17 to 2018-19 in which the generating station or a unit thereof , is declared under commercial operation, whichever is later.”**

Further, Regulation 4.1(e) reads as under:

**“ ‘Bank Rate’ means the base rate of interest as specified by the State Bank of India from time to time or any replacement thereof for the time being in effect plus 350 basis points”**

However, the Rate of Interest on Working Capital for FY 2017-18 & FY 2018-19 was claimed on provisional basis on the basis of the Rate of Interest on Working Capital for FY 2016-17 itself. However, the Rates of Interest on Working Capital applicable as per Regulation 34.3 to be read with Regulation 4.1(e) of Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 for FY 2016-17, FY 2017-18 & FY 2018-19 are as under:-

Particulars	FY 2016-17	FY 2017-18	FY 2018-19
Base Rate as on 1 <sup>st</sup> April of the year specified by State Bank of India	9.30%	9.10%	8.70%
Plus 350 basis point	3.50%	3.50%	3.50%
<b>Rate of Interest on Working Capital Claimed</b>	<b>12.80%</b>	<b>12.60%</b>	<b>12.20%</b>

To substantiate the Base Rate as on 1<sup>st</sup> April of the respective year, Base Rate Chart downloaded from SBI Corporate Website is attached herewith as **Annexure-2**.

**Issue:**

**D. Interest and Financing Charges:**

- vi. **The petitioner is required to file supporting documents in respect of weighted average rate of interest claimed in the petition.**

**Petitioner’s Reply to Para vi**

*Mails regarding Interest Rates received from Lenders are attached as **Annexure-3**.*

**Issue:**

**E. Return on Equity:**

- vii. The petitioner has claimed Return on Equity by grossing up the base rate with MAT. The petitioner is required to explain the reasons along with supporting documents for grossing up the base rate with MAT for claiming RoE during FY 2016-17.

**Petitioner's Reply to Para vii.**

*The Petitioner very humbly submits that grossing up of Rate of Return with MAT was inadvertently claimed for FY 2016-17.*

**Issue:**

**F. Lease Rent:**

- viii. The expenses payable against the lease rent are claimed in the subject petition. The petitioner is required to inform under what provisions of MPERC Tariff Regulations, 2015, these expenses are claimed by the petitioner.

**Petitioner's Reply to Para viii.**

*The Petitioner respectfully submits that the Petitioner is paying lease rent on account of Land Lease which is a part of the Project. On this basis, the Petitioner has prayed the payable Lease Rent to be allowed while arriving at AFC. The requisite challans & details thereof for FY 2016-17 are attached as **Annexure-4**.*

**Issue:**

**G. Non-tariff Income:**

- ix. The petitioner has not filed projected non-tariff income during FY 2017-18 and FY 2018-19. The petitioner is required to file the detailed break-up of projection of Non Tariff / other income for FY 2016-17 to FY 2018-19 in accordance with the Regulation 53 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015



**Petitioner’s Reply to Para ix.**

Non-Tariff income for FY 2016-17 & FY 2017-18 on actual basis & for FY 2018-19 on approximate basis (average of FY 2016-17 & FY 2017-18 is furnished as under:-

(Rs. in Crores)

Year	Non-Tariff Income	Basis
2016-17	2.16	On Actual Basis
2017-18	3.64	On Actual Basis
2018-19	2.90	Average of above

**Issue:**

**H. Foreign Exchange Rate Variation:**

- x. The petitioner has claimed the FERV during FY 2016-17 and FY 2017-18. The petitioner is required to provide complete details of the aforesaid claim of FERV in terms of Regulation 50 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations 2016.

**Petitioner’s Reply to Para x.**

As submitted in earlier submissions made during the proceedings of Petition No.41/2017, there are two Foreign Currency Loans which are as under:-

- Foreign Currency Convertible Bonds (hereinafter referred to as “FCCB”) of USD 200 million (Rs 922.40 Crores disbursed @ Rs 46.12 per USD)
- External Commercial Borrowings (hereinafter referred to as “ECB”) of JPY 1,530 Crores (Rs 848.90 Crores disbursed @ Rs 0.55484 per JPY)

Regarding FCCB it is submitted that during FY 2016-17 & FY 2017-18, the Petitioner neither did pay any instalment of FCCB nor interest thereon. Hence, the Petitioner had not claimed FERV regarding FCCB. Therefore, the Petitioner shall restrict itself to discuss about FERV on ECB only.

**1) Foreign Exchange Rate Variation (FERV) Loss on Actual Repayment of ECB:-**

It is respectfully submitted that the Petitioner had made Repayment of External Commercial Borrowing (ECB) during FY 2016-17 & FY 2017-18, the details which are furnished as under:-

**Details of Repayment of ECB made during FY 2016-17**

Sl.	Particulars	Principal Repayment Amount in JPY	Exchange Rate at the time of Repayment	Principal Repayment Amount in INR
		JPY	Rs/JPY	
1	Principal Repayment on 31.08.2016 (Due on 06.05.2016)	76,50,00,000.00	0.6609	50,55,88,500.00
2	Principal Repayment on 05.11.2016 (Due on 07.11.2016)	76,50,00,000.00	0.6527	49,93,15,500.00
	<b>Total ECB Repaid during FY 2016-17</b>	<b>1,53,00,00,000.00</b>		<b>100,49,04,000.00</b>

**Details of Repayment of ECB made during FY 2017-18**

Sl.	Particulars	Principal Repayment Amount in JPY	Exchange Rate at the time of Repayment	Principal Repayment Amount in INR
		JPY	Rs/JPY	
1	Principal Repayment on 02.05.2017 (Due on 02.05. 17)	76,50,00,000.00	0.5843	44,69,89,500.00
2	Final Principal Repayment on 31.08.2017	10,71,00,00,000.0	0.5951	6,37,35,21000.00
	<b>Total ECB Repaid during FY 2017-18</b>	<b>11,47,50,00,000.00</b>		<b>6,82,05,10,500.00</b>

It is further submitted that in the instant Petition, the Petitioner had claimed Rs 15.60 Crores & Rs 45.38 Crores as a part of Annual Capacity (Fixed) Charges towards loss incurred on repayment of ECB on account of Foreign Exchange Rate Variation (FERV) FY 2016-17 & FY 2017-18 respectively. A detailed statement of calculation of FERV loss on above Repayments of ECB is attached as **Annexure-5**.

To substantiate above Repayments, the following documents have been attached:-

- Copy of Bank Statement showing payment of Rs 55.56 Crores (JPY 76.50 Crores) made on 31-08-2016 attached as **Annexure-5.1**.
- Copy of Bank Statement showing payment of Rs 49.93 Crores (JPY 76.50 Crores) made on 05-11-2016 attached as **Annexure-5.2**.
- Copy of Bank Statement showing payment of Rs 44.70 Crores (JPY 76.50 Crores) made on 02-05-2017 attached as **Annexure-5.3**.
- Copy of Bank Statement showing payment of Rs 637.35 Crores (JPY 1,071 Crores) made on 31-08-2017 attached as **Annexure-5.4**.

It is also pertinent to mention that on 31-08-2017, the Petitioner made prepayment of entire balance amount of JPY 1,071 Crores.

Apart from above, the Petitioner very humbly also submits that it incurred loss on actual payment of interest on ECB on account of Foreign Exchange Rate Variation (FERV) FY 2016-17 & FY 2017-18 alongwith the Hedging Expenses during FY 2016-17 & FY 2017-18 which were inadvertently not claimed. The Petitioner hereby humbly prays the Hon'ble Commission to condone the inadvertent oversight in not having claimed FERV on Interest Payment & Hedging Costs earlier in respect of FY 2016-17 & FY 2017-18 and allow them to be recovered as part of Annual Capacity (Fixed) Charges.

However, the details regarding loss incurred on actual payment of interest on ECB on account of Foreign Exchange Rate Variation (FERV) during FY 2016-17 & FY 2017-18 alongwith the Hedging Expenses during FY 2016-17 & FY 2017-18 are discussed at length in following paragraphs:-

**2) Foreign Exchange Rate Variation (FERV) Loss on Actual Payment of Interest on ECB:-**

The Petitioner, apart from repayments made as discussed above, also made payments of actual interest on ECB during FY 2016-17 & FY 2017-18, the details of which are as under:-

**Details of Actual Interest on ECB made during FY 2016-17**

Sl.	Date	Actual Interest Payment Amount	Exchange Rate at the time of Interest Payment	Interest Payment Amount in INR
		JPY	Rs/JPY	
1	24-10-2016 (Due on 22.07.2016)	26,91,71,517.88	0.6449	17,35,93,921.21
<b>Total Actual Interest on ECB Paid during FY 2016-17</b>				<b>17,35,93,921.2</b>

**Details of Actual Interest on ECB made during FY 2017-18**

Sl.	Date	Actual Interest Payment Amount	Exchange Rate at the time of Interest Payment	Interest Payment Amount in INR
		JPY	Rs/JPY	
1	20.04.2017 (Due on 23.01.2017)	24,98,21,106.00	0.5999	14,98,67,681.49

<b>2</b>	<b>11.09.2017 (Due on 21.07.2017)</b>	27,69,74,536.03	0.5992	16,59,63,141.99
<b>Total Actual Interest on ECB Paid during FY 2017-18</b>				<b>31,58,30,823.48</b>

On the actual payment of Interest on ECB, the Petitioner incurred losses of Rs 2.42 Crores & Rs 2.35 Crores during FY 2016-17 & FY 2017-18 respectively on account of FERV. A detailed calculation of such losses is attached as **Annexure-6**. To substantiate above payments of interest on ECB, the following documents have been attached:-

- Copy of Bank Statement showing payment of interest on ECB of Rs 17.36 Crores (JPY 26.92 Crores) made on 24-10-2016 attached as **Annexure-6.1**.
- Copy of Bank Statement showing payment of interest on ECB of Rs 14.99 Crores (JPY 24.98 Crores) made on 20-04-2017 attached as **Annexure-6.2**.
- Copy of Bank Statement showing payment of interest on ECB of Rs 16.70 Crores (JPY 27.70 Crores) made on 11-09-2017 attached as **Annexure-6.3**.

### 3) Hedging Charges

Regarding Hedging Charges it is further submitted that:-

- In respect of FCCB of US\$ 200 million (Rs 922.40 Crores), the repayment and interest payment on FCCB are not hedged. Hence no hedging charges are paid during FY15-16 on the FCCB amount.
- In respect of ECB of JPY 1,530 Crores (Rs 848.90 Crs), the repayment and interest payment on ECB is hedged. However, as per the banking/RBI conventions, hedging of Non- USD currencies is always done through the USD route only. Hedging for JPY exposures is done in two parts - one JPY to USD and then from USD to INR. Therefore, hedging has to be done for both JPY/USD and also USD/INR. Accordingly, entire ECB is fully hedged (JPY to USD) in respect of Repayment as well as Interest and USD to INR portion has been hedged for 50% of outstanding & Interest. Balance 50% portion is unhedged.

A small brief regarding Hedging Contracts are as under:-

Hedging currency	JPY/USD
Loan Amount	JPY 15.30 billion
Repayment commencement	From Nov'2014 , for 10 years till 2024
Interest rate	4% p.a., payable half yearly in Jan and July

The hedging details are as follows:

**Hedging of JPY/USD**

	<b>Structure</b>	<b>Pay off</b>
Call Spread Levels : 75/95	Buy USD Put/JPY Call @ 95 Sell USD Put /JPY Call @ 75	Spot < 75 , JPVL buys JPY @ Market + 20 Spot is between 75 and 95 - JPVL buys JPY @ 95 Spot > 95 , JPVL buys JPY @ market

**Hedging of USD /INR**

<b>No. of payments covered</b>	<b>Structure</b>	<b>Pay off</b>
First 4 payments ( May'15 to Nov'16)	Buy USD Call / INR Put @ 62.05 Sell USD Call / INR Put @ 67.55	Spot < 62.05 , JPVL buys USD @ Market  Spot is between 62.05 and 67.55 JPVL buys USD @ 62.05  Spot > 67.55 , JPVL buys USD @ market less 5.50
Next 5 payments ( May'17 to May'19)	Buy USD Call / INR Put @ 62.05 Sell USD Call / INR Put @ 70.55	Spot < 62.05 , JPVL buys USD @ Market Spot is between 62.05 and 70.55 - JPVL buys USD @ 62.05  Spot > 70.55 , JPVL buys USD @ market less 8.50
Next 5 payments ( Nov'19 to Nov'21)	Buy USD Call / INR Put @ 62.05 Sell USD Call / INR Put @ 75.55	Spot < 62.05 , JPVL buys USD @ Market Spot is between 62.05 and 75.55 - JPVL buys USD @ 62.05  Spot > 75.55 , JPVL buys USD @ market less 13.50
Next 5 payments ( May'22 to May'24)	Buy USD Call / INR Put @ 62.05 Sell USD Call /INR Put @ 80.55	Spot < 62.05 , JPVL buys USD @ Market Spot is between 62.05 and 80.55 - JPVL buys USD @ 62.05  Spot > 80.55 , JPVL buys USD @ market less 18.50

The premium costs of the above hedging structures were as follows:-

<b>Details</b>	<b>Currency Pair</b>	<b>Date hedged</b>	<b>Premium (% p.a. on outstanding USD notional)</b>	<b>Hedging Contract Reference</b>
Hedging the Principal of JPY 15.30 bln	JPY/USD	31-5-13	1.92%	HC-1
Hedging the Interest payable on JPY 12.58 bln	JPY/USD	31-5-13	0.32%	HC-2
Hedging the Interest payable on JPY 2.72 bln	JPY/USD	30-6-14	0.11%	HC-3
Hedging 50 % of Principal and Interest (USD/INR)	USD/INR	29-9-14	3.50%	HC-4

Above Hedging Contracts are attached as **Annexure-7(Colly.)**.

The premium/hedging cost is payable on a quarterly basis and details of payment of hedging costs of Rs 32,89,22,686/- made during the FY 2016-17 is attached as per **Annexure-7.1**.

It is further stated that in respect of JPY/USD “Leg”, on account of hedging no settlement amount was received, however in respect of USD/INR hedging contract, the Petitioner had received Settlement (Refund) amount of Rs 4,25,74,326/- during FY 2016-17 as per details attached vide **Annexure-7.2**.

Therefore, Net Hedging Cost incurred during FY 2016-17 was Rs 28,63,48,360/-.

Bank statements substantiating above payments of Hedging Charges during FY 2016-17 is attached as **Annexure-7.3**.

Regarding Hedging Costs incurred and Settlement Amount received during FY 2017-18, it is further submitted since the Petitioner had made prepayment of entire balance amount of JPY 1,071 Crores on 31-08-2017 itself, the ICICI Bank terminated Hedging Contracts (Termination Notice attached as **Annexure-8**) and the payment schedule of all the payments to accrue on account of termination of the Hedge Contracts also was revised (As per Termination Advice attached **Annexure-8.1**). Therefore, the Petitioner for the Purpose of Hedging Costs incurred during FY 2017-18 has divided the same in two parts, namely:-

- A. Hedging Costs incurred/Settlement (Refund) Amount received during FY 2017-18 before Termination of Hedging Contracts;
- B. Expenses incurred during FY 2017-18 on account of payment termination of the Hedge Contracts.

**A. Hedging Costs incurred/Settlement (Refund) Amount received during FY 2017-18 before Termination of Hedging Contracts**

The details of payment of hedging costs of Rs 14,00,16,184/- made during the FY 2017-18 is attached as per **Annexure-9**.

It is further stated that in respect of JPY/USD “Leg”, on account of hedging no settlement amount was received, however in respect of USD/INR hedging contract, the Petitioner had received Settlement (Refund) amount of Rs 89,19,275/- during FY 2017-18 as per details attached vide **Annexure-9.1**.

**B. Expenses incurred during FY 2017-18 on account of payment termination of the Hedge Contracts.**

Post Termination of Hedging Contracts, the Petitioner was obligated to pay Rs 43.00 Crores over a period beginning from September '17 to August '21 as per the Termination Advice attached above as Annexure-8.1. The Payment schedule can be summarized as under:-

**Schedule of Amount to be paid/ received towards unwinding of Hedging Contracts**

**Rs in Crores**

Sl. No.	Due Date for payment	Deal 1	Deal 2	Deal 3	Deal 4	Total
1	05-Sep-17	1.96	0.44	0.16	(0.50)	2.06
2	07-Nov-17	1.96	0.44	0.16		2.56
3	07-Feb-18	1.96	0.44	0.16		2.56
4	02-May-18	1.96	0.44	0.16		2.56
5	07-Aug-18	1.96	0.44	0.16		2.56
6	07-Nov-18	1.96	0.44	0.16		2.56
7	07-Feb-19	1.96	0.44	0.16		2.56
8	07-May-19	1.96	0.44	0.16		2.56
9	07-Aug-19	1.96	0.44	0.16		2.56
10	07-Nov-19	1.96	0.44	0.16		2.56
11	07-Feb-20	1.96	0.44	0.16		2.56
12	07-May-20	1.96	0.44	0.16		2.56
13	07-Aug-20	1.96	0.44	0.16		2.56
14	06-Nov-20	1.96	0.44	0.16		2.56
15	05-Feb-21	1.96	0.44	0.16		2.56
16	07-May-21	1.96	0.44	0.16		2.56
17	06-Aug-21	1.96	0.44	0.16		2.56
<b>Total Amount</b>		<b>33.32</b>	<b>7.40</b>	<b>2.79</b>	<b>(0.50)</b>	<b>43.00</b>

As is evident from above payment schedule chart, the liability of the Petitioner to incur an amount of Rs 7.18 Crores befell during FY 2017-18 which was duly paid by the Petitioner. Balance amount of Rs 35.82 Crores shall be paid during the True up of subsequent years as & when the same is paid.

Bank statements substantiating above payments of Hedging Charges & Receipts of Settlement (Refund) during FY 2017-18 (both pre-termination of Hedging Contract & Post Termination of Hedging Contracts) is attached as **Annexure-9.2**.

Therefore, the details of total Hedging Cost, Settlement Amount (Refund) during FY 2016-17 & FY 2017-18 is as under:-

<b>Rs in Crores</b>			
<b>Sl. No.</b>	<b>Particulars</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
	Hedging Costs incurred by the Petitioner during the year	32.89	14.00
	Less:- Settlement (Refund) Amount received by the Petitioner during the year	(-) 4.26	(-) 0.89
<b>A</b>	<b>Hedging Costs net of Settlement Amount received incurred by the Petitioner during the year</b>	<b>28.63</b>	<b>13.11</b>
<b>B</b>	<b>Expenses incurred during FY 2017-18 on account of payment termination of the Hedge Contracts</b>		<b>7.18</b>
	<b>Total Hedging Costs Incurred during the Year</b>	<b>28.63</b>	<b>20.29</b>

Keeping in view of above submission made above at 1), 2) & 3) of the Petitioner hereby humbly prays the Hon'ble Commission to allow the actual FERV expenses on actual payments of Principal Foreign Loans (ECB), actual FERV expenses on actual payments of Interests on Foreign Loans (ECB) incurred during FY 2016-17 FY 2017-18 along with the Hedging Costs incurred by the Petitioner during FY 2016-17 & FY 2017-18 as part of Annual Capacity (Fixed) Charges. Such claim is summarized as under:-

<b>Amount in Rs Crores</b>			
<b>Sl.</b>	<b>Particulars</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
<b>1</b>	Actual FERV expenses incurred on the Actual Repayments made during the year (Claimed in the instant Petition)	15.60	45.38
<b>2</b>	Actual FERV expenses incurred on the Actual Interest Payments made during the year (Claimed in instant Reply)	2.42	2.35
<b>3</b>	Hedging Costs net of Settlement Amount received incurred by the Petitioner during the year (Claimed in instant Reply)	28.63	20.29
<b>4</b>	<b>Total</b>	<b>46.66</b>	<b>68.02</b>

The Petitioner hereby humbly prays the Hon'ble Commission to condone the inadvertent oversight in not having claimed FERV on Interest Payment & Hedging Costs earlier and now humbly prays the Hon'ble Commission to allow the same.



**Issue:**

**I. Performance Parameters:**

- xi. With regard to performance parameters, the petitioner is required to file the details of operating parameters actually achieved by its thermal generating units during FY 2016-17 and FY 2017-18.

**Petitioner's Reply to Para xi.**

*Actual Operational Parameters actually achieved by the Petitioner's Plant during FY 2016-17 & FY 2017-18 is attached as **Annexure-10**.*

**Issue:**

**J. Energy Charges:**

- xii. With regard to energy charges claimed in the petition, the petitioner has considered GCV of coal as fired basis for three preceding months.

- **MPERC Tariff Regulation 36.6(a) of MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2015 stipulated that the energy charge rate shall be determined based on weighted average rate of coal as 'received' basis.**
- **MPERC Tariff Regulation 36.6 (b) of the aforesaid Regulations, 2015 provides that "in case of blending of fuel from different sources, the weighted average gross calorific value of primary fuel shall be arrived at in proportion to blending ratio.**

**In view of the above, the petitioner is required to file the weighted average GCV of coal "as received basis" for three preceding months in terms of Regulation 36.6 of the MPERC Tariff Regulations, 2015. The petitioner is also required to file the 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.**

- xiii. **Laboratory test report in support of weighted average GCV of coal "as received basis" be filed in this regard.**

**Petitioner's Reply to Para xii & xiii**

*It is very humbly submitted that the Petitioner while arriving at energy charge has considered weighted average GCV of coal on "As Received Basis" for whole year for FY 2016-17 and for FY 2017-18 the same was considered for April'17 to December '17 as instead of "On Fired Basis" as suggested by Hon'ble Commission. Hon'ble Commission is very respectfully requested to refer Page No.91 & Page No.94 of the instant Petition wherein column named "GCV (Received)" has GCV of 3,779.33 kCal/kg for FY 2016-17 and 3,834.16 kCal/kg for FY 2017-18 which have been used at Page No. 94 to arrive at ECR. For ready reference, the Page Nos.91 & 94 of instant Petition are attached as **Annexure-11**. Laboratory Test Reports of Weighted Average GCV of coal on "As Received Basis" and the invoices from Amelia Coal Mines for generation of energy for making supply to MPPMCL for preceding three months (Dec'15 to Feb '16, since no supply was made from Amelia Coal Mines in March '16) are attached as **Annexure-12 & Annexure-13** respectively.*

**xiv. With regard to details for computation of landed price of coal filed in Form TPS 15 prescribed under MPERC Tariff Regulations, 2015. It is observed that the weighted average rate of coal worked out in TPS 15 is not in line with the rate used while determining the energy charges in the subject petition. The petitioner is required to clarify the aforesaid discrepancy.**

**Petitioner's Reply to Para xiv**

*It is respectfully submitted that during FY 2016-17 & FY 2017-18 the Petitioner has received coal from Amelia Coal Mines (for both PPA & Merchant Generation) & open market and therefore TPS-15 was prepared accordingly. Whereas, for calculation of ECR the weighted average landed price of only coal sourced from Amelia Coal Mines (only for PPA Generation) was considered. To substantiate it further Page No. 90 (TPS-15), Page No. 92 (Calculation of Purchase Price of Coal from Amelia Coal Mine for PPA Generation) and Page No.96 (Coal Purchase Detail during FY 2016-17) of instant Petition are attached as **Annexure-14**. It can be seen that the Petitioner has used data relating to Coal Purchases from Amelia for PPA Generation only from Page No.96 to arrive at Purchase Price of Coal from Amelia Coal Mine for PPA Generation and the same has been used as*

Weighted Average Landed Price of the Primary Fuel in Rs per Kg to arrive at ECR at Page No. 94.

xv. Vide order dated 28<sup>th</sup> January 2016 in SMP No.49 of 2015, the Commission has redetermined Energy Charges for petitioner's power project based on landed price of coal considered para 97 of aforesaid order. It is mentioned in para 89 of said order that the fixed rate of Rs.100/MT shall be subject to escalation as per clause 9.2 of Coal Mine Development and Production Agreement (CMDPA).

In view of the above, the petitioner is required to submit the following:

- a) The month-wise landed price of coal and GCV of coal considered by the petitioner for claiming Energy Charges from the procurer (MPPMCL) during January 2016 to March 2018.
- b) Detailed break-up of various components for arriving at landed price of coal in excel sheet for each month during January 2016 to March 2018 be also submitted.
- c) The copies of bills raised by JPVL to MPPMCL towards Energy Charges during January 2016 to March 2018 be submitted.
- d) Based on above, the landed price of coal claimed in the subject petition be submitted with all cost components.

**Petitioner's Reply to Para xv.**

*Regarding escalation in Fixed Rate of Rs 100/- PMT it is humbly submitted that no escalation in the Fixed Rate has yet been notified by Ministry of Coal.*

**Petitioner's Reply to Para xv (a).**

*Month wise landed price of coal and GCV of coal considered by the Petitioner for claiming Energy Charges from the procurer (MPPMCL) during January 2016 to March 2018 is as under:-*

<b>Month</b>	<b>GCV</b>	<b>Rate Rs Per Kg.</b>
<i>Jan-16</i>	<i>3,665</i>	<i>0.870</i>
<i>Feb-16</i>	<i>3,639</i>	<i>0.868</i>
<i>Mar-16</i>	<i>3,668</i>	<i>0.866</i>

Apr-16	3,865	1.084
May-16	3,858	1.087
Jun-16	3,678	1.105
Jul-16	3,638	1.040
Aug-16	3,587	0.998
Sep-16	3,797	0.995
Oct-16	3,711	1.129
Nov-16	3,654	1.021
Dec-16	3,913	1.023
Jan-17	3,913	1.022
Feb-17	3,913	1.022
Mar-17	3,913	1.022
Apr-17	4,033	1.067
May-17	3,856	1.070
Jun-17	3,796	1.069
Jul-17	3,897	0.623
Aug-17	3,724	0.614
Sep-17	3,715	0.714
Oct-17	3,749	0.671
Nov-17	3,767	0.669
Dec-17	4,144	0.685
Jan-18	4,144	0.694
Feb-18	4,144	0.739
Mar-18	4,144	0.749

**Petitioner’s Reply to Para xv (b) & (d)**

Detailed break up of various components of arriving at landed price of coal from Amelia Coal Mines for PPA Generation for each month during December '15 to March '18 is attached as **Annexure-15**. Landed Cost of Coal arrived in such manner has been used to calculate ECR & Coal Cost as described in Reply to Para xiv for the purpose of Working Capital only. It is further mentioned that the breakup of Coal Cost Considered for Claiming Energy Charges (Passed through Components) from Procurer (MPPMCL) is also given in the same Annexure.

**Petitioner's Reply to Para xv (c)**

*The summary of bills raised from January '16 to March '18 to the Procurer for the supply of electricity is attached as **Annexure-16**. However, copies of electricity bills as are being furnished in a CD attached as **Annexure-16.1**.*

**Issue:**

**K. Secondary Fuel Oil :**

**xvi. The petitioner has filed the detailed calculation for arriving the weighted average rate of secondary fuel oil. On perusal of the aforesaid details, the following is observed:**

**a) The petitioner has worked out the weighted average rate of secondary fuel oil based on LDO / HFO consumption during FY 2016-17 and for FY 2017-18 (till Dec. 2017) and the same has been considered while determining the Energy Charges. As per Regulation 36.6 (a) of MPERC Tariff Regulation, 2015 the weighted average landed price of secondary fuel oil is required.**

**In view of the above, the petitioner is required to file the landed price of secondary fuel oil purchased during three preceding months in accordance with the provisions under the MPERC Tariff Regulations, 2015.**

**b) Supporting documents (Bills / invoices) in respect of price of oil purchased be filed by the petitioner.**

**Petitioner's Reply to Para xvi**

**(a) Petitioner's Reply to Para xvi (a)**

*It is very humbly submitted that the Petitioner has calculated the weighted average rate of secondary fuel based on the receipts of the LDO/HFO during FY 2016-17 & FY 2017-18 (till Dec'17) not on the basis of the consumption as suggested by the Hon'ble Commission.*

*However, weighted average landed price of the secondary fuel for the preceding three months (i.e. January'15 to March'16) is calculated as under:-*

Month	Type of Oil	Quantity	Total Landed Cost	Average Rate/KL
Jan-16	LIGHT DIESEL OIL (LDO)	0.00	-	
Jan-16	HEAVY FUEL OIL (HFO)	0.00	-	
Feb-16	LIGHT DIESEL OIL (LDO)	947.26	<b>2,89,70,125.64</b>	30583.077
Feb-16	HEAVY FUEL OIL (HFO)	1845.35	<b>3,81,37,135.04</b>	20666.613
Mar-16	LIGHT DIESEL OIL (LDO)	0.00	-	
Mar-16	HEAVY FUEL OIL (HFO)	0.00	-	
<b>Total</b>		<b>2792.61</b>	<b>6,71,07,260.68</b>	<b>24,030.30</b>
<b>Weighted Average Landed Price/KL</b>				<b>24,030.30</b>

**Petitioner’s Reply to Para xvi (b)**

*Bills of the Secondary Fuel purchased during the last three months (ie. Jan ’16 to Mar ’16) is attached herewith as **Annexure-17**.*

**Issue:**

**L. Formats:**

xvii. Following formats are either left blank or filled-up partially :

- Format TPS-9A and TPS-9B are not filed as per the formats prescribed under MPERC Tariff Regulations, 2015.
- The petitioner is required to furnish the complete information under form TPS-10.

The petitioner has not furnished any information under format TPS-9C, D, E, F and TPS 14A, TPS-16&17. The petitioner is required to file the reasons for not furnishing the aforesaid information.

**Petitioner’s Reply to Para xvii.**

- *Duly filled up Format TPS 9-A of Regulation, 2015 is being attached herewith as **Annexure-18**. However, since Petitioner’s Plant has still not reached the Fag End of useful life of the Project, the TPS 9-B of Regulation, 2015 is being attached herewith as **Annexure-18.1** by marking them “**Not Applicable**”.*
- *TPS-10 as submitted with Original Petition is complete as at the time of filing Petition. Since the instant Petition is based on actual figures of FY 2016-17, dully filled up Format TPS-9C is being submitted as **Annexure-19**. Since any assets/expenditure*

*which are not allowable are not being claimed in the instant Petition, TPS-9D is not applicable. However, TPS-9E & TPS-9F are being provided as **Annexure-20 & Annexure-20.1** respectively. Since TPS-14A pertains to period upto COD only, TPS-14A was not furnished. No Capital Spares were capitalized as a part of Additional Capitalization, hence TPS-16 also is not applicable.*

## Annexure II

### **Respondent's (MPPMCL) comments on the petition and petitioner's reply on all such comments**

The Respondent No.1, MP Power Management Company Ltd., Jabalpur most respectfully submits as under:

#### **Comment:**

1. That the Petitioner M/s Jaiprakash Power Venture Ltd., Noida , U.P has filed this petition under Section 62 and Section 86(1) (a) of the Electricity Act 2003 read with MPERC (Terms and Conditions of Determination of Generation Tariff) Regulations, 2015 (herein after referred to as the Tariff Regulations 2015), praying for determination of Generation Tariff under the Multi Year Tariff framework for its 2x660 MW Super Critical coal based Thermal Power Station at Nigrie ,District Singrauli, Madhya Pradesh from 01.04.2016 to 31.03.2019.
2. That, the Petitioner, inter-alia, has made following prayers before this Hon'ble Commission :
  - (a) Determine the Generation Tariff of the Project for FY 2016- 17, FY 2017- 18, FY 2018- 19 as claimed in Para 10 in terms of the Additional Capital Expenditure incurred /proposed to be incurred by the Petitioner as enumerated in Paras 6 to 8 of the petition.
  - (b) Allow the recovery of filing fees paid to the Hon'ble Commission and also the publication expenses from the beneficiaries.
3. That, the motion hearing in the matter was held on 05/06/2018 before this Hon'ble Commission, wherein the Hon'ble Commission has admitted the petition and directed the petitioner to serve copies of petition on all Respondents in the matter and report its compliance to the Commission. The respondents in the matter were directed to file their response by 25/06/2018. Further hearing in the matter was held on 17.07.2018 and on request of the answering Respondent, the Hon'ble Commission has allowed respondent to



file response by 6<sup>th</sup> August'2018. Accordingly the answering respondent is filing its response to the petition.

#### **Petitioner's response to para 1 to 3**

*The contents of these paragraphs are formal in nature and matter of record. Therefore, these paragraphs need no rejoinder.*

#### **Comment:**

- 4. That, the averments made by the Petitioner in the present Petition are denied and disputed unless specifically admitted or matter of record. The answering respondent opposes and denies all claims which are unreasonable and those which are not permissible under "Tariff Regulations 2015". The answering Respondent submits that this Hon'ble Commission should conduct a complete prudence check before allowing any claims/costs/expenditures which are claimed by the Petitioner. The answering Respondent submits that the Hon'ble Commission should reject all such claims which are not in accordance with the Tariff Regulations, 2015, for example the Petitioner is seeking about 999 crores which is cost of the coal mine as part of its Tariff. It is submitted that such absurd and illegal claims should be summarily rejected with costs.**

#### **Petitioner's Response**

- 1. The contents of these paragraphs are denied and disputed to the extent the same are not specifically affirmed by the Petitioner.*
- 2. It is respectfully submitted that the expenditure incurred towards procurement of assets inter alia land and infrastructure for Amelia (North) Coal Mine (hereinafter referred to as "**Amelia Mines**") alongwith the cost of obtaining statutory permits / approvals with respect to the same is in nature of capital expense. Such capital expenses had been incurred for procuring assets which were necessary for providing coal to the generating stations of the Project and ought to be allowed by the Ld. Hon'ble Commission.*

Further, it is respectfully submitted that MPPMCL has failed to appreciate that the Petitioner has incurred expenditure by way of Additional Premium on account of acquiring or bringing into existence an asset of an enduring benefit (coal mine) for the generation business. Therefore, the same ought to be approved by the Hon'ble Commission towards capitalization in Amelia Mine. Further, it is noteworthy that the issue regarding expenditure on Amelia Mines on account of Additional Premium on coal supplied is pending adjudication vide Appeal No. 95 of 2016 and Appeal No. 244 of 2017 before the Hon'ble Appellate Tribunal of Electricity ("**Hon'ble Tribunal**"). Further, the Petitioner has also preferred an appeal against the True Up Order wherein the issue regarding additional capitalization of the Amelia Mines is being taken up. It is submitted that the legal basis for the Petitioner's claims have already been detailed in its Petition and the same is not repeated herein for the sake of brevity.

**Comment:**

5. That, the answering respondent submits the following preliminary objections to the Petition:
  - (i) that, as per the provisions of Tariff Regulations 2015, the Approved Capital cost as on 31.03.2016 shall be used as base Capital cost for determination of MYT Tariff for the period FY16-17 to FY 18-19. This Hon'ble Commission, vide order dated 20.07.2018 passed in petition no. 41/2017, determined the True-up tariff for FY 15-16 and determined the final capital cost as on 31.03.2016 as Rs. 10585.56 Crores only. This capital cost determined by this Hon'ble Commissions should have been taken as the base capital cost for determinations of MYT for the period 01.04.16 to 31.3.2019. Whereas, in the subject petition, the petitioner has used the base capital cost as on 31.03.2016 as Rs. 11281.91 Crores as claimed by it in the petition on. 41 Of 2017. It is respectfully submitted that, the order dated 20.07.2018 has already been passed and the capital cost as on 31.3.2016 as Rs. 10585.56 crores has been determined by this Hon'ble Commission and therefore, the petitioner may be directed to file a revised petition considering the base capital cost as

10585.56 crores as on 31.03.2016 and till such time this Hon'ble commission should adjourn the proceedings in the instant petition.

**Petitioner's Response:**

3. *The contents of these paragraphs are denied and disputed to the extent the same are not specifically affirmed by the Petitioner.*
  
4. *It is respectfully submitted that at the time of filing of the instant Petition, i.e. 05.02.2018, the base capital cost as on 31.03.2016 had not been determined by this Hon'ble Commission. In this background, the Petitioner reproduced the capital cost as on 31.03.2016 which was mentioned in the True Up Petition No. 41 of 2017. It was only on 20.07.2018 i.e. after a period of five months from the date of filing the instant Petition, that the Hon'ble Commission issued the True Up Order and admitted the capital cost as on 31.03.2016. Therefore, the determination of the base capital cost as on 31.03.2016 was a subsequent development and could not have been factored in by the Petitioner while filing the instant Petition.*
  
5. *Without prejudice to the following, it is respectfully submitted that the claim of the Petitioner in the instant Petition is based upon additional capital expenditure incurred by the Petitioner upto 31.03.2016 claimed by the petitioner in the True Up Petition No. 41 of 2017. The table comparing the capital cost upto 31.03.2016 admitted by this Hon'ble Commission in the True Up Order and the capital cost claimed by the Petitioner in the present Petition are reproduced herein below for reference:*

Sl. No.	Particulars	In Rs. Crores	
		Col (1)	Col (2)
		Capital Cost as on 31.03.2016 admitted in the True Up Order	Capital Cost upto 31.03.2016 claimed by the Petitioner in
1	Land	37	38.48
2	BTG	4845.30	4,845.30
3	BOP	1599.91	1,850.77
4	Civil	1513.74	1,594.90
<b>5</b>	<b>Total Hard Cost</b>	<b>7995.95</b>	<b>8,329.45</b>

6	Establishment Charges	268.13	268.13
7	Start Up Fuel	221.82	221.82
8	Interest during Constructions (IDC)	2,282.68	2,282.68
9	Interest During Construction (IDC) on Debt Component of Unallocated portion from 03-09-2014 to 20-02-2015	29.69	29.69
10	Foreign Exchange Rate Variation	(91.95)	(91.95)
11	Liquidated Damages	(120.77)	(120.77)
<b>12</b>	<b>Total Soft Costs (6 to 11)</b>	<b>2589.62</b>	<b>2589.62</b>
13	Intangible Assets	-	217.46
14	Cost of ownership of Mining Rights	-	145.39
<b>15</b>	<b>Total Capital Cost (5+12+13+14)</b>	<b>10,585.56</b>	<b>11,281.91</b>

*It is respectfully submitted that the Petitioner, herein, has already preferred an appeal against the True Up Order before the Hon'ble Tribunal challenging, thereby, various disallowances made by this Hon'ble Commission and the capital cost as determined in Col. (1) in the above table. In these circumstances, it is noteworthy that the True Up Order and the capital cost as determined as on 31.03.2016 admitted by the Hon'ble Commission has not attained finality.*

*Therefore, the Petitioner humbly submits that the Ld. Commission ought to proceed on the basis of the capital cost as claimed by the Petitioner in the instant Petition which is also reproduced in Col. (2) of the aforementioned table.*

**Comment:**

- (ii) that, JPVL, (the Petitioner) has filed an appeal no. 244/2017 before Hon'ble APTEL challenging the order dated 24.05.2017 passed by this Hon'ble Commission in petition no. 72 /2015 in the matter of determination of tariff for FY 14-15 & FY 15-16 ,which is pending before Hon'ble APTEL. This pendency of the Appeal may please be considered while determining the Tariff.
- (iii) That, JPVL in this Petition has claimed Capital Expenditure of Rs.999.75 Cr. towards expenditure on Amelia coal mine & cost of ownership of Amelia coal

mine, which is not admissible under the provisions of Tariff Regulations 2015. The claim of Capital expenditure on Coal mines has already been disallowed by this Hon'ble Commission vide order dated 24.05.2017 passed in Petition No. 72 /2015 for determination of final tariff for FY 14-15 to FY 15-16. The answering respondent reiterate the submission made vide its reply dated 24.02.2016 filed in Petition No. 72/2015. The copy of the reply dated 24.02.2016 is attached as Annexure-1

- (iv) The petitioner, despite of disallowance of Capital Expenditure on Coal Mines again claimed the same in petition No.41/2017 for true up of tariff for FY 15-16. The answering respondent in the reply dated 9.02.2018 filed in the aforesaid petition strongly opposes the claim and request this Hon'ble commission to disallow the entire claim towards Coal Mines. The copy of the reply dated 9.02.2018 is attached as Annexure-2
- (v) This Hon'ble Commission vide order dated 20.07.2018 disallowed the cost claimed towards Coal Mines and therefore it is reiterated that no cost towards expenditure on coal mines shall be allowed as the same has been rejected twice by this Hon'ble Commission.

#### **Petitioner's response**

- 6. *The contents of these paragraphs are denied and disputed to the extent the same are not specifically affirmed by the Petitioner.*
- 7. *MPPMCL has stated that the claim regarding capital expenditure has been disallowed by this Hon'ble Commission vide Petition No. 41 of 2017 and therefore, the Petitioner cannot raise a claim in this respect. It is respectfully submitted that the claim regarding capital expenditure in the Amelia Mines is well within the terms of the Tariff Regulations, 2015. Moreover, it may also be appreciated that the Petitioner herein has preferred an appeal against the True Up Order before the Hon'ble Tribunal. In these circumstances, the True Up Order, where the Hon'ble Commission has disallowed the expenses on account of additional capital expenditure in Amelia Mines, have not attained finality.*

*In addition to the foregoing, the issue raised in these paragraphs by MPPMCL are also addressed in **Reply to Para 4** of the present Rejoinder. The Petitioner adopts the grounds mentioned therein and does not repeat the same for the sake of brevity.*

**Comment:**

- (vi) That, the admitted project Capital cost up-to 31.03.2015 is Rs. 10564.80 Crs. which is approx. Rs. 8.00 Cr. /MW and very high in comparison to CERC notified Bench Mark Hard Capital cost of Rs. 5.01Cr. Therefore, no additional capital cost may kindly be allowed and the Hon'ble Commission ought to keep the capital cost less than Rs. 5 crores per MW as per the CERC norms.

**Petitioner's Response**

8. *The contents of these paragraphs are denied and disputed to the extent the same are not specifically affirmed by the Petitioner.*
9. *It is respectfully submitted that the Petitioner has already submitted in detail the reasons for incurring capital expenditure under the various heads in the instant Petition and the Hon'ble Commission may refer to the same. However, MPPMCL has declared that the capital cost upto 31.03.2015 is higher than the notified benchmark hard capital cost notified by the Hon'ble Central Electricity Regulatory Commission ("**Hon'ble Central Commission**") and on this basis, no additional capitalization may be permitted by this Hon'ble Commission.*
10. *It is respectfully submitted that the Hon'ble Commission had admitted the capital cost of the Project as on 31.03.2015 vide order dated 24.05.2017 passed in Petition No.72 of 2015 only after having carried out prudence check according to the applicable provisions of the Tariff Regulations. It may be noted that the Respondent had not contested such capital cost approved by the Hon'ble Commission. It may further be acknowledged that the Hon'ble Commission determined Capital Cost of the Project upto 31.03.2016vide True Up Order dated 20-07-2018 in Petition No.41/2017 and it is noteworthy that the Respondent No. 1 did not raise the issue*

of benchmark cost during the True Up proceedings. In these circumstances, the Respondent No. 1 cannot be allowed to agitate this issue in the present proceedings.

In view of above, it is respectfully submitted that the Capital Cost (Hard Cost) of the Project is well within the benchmark norms specified by the Hon'ble Central Commission, even after factoring in the additional capitalization in the Project. In these circumstances, the Hon'ble Commission ought to allow the additional capital expenditure as claimed by the Petitioner herein.

**Comment:**

(vii) That, the petitioner has claimed Rs. 330.14 Cr. & Rs.257.31 Cr. as Additional Capitalization during FY 16-17 and FY 17-18 respectively, but not submitted the Audited Accounts for FY 17-18 and therefore the same cannot be allowed.

**Petitioner's Response**

The contents of these paragraphs are denied and disputed to the extent the same are not specifically affirmed by the Petitioner.

It is respectfully submitted that the Petitioner had filed the present Petition on 05.02.2018 and in such a circumstance, could not have submitted the Audited Annual Accounts for FY 2017-18. Moreover, the Petitioner has categorically mentioned that the details of additional capital cost pertaining to FY 2017-18 are "proposed" and not actual. It is noteworthy that the same is subject to be trued up against the order to be passed in the instant Petition. Hence, the submission of MPPMCL on this issue ought to be set aside.

**Comment:**

(viii) That, the petitioner has claimed capacity charges against GoMP concessional power share by claiming 32.43%. AFC on MPPMCL instead of MPPMCL share of 30%, which is not admissible and cannot be allowed.

### **Petitioner's Response**

11. *The contents of these paragraphs are denied and disputed to the extent the same are not specifically affirmed by the Petitioner.*
12. *It is respectfully submitted that 7.5% of the power is being supplied to the State of Madhya Pradesh on energy charges only. Such supply is in the nature of concession to the State of Madhya Pradesh in which the Appellant has been allowed to setup the thermal power plant and therefore, necessarily forms part of the operational cost of the generating station and must be allowed as capacity charges. It is submitted that MPPMCL has failed to take into account the fact that the State of Madhya Pradesh is being offered 7.5% of contracted capacity under the PPA dated 06.09.2011, to ensure that the host state is given the benefit of electricity generated from the Project, which is operating within its jurisdiction.*
13. *It is humbly submitted that MPPMCL has failed to appreciate that the Petitioner is entitled to a complete pass through of the expenses incurred in operating the Project as per Sections 61 and 62 of the Electricity Act, 2003 and various regulations issued by this Hon'ble Commission. Furthermore, the claim of the Petitioner with respect to capacity charges on 32.43% contracted capacity is also in line with the National Electricity Policy and National Tariff Policy.*
14. *It is respectfully submitted that the Petitioner is supplying 7.5% of the power generated to the State of Madhya Pradesh only on energy charges. Therefore, the Appellant must recover the expenses on operating the Project from the Procurers obtaining 92.5% of the remaining power. In these circumstances, the Respondent No. 2, being the beneficiary of the 30% contracted capacity, ought to pay the pro-rated expenses in operating the Project accordingly.*
15. *In light of the above, it is respectfully submitted that the Petitioner is entitled to recover the expenses incurred in operating the project under the extant regulatory framework and to this extant the claim of the Petitioner for capacity charges for 32.43% of the contracted capacity is valid and ought to be allowed.*



*Without prejudice to the foregoing, it is respectfully submitted that the Petitioner has already challenged the issue of non-consideration of capacity charges on 32.43% of contracted capacity before the Hon'ble Tribunal vide Appeal No. 244 of 2017 and that the same is pending adjudication. Therefore, any outcome in those proceedings will necessary be binding on the present Petition in so far as the issue regarding capacity charges on 32.43% contracted capacity is concerned*

**6. Para-wise Comments and its Reply:**

**Comment:**

**(A) Para 1 to 3 – Matter of record hence no comments.**

**(B) Para 4.1(a) to 4.1(w) are matter of record, however all averments made by petitioner in addition to the records are specifically denied.**

**Petitioner's response**

*The contents of these paragraphs are denied and disputed to the extent the same are not specifically affirmed by the Petitioner.*

**Comment:**

**(C) Para 4.1(x) to 4.1(y) –The para 4.1(x) is a matter of record, however the answering respondent reiterate its reply dated 9.2.2018 submitted in petition no. 41 /2017 and denies and opposes all additional capital claim including claim towards Amelia Mines during FY 15-16, as the claims are not maintainable under provisions of Tariff Regulations 2015 and this Hon'ble Commission vide order dated 20.07.2018 has already disallowed the same.**

**Petitioner's Response**

*The contents of these paragraphs are denied and disputed to the extent the same are not specifically affirmed by the Petitioner. The reply to contents of this paragraph are dealt with under **Reply to Para 4** of this Rejoinder and are not repeated for the sake of brevity.*

**Comment:**

- (D) Para 5.1 to 5.2 – The petitioner has claimed additional capital expenditure of Rs. 174.15 Crs and Rs. 155.99 Crs. during FY 2016-17 on Generating station and Amelia Mines respectively. The answering respondent denies and opposes all additional capital expenditure claims including claim towards Amelia Mines during FY 16-17 unless specifically admitted, as the claims are not maintainable under the provisions of Tariff Regulations 2015.

**Petitioner's response**

*The contents of these paragraphs are denied and disputed to the extent of the same are not specifically affirmed by the Petitioner. It is respectfully submitted that the additional capital expenditure claims with respect to the generating station is covered by Regulation 20 of the Tariff Regulations and is therefore, maintainable. Furthermore, the reply to contents of this paragraph to the extent of Amelia Mines are dealt with under **Reply to Para 4** of this Rejoinder and are not repeated for the sake of brevity.*

**Comment:**

- (E) Para 5.3 to 5.5 – The petitioner has proposed additional capital expenditure of Rs. 109.53 Crs and Rs. 147.78 Crs. During FY 2017-18 on Generating station and Amelia Mines respectively. The petitioner has not submitted audited account for FY 2017-18 and therefore the capital expenditure can't be allowed. The answering respondent denies and opposes all additional capital expenditure claims including claim towards Amelia Mines during FY 17-18 unless specifically admitted, as the claims are not maintainable under the provisions of Tariff Regulations 2015.

**Petitioner's Response**

*The contents of these paragraphs are denied and disputed to the extent the same are not specifically affirmed by the Petitioner.*

*The reply to contents of this paragraph with respect of non-submission of Audited Annual Accounts for FY 2017-18 are already dealt with under **Reply to Para 5 (vii)** of this Rejoinder and are not repeated for the sake of brevity. Further, it is reiterated that the*

claims of the Petitioner on account of additional capital expenditure in the generating station is covered by Regulation 20 of the Tariff Regulations and ought to be allowed by the Hon'ble Commission. In addition, the reply to the contents of this paragraph with respect of additional capitalization in the Amelia Mines are already dealt with under **Reply to Para 4** and are not repeated for the sake of brevity.

**Comment:**

(F) **Para 6.1 - The petitioner has claimed additional capital expenditure of Rs. 0.01 Crs. towards land tax to panchayat which is not admissible under provisions of Regulations 2015. The petitioner further claimed expenditure of Rs. 172.25 Crs. towards addition on account of BTG equipment's incurred in FY 2014-15 but paid in FY 2016-17, which does not appear to be within the Original scope of work and therefore denied. It is respectfully prayed to the Hon'ble Commission that may prudently check it and pass appropriate orders and if required disallow the same. The petitioner has claimed expenditure of Rs. 5.6 Crs. towards addition on account of BOP equipment's which does not appear to be within the Original scope of work and therefore denied. It is respectfully prayed to the Hon'ble Commission that may prudently check it and pass appropriate orders and if required disallow the same.**

**Petitioner's Response**

*The contents of these paragraphs are denied and disputed to the extent the same are not specifically affirmed by the Petitioner.*

*It is respectfully submitted that the land tax paid to the Panchayat is an additional cost that is incurred by virtue of the Project land and is intrinsically linked to it. Therefore, the claim of the Petitioner ought to be allowed by the Hon'ble Commission towards capitalization of the cost of Project land.*

*It is respectfully submitted that the additional capital expenditure incurred by the Petitioner on account of BTG and BOP equipment is within the Original Scope of Work and covered by Regulation 20 of the Tariff Regulations. It may be noted that out of the total addition of INR 174.15 Crores in the Generating Station of the Project, most of the works were*

executed during FY 2014-15 which totalled around INR 172.00 Crores and only minor works were carried out during FY 2015-16 and FY 2016-17. However, the bills for all such works were paid during FY 2016-17. In these circumstances, the said expenditure was capitalized during FY 2016-17 which is within the prescribed cut-off date.

Therefore, the expenditure claimed by the Petitioner on the foregoing accounts ought to be allowed by the Hon'ble Commission.

**Comment:**

**(G) Para 6.3, 6.4 7.2, 8.1and 8.2 –No expenditure on Amelia mines is admissible under Capital Cost of the Power Station as per provisions of “Tariff Regulations 2015”. The answering respondent has already opposed the same in its reply dated 24.02.2016 filed in Petition No. 72/2015 and also in reply dated 9.02.2018 filed in petition no.41/2017. The claim of Capital expenditure on Coal mines has already been disallowed by this Hon'ble Commission vide order dated 24.05.2017 passed in Petition No. 72 /2015 in the matter of determination of final tariff for FY 14-15 to FY 15-16 and also vide order dated 20.07.2018 passed in petition no. 41 of 2017. The answering respondent reiterate the submission made vide its reply dated 24.02.2016 filed in Petition No. 72/2015 and reply dated 9.02.2018 filed in petition no. 41 /2017. The petitioner, despite of disallowance of Capital Expenditure on Coal Mines by the Hon'ble Commission, again claimed the same in petition No.41/2017 for true up of tariff for FY 15-16.The answering respondent in the reply dated 9.02.2018 filed in the aforesaid petition strongly opposes the claim and request this Hon'ble commission to disallow the entire claim towards Coal Mines. Therefore, it is respectfully prayed to the Hon'ble Commission that no expenditure on Amelia Coal mine shall be considered as a part of project Capital cost.**

### **Petitioner's Response**

*The contents of this paragraph are denied and disputed to the extent the same are not specifically affirmed by the Petitioner. The reply to contents of these paragraphs are dealt with under **Reply to Para 4** of this Rejoinder and are not repeated for the sake of brevity.*

### **Comment:**

**(H) Para 7.1 –the Petitioner has proposed expenditure of Rs. 7.78Cr, Rs. 82.88 Crs. & Rs. 18.87 Cr. towards additional capital expenditure on BTG equipment, BOP equipment and on civil works respectively during FY 17-18. The petitioner has not submitted audited account for FY 17-18 and only on this ground, the expenditure cannot be allowed. Further, it appears that the aforesaid expenditure are not the part of original scope of work and therefore not to be considered.**

### **Petitioner's Response**

*The contents of this paragraph are denied and disputed to the extent the same are not specifically affirmed by the Petitioner.*

*It is respectfully submitted that the additional capital expenditure on account of civil works, BTG and BOP equipment, proposed to be incurred by the Petitioner, is within the Original Scope of Work. Therefore, the claim of the Petitioner on the foregoing accounts ought to be allowed by the Hon'ble Commission as the same is covered by the provisions in Regulation 20 of the Tariff Regulation.*

*Furthermore, the reply to contents of this paragraph with respect of non-submission of Audited Annual Accounts for FY 2017-18 are dealt with under **Reply to Para 5 (vii)** of this Rejoinder and are not repeated for the sake of brevity.*

### **Comment:**

**(I) Para 9.1, 9.2 & 10 – The additional capital cost claimed by the petitioner is not admissible under the provisions of Tariff Regulations 2015 and therefore not admissible.**

- (J) Para 14 - In view of the aforesaid submissions , the additional capital cost claimed by the petitioner for FY 2016-17, FY 2017-18 & FY 2018-19 is not admissible under the provisions of “Tariff Regulations 2015” and therefore it is respectfully prayed to the Hon’ble Commission that not to allow any additional capital cost to the Petitioner for FY 2016-17, FY 2017-18 & FY 2018-19 .

### **Petitioner’s Response**

*The contents of this paragraph are denied and disputed to the extent the same are not specifically affirmed by the Petitioner. It is respectfully submitted that the claim of the Petitioner is well within the terms of the Tariff Regulations as detailed above in various paragraphs of the present Rejoinder. The Petitioner reiterates its submissions in the Petition and is not repeating the same for the sake of brevity. In view of above, the claim of the Petitioner ought to be allowed by the Hon’ble Commission.*

### **Comment:**

**In view of the above and without prejudice, it is respectfully submitted that, the order dated 20.07.2018 has already been passed and the capital cost as on 31.3.2016 as Rs. 10585.56 crores has been determined by this Hon’ble Commission and therefore, the petitioner may be directed to file a revised petition considering the base capital cost as 10585.56 crores as on 31.03.2016 instead of Rs. 11281.91 crores taken by the Petitioner and therefore the instant petition be dismissed.**

### **Petitioner’s response:**

*The contents of this paragraph are denied and disputed to the extent the same are not specifically affirmed by the Petitioner.*

*It is respectfully submitted that the capital cost as on 31.03.2016 determined by this Hon’ble Commission in the True Up Order has not attained finality in view of the appeal preferred by the Petitioner, herein, before the Hon’ble Tribunal. Therefore, reference to the capital cost of INR 10585.86 Crores by MPPMCL as determined in the True Up Order does not hold. It is reiterated that the Hon’ble Commission ought to allow the Petitioner to*

*proceed with the capital cost as mentioned in the instant Petition being INR 11,281.91 Crores.*

*It is respectfully submitted that the instant Petition is bonafide in nature and under the settled position of law, the Hon'ble Commission ought to allow the revenue requirements of the Petitioner under various heads.*

*In view of the aforesaid, it is respectfully submitted that the Reply filed by MPPMCL is without any merits and that the Petition filed by the Petitioner deserves to be allowed by the Hon'ble Commission.*

### Annexure III

#### Stakeholder comments on the petition and petitioner's reply on all such comments

##### Comment:

1. Hon'ble Commission carried out hearing against this petition no 07/2018 on 28<sup>th</sup> August' 2018 and passed the order dated 31<sup>st</sup> August 2018 and fixed the public hearing on 09/10/2018. The public notice for public hearing was required to be issued only in compliance of the Hon'ble Commission order i.e., after 31<sup>st</sup> August' 2018.

However, your good self has issued the public notice no. MPERC/D (T) 2018/1187 dated 25/8/2018 on your website. This notice gives time up to 15/9/2018, from public side to submit objections to become eligible to be heard.

It can be seen from above that date of public notice is even earlier than date of hearing and date of issue of order by Hon'ble Commission in which the date of public hearing was fixed. We have visited the MPERC website dated 4/9/2018 and this notice dated 25.9.2018 was not visible on website. We have not seen the publication of this notice in any heading. news papers on 25.8.2018 or thereafter.....This act on the part of your office, has reduced the time of 21 days, allowed to public participant to file objections considerably into few days only.

It can be said that the act mentioned above is against public interest.

There were some irregularities before also like:

We have studied the recent order dated 12/07/2018 which says that public notice was published on 5/6/2018 and public hearing was scheduled on 10/7/2018. Total time allowed was 36 days but none of stakeholders from public side appeared on date 10/7/2018. No further public hearing was conducted and order was issued.

Hon'ble Commission passed daily order on 10<sup>th</sup> July'2018 against petition No. 11/2018. There was mention of date of public hearing as 7/8/2018 even when certain documents were to be filed by petitioner and Respondent. However, undated public notice posted on MPERC Website for conducting public Hearing on 7/8/2018. This



illegality made the whole process of public hearing as illegal and hence against public interest. No public notice was traceable on paper.

There seems some problem in the system of MPERC Bhopal conducting public hearing because public response is negligible /nil and orders are being passed without participation of public. The second public hearing is also not ordered.

### **Petitioner's Response**

*The contents of these paragraphs are denied and disputed to the extent the same are not specifically affirmed by the Petitioner.*

*In the introductory paragraphs of the Submission, JPCFT has averred that the notice for public hearing was required to be issued only in compliance of the daily order dated 31.08.2018 passed by the Hon'ble Commission and that the time granted to tender comments on the instant petition was reduced by this Hon'ble Commission. It is respectfully submitted that there is no basis for such a submission. The applicable framework and events in this background may kindly be appreciated. It is respectfully submitted that the liability of publishing the public notice as approved by this Hon'ble Commission is upon the Petitioner herein. Accordingly, upon receipt of the approved public notice from this Hon'ble Commission, the Petitioner caused its prompt publication in two English dailies, namely, Times of India: Bhopal and Times of India: Indore and two Hindi dailies: Dainik Jagran: Rewa and Dainik Jagran: Bhopal on 04.09.2018. Therefore, the assertion by JPCFT that it did not come across the publication of the notice after 25.08.2018 is an error apparent on the face of record and is liable to be dismissed. The said public notices as published in the aforementioned English and Hindi dailies are annexed herewith and marked as **Annexure P/ 1**.*

*Furthermore, it is respectfully submitted that the period of 21 days granted in the public notice commences from the date of publication thereof which is 04.09.2018 in the present case. In view of the foregoing, interested persons were allowed time till 25.09.2018 to tender their comments on the instant petition. Therefore, JPCFT has erroneously proceeded by considering the commencement of the time period in the public notice from 25.08.2018 and asserting that interested persons had reduced time to tender their*

comments. Moreover, it may be noted that the public hearing in the instant proceeding is fixed on 09.10.2018. In view of above, it is respectfully submitted that the time period of 21 days is, therefore, reasonable and may not be disputed by JPCFT.

Moreover, the particulars regarding processes in other matters before the Hon'ble Commission are not relevant to the instant proceedings and are misleading in nature.

JPCFT has also submitted that it has been supplied with the copy of the main petition only and has requested for copies of other documents related to the petition which have not been made part of the public hearing. It is respectfully submitted that the public notice only allows a person interested in public hearing to obtain copy of the main petition. Therefore, this Hon'ble Commission is under no obligation to supply to JPCFT copy of any other document related to the instant proceedings other than the copy of the main petition.

**Comment:**

2. With the filing of petition no 07/2018, all previous orders passed by Hon'ble Commission Section 151 of code of Civil Procedure 1908 also states as follows:

***Saving of Inherent powers of Court – Nothing in this code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the needs of justice or to prevent abuse of the process of the court.***

Hence our submission, that all the previous orders passed by the Hon'ble Commission to link this petitioner company power plant with Electricity Act 2003 are null and void and may kindly be withdrawn. All these previous orders may kindly be reconsidered looking into the content of the submission.

**Petitioner's Response**

*The contents of these paragraphs are denied and disputed as they are not relevant to the instant proceedings and are misleading in nature.*

*It may be noted that the scope of the Submissions ought to have been limited to the issues relevant to the instant proceedings. The law is well settled that orders passed by the Hon'ble Commission attain finality to the extent that they are not reviewed or appealed*

within the time period prescribed under the Electricity Act, 2003 or the applicable regulations. Therefore, any submissions made in the instant proceedings cannot lead to reconsideration of issues already decided and settled by the Hon'ble Commission in other proceedings.

**Comment:**

3. The petitioner has claimed that it is a generating company within the meaning of section 2 (28) of electricity Act 2003. We shall submit that petitioner company unit Jaypee Nigrie signed MOU with Govt of MP to put up this power plant as industry and Electricity Act 2003 is not applicable on it.
4. Hon'ble APTEL in its order dated 6<sup>th</sup> May' 2010 against OA no.44/2010 has ruled as follows vide para No 61 of order regarding all the power plants including petitioner, established in M.P. as industry through MOU route.  
“ the state govt has retained the option to take the power under the MOU. If the rate to be worked out as proposal rate in MOU is cheaper than Rs. 2.45/Kwh and if it is costlier, there is an option provided not to take power. The above decision has been taken in the interest of State.
5. Hence this para 61 of the order APTEL was the binding condition applicable on all the MOUs signed by all the companies. This order of APTEL does not allow the petitioner to sign illegal PPAs with Respondents and to file the petition before Hon'ble MPERC, Bhopal under Section 62 and 86(1) of Act 2003.
6. Hon'ble APTEL fixes an upper ceiling of Rs. 2.45 per unit for the non concessional power to be taken by Govt of MP. Hon'ble APTEL never allowed MPERC Bhopal to fix the tariff of all these companies including petitioner who signed MOU under any provision of the Act 2003.

**Petitioner's response:**

*The contents of this paragraph are denied and disputed as they are not relevant to the instant proceedings and are false, baseless and an attempt to mislead this Hon'ble Commission.*

*It is respectfully submitted that the Project set up by the Petitioner is a generating station within the meaning of the Act. Therefore, the Act is squarely applicable on the Project and the supply of electricity therefrom. By questioning the applicability of the Act on the Project, JPCFT is challenging the propriety and authority of the Hon'ble Commission to determine the generation tariff of the Project and the same ought to be dismissed by this Hon'ble Commission.*

*It is respectfully submitted that the Petitioner and the State have entered into validly subsisting and binding contracts with respect to the Project. JPCFT cannot be allowed to question the propriety of the same by making a sweeping statement that the same is "illegal". Further, any and all issues raised in these paragraphs with respect to power projects developed by other developers situated in the State and have no bearing on the present proceeding and ought to be dismissed by the Hon'ble Commission.*

*It is respectfully submitted that the Petitioner has already tendered in its reply with respect to the reliance placed by JPCFT on the order of Hon'ble Tribunal in Para F of the Preliminary Submissions herein and the same is not being repeated for sake of brevity.*

*It is respectfully submitted that under the extant statutory framework this Hon'ble Commission is mandated to determine the tariff under Section 62 of the Act. The Petitioner has, thus, filed the present Petition for the sole purpose of determining the generation tariff of the Project under multiyear framework and the scope of the instant proceedings is limited to that extent. Pursuant to the aforesaid approach, it is respectfully submitted that this Hon'ble Commission has previously determined the generation tariff of the Project vide order dated 24.05.2017 passed in Petition No. 72 of 2015 and trued up the same vide order dated 20.07.2018 passed in Petition No. 41 of 2017. In view of the aforementioned, it is respectfully submitted that JPCFT's submissions may kindly be rejected by this Hon'ble Commission.*

**Comment:**

- 7. Government of M.P. after conducting the study of long term power requirement of power in the year 2005, decided that this requirement for M.P was less than 2000 MW. Hence, the tender was floated under section 63 of**

electricity Act 2003, in the year 2005 to purchase 2000 MW, on long term basis.

8. Government of India also planned Sasan Power Ltd.(UMPP) in the year 2006 and M.P. was to get nearly 1500 MW power allocation from this plant. Hence long term power requirement of state reduced to only 500 MW, in the beginning of 2006 against which the tender to purchase 2000 MW was already in process.
9. Govt. of M.P., knowing fully well in the year 2006, that there is no long term power requirement in M.P. and not allowed to purchase any power under section 62 of electricity act 2003, as per directive issued by MoP in the year 2006.
10. Govt. of M.P, formed the industrial policy and passed it on dated 5/12/2006, to put up power generating plant as industries and nominated agency of Govt. Of M.P., was entitled to get minimum 5% power at concessional rate (only variable charges). Under this pretext, cheap land, allocation of water etc was to be done. The projects were being installed as industrial project. This whole exercise, later provided to be the part of the coal scam, which CBI is investigating.
11. Govt. of M.P., signing the MOUs with these companies including petitioner, made them eligible illegally to apply for coal block and get subsidized coal from Coal India and hence maximizing their profit by getting cheap coal.
12. Financial Institutions were not willing to provide the loan to these companies due to risk and hence Govt. of M.P. inserted the clause in MOU & later in IA, which states as follows:

GoMP or its nominated agency has the first right to purchase power from the project, up to 30% of the installed capacity over a period of 20 years at a tariff to be determined by the Hon'ble Commission.

These companies shows this clause to financial institutions and get the loan sanctioned. The cost of project was shown as nearly Rs. 4.50 Crores per MW and tariff was shown as Rs. 2.45 per Unit, on which it was said that project was viable. Once, the loan was sanctioned, the cost of project were increased by nearly 50% by

almost all the companies including petitioner.

13. The petitioner raised nearly 1500.00 Crores through IPO in the year 2008, from capital market, on the basis of above. The study shows that nearly all the companies, who signed MOU & IA, raised huge amount of money from capital market.

#### **Petitioner's response**

*The contents of these paragraphs are denied and disputed. It is submitted that averments in these paragraphs are not relevant to the instant proceedings and are misleading in nature.*

*It is respectfully submitted that JPCFT has made averments which have no bearing on the instant petition which has been filed for the sole purpose of determining the generation tariff of the Project under multiyear framework and the scope of the proceeding is limited to that extent. In addition, the petitioner has made sweeping statements without providing a shred of evidence and the same ought to be rejected by this Hon'ble Commission.*

#### **Comment:**

14. Petitioner has listed the under the heading Relevant Facts (page no. 6-14) and our submission is as follows:

We submit that petitioner power plant is set up as industry in response to MOU & IA and hence does not comes under Electricity Act 2003. This is evident from the fact that, in exercise of powers conferred under section 3(3) of Electricity Act 2003, the Central Govt. notified the reversed tariff policy on dated 6<sup>th</sup> January' 2006. There was no requirement/demand of long term power in M.P. at the time of signing of MOU & IA and further even then the MOU & IA signed were violative of Central Govt. policy dated 6<sup>th</sup> january' 2006 and hence Electricity Act, 2003.

Petitioner claims that MPSMCL allotted coal blocks of Amelia (North) and Dongri Tal-ii, to it. This allocation necessitated the planning of this power plant. This establishes that petitioner's power plant has nothing to do with Electricity Act 2003. This was the greed of petitioner to generate electricity with cheaper coal and make

huge profits by selling it in open market as merchant power. Petitioner, was keen to adopt the success story of Jindal Steel & power, which was earning huge profit, by selling power generated with cheap coal, in open market at very high prices.

The petitioner signed MOU on dated 16/1/2007 to utilize this coal and hence to set up the industry to generated 500 MW power. The capacity of plant was enhanced to 1320 MW subsequently, by amendment in MOU dated 8/12/2017 and 27/3/2008. The capacity of this power plant was enhanced, as done for industry, and demand forecast of Govt. of M.P. was not considered. Hence, this enhancement of capacity was not permissible as per provisions of Electricity Act 2003. These MOUs were signed to use captive coal mines allotted by MPSMCL and were not covered under Electricity Act 2003, because at that time Govt. of M.P. was not having any long term power requirement.

Petitioner signed the Implementation agreement with Govt. of M.P. on dated 12/12/2007 which was subsequently amended on 27/3/2008. This IA was the commercial contract signed between two parties. There was no requirement of long term power by Govt. of M.P. while signing this IA. Hon'ble Commission did not give any approval to this IA and hence this IA was not having any relationship with Electricity Act 2003 and violative of the Central Govt notified policy regarding the revised a Tariff policy on dated 6<sup>th</sup> January' 2006.

The companies including this petitioner company, were facing problems from financial institutions to get loan, because there was no arrangement of selling of final product (electricity) of these industries. Govt of M.P. officers ileegally made the provision in IA that GoMP or its nominated agency has the first right to purchase power from the project, up to 30% of the installed capacity over a period of 20 years at a tariff to be determined by Hon'ble MPERC. GoMP officers has no power to define the role of MPERC while violating Electricity Act 2003. It was out of Jurisdiction of MPERC Bhopal. Hon'ble APTEL in its order dated 6<sup>th</sup> May' 2010, has fixed the upper ceiling of Rs. 2.45 per Unit for supplying the power and did not allow MPERC Bhopal to decide the tariff under Electricity Act 2003.

**This was the big conspiracy by which loan was taken from financial institutions by various companies including petitioner to install thermal power plants as industry. GoMP officers were knowing well that there is no requirement of power in M.P. and the thermal power plant can not allowed to installed under electricity act 2003.**

**We are agreed that pursuant the terms of the MOU and IA, the petitioner set up this project as industry and not under Electricity Act 2003. The petitioner was also not interested to supply the power under Electricity Act 2003 from this power plant and hence did not sign the PPA on dated 27/3/2008 it self and signed the IA only which was in violation of MoP Notification dated 6<sup>th</sup> january' 2006. The IA and Hon'ble APTEL order dated 6<sup>th</sup> May' 2010 clearly define the power supply to be made to procurers. There was no long term power requirement in M.P. and all the power, if purchased from these plants by Govt. of M.P. at the rates lower than Rs. 2.45 per unit, were to become surplus power and were to be sold outside M.P.**

**In the year 2010, petitioner and Respondent No 1, entered in to criminal conspiracy against public interest. They signed PPA even when it was illegal. IA was in existant and this PPA was signed to bring petitioner this power plant under Electricity Act 2003. The PPA signed on dated 5/1/2011 to supply 30% of installed capacity of the project to the Respondent No 1. Is illegal.**

**There was no need to sign PPA dated 6/9/2011, because this was already the part of MOU & IA.**

**Petitioner power plant is installed as per MOU & IA. The concern shown in these paras has nothing to do with Hon'ble Commission and respondent.**

**This is the business decision of petitioner and increase in coal prices will not affect Respondent, because, the prices of power is already fixed maximum at Rs. 2.45 per unit as per Hon'ble APTEL order.**

**The filing of petition No. 72 of 2015 was illegal and all the decisions taken by**



**Hon'ble Commission on this petition are without jurisdiction.**

**No Comment**

**All the details mentioned in these paras are irrelevant because the the tariff fixation of petitioner power plant does not come under Electricity Act 2003.**

**Petitioner's response**

*The contents of these paragraphs are denied and disputed as they are misleading in nature.*

*It is respectfully submitted that the Petitioner has already dealt with the the submissions with respect to the applicability of the Act on the Project, the legality of the PPA as well as the jurisdiction of this Hon'ble Commission regarding tariff fixation for the Project under **Reply to Paras 2 to 5 on Page 3** of this Rejoinder and the same is not repeated for the sake of brevity.*

*Further, the issues qua the requirement / demand of long-term power in Madhya Pradesh and the need for signing, including the validity, of the Memorandum of Understanding dated 16.01.2017 ("**MoU**") and Implementation Agreement dated 12.12.2017 ("**I.A.**") are outside the scope of the present proceedings which relates to determination of generation tariff of the Project under multiyear framework. The Government of Madhya Pradesh and the Petitioner entered into the MoU to initiate the process for setting up the Project. Clause 25 of the MoU limited its term to a period of one year from the date of its signing and further stated that the MoU would be replaced by an I.A. during the validity of the MoU. In these circumstances, the Government of Madhya Pradesh and the Petitioner subsequently entered into the I.A. and a PPA thereafter. The Petitioner has merely reiterated this background in the copy of the main Petition to lay down the facts leading upto the filing of the Petition.*

*It may be noted that the State of Madhya Pradesh ("**State**") was facing power scarcity and entering into PPAs was the need of the hour to encourage capacity addition at that time. It is respectfully submitted that the Project of the Petitioner has only contributed towards*

*eliminating the issue of power shortage in the State by virtue of its Project. Therefore, the submissions in respect of the foregoing ought to be rejected by this Hon'ble Commission.*

*It is significant that JPCFT has alleged that the Petitioner along with Government of Madhya Pradesh had conspired to secure financing for the thermal generating stations, including the Project of the Petitioner. It is respectfully submitted that the allegation is frivolous, unsubstantiated and misleading. JPCFT has made these sweeping averments without bringing forward a shred of evidence. The Petitioner takes strong umbrage of the averments made in these paragraphs wherein JPCFT has made irresponsible and slanderous averments against the Petitioner which have no bearing to the instant Petition whose scope is limited to determination of generation tariff of the Project under multiyear framework.*

*Furthermore, JPCFT has questioned the judicial propriety of this Hon'ble Commission by stating that it was not authorized to determine the tariff for the Petitioner's Project. It is respectfully submitted that the Hon'ble Commission was authorized to determine the tariff of the Project as contemplated in the PPA and in doing so, was fulfilling its mandate under Section 62 of the Act.*

*Therefore, it is respectfully submitted that the averments made by JPCFT ought to be dismissed for being false, baseless and erroneous.*

**Comment:**

- 15. Govt. of M.P. decided to put this highly polluting coal based thermal power plants as industry. It can be seen that these industries decided to burn low calorie coal including Petitioner, to produce power and hence will cause more pollution and generation of ash.**
- 16. The use of low calorie coal added to requirement of more water because quantity of coal to generate per unit was more. The only concerns of these industries were to earn maximum profit at the cost of environment hazards created by them.**
- 17. These industries were to export power, while the environmental hazards were to be borne by public of M.P.**

18. The environment damage was to be caused as follows:
- i) Burning of additional, huge quantity of coal due to these thermal power industries of 41775 MW.
  - ii) Adding of additional, huge quantity of CO<sub>2</sub> in atmosphere of M.P.
  - iii) Generation of additional huge quantity of fly ash due to burning of this additional coal.
  - iv) Requirement of additional, huge quantity of water to run these power plants causing shortage of water for irrigation & drinking purpose.
  - v) Additional huge no. of tree plantation was required to absorb this release of CO<sub>2</sub> in atmosphere.
- 19) We are giving following example regarding environmental disaster due to surplus power:
- a) Govt. of M.P. exported 14910 MU in FY 2017-18, due to surplus power which burnt nearly 119.28 lacs tonnes coal in the year FY 2017-18, itself. This is going to increase exponentially in coming years with the addition of the petitioner plant and others to supply power. The burning of this coal caused huge smoke and ash, without supplying even single unit of this power generated to the public of M.P.
  - b) The burning of coal to generate surplus power of 14910 MU, generated & exported in FY 2017-18 from M.P. requires the planting of 201.14 Crore additional trees, in the state. These surplus units are sold, outside M.P. While the public of M.P. bears the coal smoke, ashes and other environmental hazards.
- 20) We wish to submit that this policy of Govt. of M.P. to promote the coal based thermal power plants in the state as industry was against public interest. The parties, who sign the MOU with Govt. of M.P. regarding these power plants as industry, assured that the cost of power will be lesser than Rs. 2.45 per kwh and cost of project will be near to Rs. 4.60 Crore/MW. Govt. of M.P. signed the MOU for total 41775 MW at the cost of Rs. 191888 Crores. This Cost of Power to be generated was stated to be comparable with rate of Rs. 2.45 per/kwh,

obtained during the bidding carried out under section 63 of Electrify Act 2003, for 2000 MW at the time of signing of these MOUs. MOU also specifies that Govt or their nominated agency do not guarantee purchase of power from the Petitioner company and same stand was taken by govt. of M.P. before Hon'ble APLTEL as shown in para 60 of order dated 06<sup>th</sup> May' 2010 against OA No. 44 of 2010..

- 21) There was sudden change in the scenario of requirement of power in Indian and the companies putting these Thermal Power Stations as industry, became non competitive because fall in rated of power and much lesser requirement of power , outside M.P.

#### **Petitioner's response**

*The contents of these paragraphs are denied and disputed for want of knowledge. It is submitted that averments in this paragraph are not relevant to the instant proceedings and are misleading in nature.*

*It may be noted that the intention of facilitating private investments in the power generation projects in the State was a policy decision and is beyond the scope of the present proceedings. Further, this Hon'ble Commission is not the appropriate forum for the purpose of assessing the environmental damage caused by power generation projects in the State.*

*It is reiterated that the scope of the present proceedings is limited to the determination of generation tariff of the Project under multi-year framework.*

*Further, JPCFT has erroneously presumed that the Petitioner by signing the MoU with the Government of Madhya Pradesh for setting up the power plant in the State assured that the cost of power would be lesser than INR 2.45 / kWh and the cost of Project would be around INR 4.60 Cr/ MW. It is respectfully submitted that the reliance placed by JPCFT for the foregoing purpose on the judgment of the Hon'ble Tribunal dated 06.05.2010 in Appeal No. 44 of 2010 is misleading as it has no bearing on the instant proceeding. No inference can be drawn from the above Appeal regarding cost of power from the Petitioner's Project*

herein as the said Appeal is distinguishable on facts. Therefore, any attempt by JPCFT to mislead this Hon'ble Commission ought to be dismissed.

In view of the above, the submissions of JPCFT ought to be rejected by this Hon'ble Commission as they are no relevant for the purpose of the present proceeding.

**Comment:**

**22) We shall further submit as follows:-**

- a) There is, power surplus in M.P. from last several years . The power available from these companies including petitioner will increase the surplus power only and state of M.P. will remain surplus power for long period.
- b) The tariff order passed for FY 2017-18 shows the power surplus at 26,369.00 MU. Out of this, 14910 MU were generated and sold outside M.P. while creating environment hazards in M.P. The back down charges were paid for remaining units which were not generated.
- c) The solar RPO will increase in coming years. This will create further surplus thermal power.
- d) These companies including Petitioner Company are receiving back down charges. Petitioner Company has also received back down charges for 657 MU in the year FY 2016-17.

These back down charges have been paid without verifying following facts:

- i) Grid Connectivity can't be allowed for thermal plants, operating at less than 55% of name plate capacity while in this case the back down charges were paid for not availing 30% capacity.
- ii) It was necessary that petitioner plants individually were operating at 55% of name plate capacity for the period for which back down charges were claimed and there must be sufficient coal to generate 85% of name plate capacity.

- g) The supply cost per unit will be near to 4.00 per unit while surplus units are sold @ Rs. 2.60 per unit. This difference cost will be paid by public of M.P.**
- h) This plant will cause loss to public of M.P. for its entire life.**

### **Petitioner's Response**

*The contents of these paragraphs are denied and disputed for want of knowledge. It is submitted that averments in this paragraph are not relevant to the instant proceedings and are misleading in nature.*

*It is respectfully submitted that JPCFT has wrongly assessed the State to be power surplus. The submissions made by JPCFT are based on assumptions and conjectures and it is respectfully submitted that the Hon'ble Commission ought not to entertain such claims which are unverifiable. It is respectfully submitted that the Petitioner has only contributed towards eliminating the issue of power shortage in the State by virtue of its Project and JPCFT cannot allege that the Project would cause loss to the public of the State for its entire life.*

### **Comment:**

- 23) The cost of project was much lesser per MW as per MOU of this petitioner. However, this has increased to much higher now, and burden of increase of this cost is to be borne by public of M.P. This is against public interest.**
- 24) There is no CAG audit of capital cost carries out by petitioner, while its impact is being paid by public of M.P. Hon'ble Commission is fully empowered to order the CAG audit regarding capital cost incurred.**

### **Petitioner's Response**

*The contents of these paragraphs are denied and disputed as they are not relevant to the instant proceedings and are misleading in nature.*

*It is respectfully submitted that the MoU had initially been signed with an object of setting up a thermal generating station of 500 MW capacity. By way of subsequent amendments*

carried out in the MoU and the I.A. the capacity of the Project was enhanced to 1320 MW which consequently enhanced the proposed investment in the Project. Therefore, the claim of the Petitioner that the cost of the Project has increased now as against initially agreed as per the MoU does not hold and is liable to be rejected.

It is respectfully submitted that the Petitioner does not fall under the purview of an audit conducted by the Comptroller and Auditor General of India (“CAG”) as it does not satisfy the criterion laid down under the Comptroller and Auditor General’s (Duties, Powers and Conditions of Service) Act, 1971. Therefore, it is wrong to suggest that the CAG is fully empowered to conduct an audit regarding the capital cost incurred by the Petitioner in the respect of the Project.

**Comment:**

- 25) The arrangement of surplus power by signing illegal PPAs and then paying back down charges and selling surplus power at throw away prices is criminally against public of M.P.**
- 26) Indian Railway and seven H.T. Consumers are not availing power while carrying out their operation in M.P. due to high tariff , resulted due to surplus power. It has resulted in the more surplus power and increase tariff for general public to unbearable extent.**
- 27) M.P. Genco, spented more than Rs. 15000.00 Crore to increase generation capacity in last 15 years. But due to surplus power no increase in power generation in units was achieved despite troubling the installed capacity. Hence, these Rs. 15000.00 Crore along with interest has gone waste. The liability arising due to this is being recovered from public, by way of increase in power tariff.**

**Petitioner’s response**

*It is respectfully submitted that the JPCFT is engaging in slander by stating that surplus power from the Project has been arranged by way of illegal PPAs at throw away prices. It*

*is respectfully submitted that the allegation of JPCFT in these paragraphs are unsubstantiated and ought to be rejected for want of information.*

*JPCFT has further alleged that public in the State has been burdened due to increased tariff attributed to actions of M.P. Genco, Indian Railways and several H.T. consumers. It is respectfully submitted that the investment made by MP Genco is not the subject matter of the present Petition and have no bearing on the same. Therefore, the issue qua investment made by MP Genco is without basis and certainly beyond the scope of the present proceedings. It is respectfully submitted that JPCFT is misleading this Hon'ble Commission by alleging and raising issues that have no bearing on the present proceeding, as they are not even remotely relevant to the determination of generation tariff for the Project under multiyear framework.*

*Therefore, the submissions made by JPCFT ought to be outrightly rejected on this ground.*

**Comment:**

**28) MPPMCL, Jabalpur as Petitioner and others against Petition No. 3/2018 before Hon'ble Commission, have submitted in various paras under revenue at current % proposed tariffs. Our submission is as follows:**

- 1.1. MPPMCL, Jabalpur is trying to surrender its share in NTPC Mouda Stage I, ATPS Chachai-Ph 1 & Ph-2, NTPC Gandhar. The letter no. 1023 dated 16<sup>th</sup> August' 2016, addressed to Ministry of Power regarding surrender offer for 4023 MW and all is thermal Power. This surrender is being offered to reduce financial burden on state.**
- 1.2. The petitioner has shown the importance of competitive tariff for industries to retain them. This shows that tariff in M.P. are very high and the industry and railway has option not to avail this costly power. However, the domestic consumers have no option but to avail the costly power.**
- 1.3. The petitioner says that it would not be possible for the DISCOMs to maintain its operational viability without increasing its sale. Petitioner is selling surplus power, 12576 MU in FY 2017-18 @ Rs. 2.60 per kwh.**



### **Petitioner Response**

*The contents of these paragraphs are denied and disputed as they are not relevant to the instant proceedings and are misleading in nature.*

*It is respectfully submitted that JPCFT is misguiding the Hon'ble Commission by disputing issues that have no bearing on the present proceeding. Therefore, the submissions made by JPCFT ought to be outrightly rejected on this ground.*

### **Comment:**

- 29) **Hon'ble Commission Allowed the CoD of this project. Our submission is that Hon'ble Commission may kindly call all the papers related to commissioning of these units on the basis of which COD was declared. The CERC has also called the relevant papers (para 5 of order dated 30/12/2015 in petition no. 18/SM/2015.) and Tata Power has submitted all the papers as directed by Hon'ble CERC. This SMP has taken after several years of approval OF COD, in case of CGPL, Mundra.**
- 30) **Recently, it is found that COD declared and accepted by procurers were manipulated and cancelled even by Hon'ble Supreme court in case of Sasan power Ltd., Hon'ble CERC, New Delhi in case of NTPC and issue regarding CGPL Mundra is under consideration of Hon'ble CERC, New Delhi.**
- 31) **There are clear directions issued by Ministry of Power for Carrying out COD and applicable on thermal power station (other than UMPP) and hence all the companies including this petitioner has to ensure that COD is accepted only after the plant run on continuously for 72 hours at 95% of contracted capacity (name plate capacity) during commissioning test.**
- 32) **It is claimed that COD was delayed. The delay in COD has increased the cost of project and the same is being passed out to the public consumers. This is against public interest.**

**Petitioner's response:**

*The contents of these paragraphs are denied and disputed for want of knowledge. It is submitted that averments in this paragraph are not relevant to the instant proceedings and are misleading in nature.*

*It is submitted that JPCFT has failed to comprehend the scope and nature of the present proceedings. It is respectfully submitted that the submissions made are misleading in nature and are liable to be rejected for want of knowledge. Without prejudice, it is submitted that JPCFT has alleged that the Petitioner, in prior proceedings relating to the Project, had submitted misleading information and, on this basis, this Hon'ble Commission call for and review the earlier orders. It is respectfully submitted that the proceedings being referred to by JPCFT have achieved finality and the request of JPCFT to resurrect such proceedings by way of tendering objections in the instant proceedings is based on an incorrect interpretation of law and cannot be considered.*

*It is respectfully submitted that JPCFT is misguiding the Hon'ble Commission by disputing issues that have no bearing on the present proceeding, as they are not even remotely relevant to the determination of generation tariff of the Project under multiyear framework. Therefore, the submissions made by JPCFT ought to be outrightly rejected on this ground.*

*It is reiterated that JPCFT has been throughout its averments has constantly challenged the judicial authority of this Hon'ble Commission and the extant statutory and regulatory framework for determination of tariff. Therefore, the averments made by JPCFT in its Submission are liable to be summarily rejected. It is submitted the averments of JPCFT are slanderous in nature and have been made with a complete disregard to the judicial propriety of this Hon'ble Commission. JPCFT has converted the entire public consultation anecdote by making irresponsible, concocted and sensational claims with the sole object of misguiding the Hon'ble Commission.*

*It is respectfully submitted that the instant Petition is bonafide in nature and under the settled position of law, the Hon'ble Commission ought to allow the revenue requirements*

*of the Petitioner owing to actual and proposed capital expenditure submitted with respect to the control periods FY 2016-17 to FY 2018-19.*

*In view of the aforesaid, it is respectfully submitted that the Submission made by JPCFT is without any merits and that the Petition filed by the Petitioner deserves to be allowed by the Hon'ble Commission.*

**Concluding Para:**

The contents of the Concluding Paras are a summation of the submissions made by the Objector in its Objections and are wrong and denied. The Petitioner craves leave to refer to submissions in Para No. 1 to 19 of the present Reply, which are not repeated herein for the sake of brevity.

In light of the submissions made hereinabove and the submissions in the present Petition, it is submitted that this Hon'ble Commission may be pleased to reject the Objections of the Objector and proceed with the determination of true-up tariff of Unit-1 of the Petitioner's Project.

**Comment:**

**33) We, the stakeholders request the Hon'ble Commission to kindly take notice of the inputs/comments suggested by us in taking any decision for tariff determination.**

**The petitioner in para 4.1 (d) of the petition has mentioned that the Implementation agreement dated 12/12/2007 states that GoMP or its nominated agency has the first right to purchase power from the Project, up to 30% of the installed capacity over a period of 20 years at a tariff to be determined by this Hon'ble Commission for which the Petitioner has filed the present Petition under Section 62 read with 86(1)(a) of the Electricity Act.**

**The Petitioner's above mentioned facts according to documents are completely false and baseless . Honestly, IA dated 12/12/2007 whose copy for easy reference is attached where in clause 3(i) (ii) mentions that only govt or its nominated agency has the first right to purchase power up to 30% of the installed capacity whose tariff will be determined by the Hon'ble Commission which is clearly under the section 63**

and 86(1) (b) of the Act and under MPERC Jurisdiction and is also based according to the Tariff Policy 2006, modified 2016 as well as MPERC, Regulations 2004, modified 2006 under Section 26. It is a humble request from the Commission to deliver proper instructions to the petitioner on the same.

### **Petitioner's Response**

*The contents of these paragraphs are denied and disputed to the extent the same are not specifically affirmed by the Petitioner.*

### **Comment:**

**34) It is mentioned in para 4.1(f) of the petition that the Petitioner entered into a long-term Power Purchase Agreement with Respondent No. 1 on 05.01.2011. Under the Power Purchase Agreement dated 05.01.2011, the Petitioner is required to supply 30% of the installed capacity of the Project to the Respondent No. 1 at a tariff determined by this Hon'ble Commission.**

**State govt directed through its letter dated 24/6/2018 under all rules and promises mentioned in IA that only MPPMCL was directed to look into matter on the basis of which the petitioner has mentioned in the petition that the project has been set up only on the terms of MoU and IA . But during the project construction of the project ,basis of tariff determination according to PPA was changed which was neither under the jurisdiction of MPPMCL clearly nor under the State Government.**

### **Petitioner's response**

*The contents of these paragraphs are denied and disputed as they are without basis.*

*It is noteworthy that the Stakeholder has wrongly stated that the basis of tariff determination was changed during the development of the Project. The Petitioner has already made submissions under **Reply to Para 1** on the subject that the framework for tariff determination was always envisioned to be Section 62 of the Act. It is reiterated that tariff adoption in pursuance of competitive bidding under Section 63 was never contemplated by the parties to the PPA. Therefore, it is erroneous to state that the method for determination of tariff was changed inadvertently while development of the Project.*

**Comment:**

**35)As mentioned in para 4.1(f) of the petition the Petitioner entered into a long-term Power Purchase Agreement with Respondent No. 1 on 05.01.2011which is completely doubtful because the signature of Shri Sanjay Mohase ( Chief Engineer) of M.P. Paschim Chetra Vidyut Vitaran Company on the PPA has joined his services on 6/4/2011, the copy for easy reference is attached herewith.**

**Petitioner Response**

*The contents of this paragraph are denied and disputed as they are not relevant to the instant proceedings and are an attempt to mislead this Hon'ble Commission.*

*It is respectfully submitted that the authority of the concerned official of the has no relevance to this instant proceeding. It is noteworthy that the PPA of the Project has already achieved the approval of this Hon'ble Commission after due filings by the authorized officials of the Parties to the PPA and represents a concluded contract. Therefore, any attempt by the Stakeholder to challenge the sanctity of the PPA ought to be dismissed by this Hon'ble Commission. Further, it is reiterated that the instant proceeding has been initiated for the limited purpose of determination of Generation Tariff of the Project under Multi Year Tariff framework for FY 2016-17 to FY 2018-19 and not for approval of the PPA.*

**Comment:**

**36)MPERC Regulations, 2015 were being notified on 01<sup>st</sup> January 2016 which are applicable for the tariff determination between 01 April' 2016 to 31<sup>st</sup> march' 2019. But it is seen that the petitioner has filed the petition on 27<sup>th</sup> January' 2018 and has not mentioned any reasons for delay in filing the petition. This is clearly disregard of the Regulations of the Commission.**

**Petitioner's Response**

*The contents of this paragraph are denied for being erroneous in nature.*

*The Stakeholder has submitted that there is no description of the reasons for delay in filing the instant Petition made by the Petitioner. In this respect, it is submitted that the correct facts may kindly be appreciated. It is respectfully submitted that the Petitioner had filed an application for condonation of delay on 20.03.2018 and deposited the requisite fee on 11.04.2018 as requested by this Hon'ble Commission. By means of order dated 17.05.2018 this Hon'ble Commission has already condoned the delay in filing the subject Petition.*

*In view of above, the averment made by the Stakeholder in this paragraph may kindly be dismissed for being wrong.*

**Comment:**

**37) It is seen in the petition that the petitioner has filed the petition on 27/01/2018 and has filed for tariff determination for the control period FY 2016-17 to FY 2018-19 but the petitioner has not submitted the technical data such as Plant Availability Factor, Station Heat Rate, Gross Generation, sale of unscheduled power from the plant for FY 2016-17 as part of its Petition.**

**It is a humble request from the Hon'ble Commission to kindly think upon the same for deciding final generation tariff of FY 2016-17 and on provisional basis for FY 2017-18 to FY 2018-19.**

**Petitioner's Response**

*The contents of these paragraphs iterate that the Petitioner has not submitted technical data such as Plant Availability Factor, Station Heat Rate, Gross Generation as part of its Petition. It is submitted that the same is wrong for the reason that the Petitioner has duly submitted the requisite technical data including Gross Generation, Net Generation, Auxiliary Consumption, % of Auxiliary Consumption, Coal Consumption, Actual GSHR, GCV (both fired & received), Specific Oil Consumption, Total Oil Consumption. Further, it may be noted that such details, in addition to above, data with respect of Plant Availability Factor were furnished to the Hon'ble Commission again upon a direction made by Hon'ble Commission vide letter dated 23.06.2018.*

Further, it is respectfully submitted that details of income from sale of unscheduled power from the Project is not required for the purpose of the instant Petition. It is noteworthy that the subject Petition is filed for the limited purpose of determining the Annual Capacity (Fixed) Charges (“AFC”) and details of sale of unscheduled power is not relevant to arrive at AFC. It is noteworthy that subsequent to the filing of the instant Petition this Hon’ble Commission had called for submission of clarifications regarding information gaps in the Petition from time to time and the same has been duly complied with by the Petitioner.

The Stakeholder has submitted that on account of submission of Audited Annual Accounts for the FY 2016-17, final tariff order may be issued and for the rest of the control period i.e. FY 2017-18 and FY 2018-19 tariff be determined on provisional basis. To this extent, it is respectfully submitted that the Petitioner has indeed submitted the subject Petition for determination of Generation Tariff for FY 2016-17 on final basis and for FY 2017-18 and FY 2018-19 on provisional basis subject to prudence check by this Hon’ble Commission accordingly.

Therefore, it is respectfully submitted that the averments made by the Stakeholder may kindly be considered in view of the submissions made by the Petitioner in the preceding paragraphs of the present Rejoinder read with the Petition.

**Comment:**

**38)The order passed in FY 2015-16 by the Hon’ble commission dated 20<sup>th</sup> July’ 2018 , wherein the petitioner has claimed the expenditure incurred towards procurement of assets inter alia land and infrastructure for Amelia (North) Coal Mine which was not approved by the Commission and aggrieved with the order, the petitioner filed two appeals 95/2016 and 244/2017 which is subjudice before the Hon’ble Tribunal.**

**Since issue regarding expenditure on Amelia Mines on account of Additional Premium on coal supplied is pending adjudication vide Appeal No. 95 of 2016 and Appeal No. 244 of 2017 before the Hon’ble Appellate Tribunal of Electricity (“Hon’ble Tribunal”) and the petitioner has also preferred an appeal against the order dated 20.07.2018 for true-up of FY 2016-17 wherein the issue regarding additional**

capitalization of the Amelia Mines has been taken up. It is noteworthy that the issue regarding denial of pass-through of expenditure incurred towards capitalization of Amelia coal mine including Additional Premium has not attained finality and claiming the same in the subject Petition is opposed to the extant legal framework. Hence it is a humble request from the Hon'ble Commission to notice all future filed petitions and direct the petitioner's to submit and detail the legal basis for the Petitioner's claims.

**Petitioner's Response:**

*The contents of these paragraphs are denied and disputed to the extent the same are not specifically affirmed by the Petitioner.*

*It is respectfully submitted that the expenditure incurred towards procurement of assets inter alia land and infrastructure for Amelia (North) Coal Mine (hereinafter referred to as "Amelia Mines") alongwith the cost of obtaining statutory permits / approvals with respect to the same is in nature of capital expense. Such capital expenses had been incurred for procuring assets which were necessary for providing coal to the generating stations of the Project and ought to be allowed by this Hon'ble Commission.*

*Further, it is respectfully submitted that the Stakeholder has failed to appreciate that the Petitioner has incurred expenditure by way of Additional Premium on account of acquiring or bringing into existence an asset of an enduring benefit (coal mine) for the generation business. Therefore, the same ought to be approved by this Hon'ble Commission towards capitalization in Amelia Mine. Further, it is noteworthy that the issue regarding expenditure on Amelia Mines on account of Additional Premium on coal supplied is pending adjudication vide Appeal No. 95 of 2016 and Appeal No. 244 of 2017 before the Hon'ble Appellate Tribunal of Electricity ("Hon'ble Tribunal"). Further, the Petitioner has also preferred an appeal against the order dated 20.07.2018 for true-up of FY 2016-16 wherein the issue regarding additional capitalization of the Amelia Mines has been taken up. In view of above, it is noteworthy that the issue regarding denial of pass-through of expenditure incurred towards capitalization of Amelia coal mine including Additional Premium has not attained finality and claiming the same in the subject Petition is not*



opposed to the extant legal framework. Moreover, it is a well settled principle of law that each tariff order is independent and gives rise to separate cause of action.

It is respectfully submitted that the legal basis for the Petitioner's claims have already been detailed in its Petition and the same is not repeated herein for sake of brevity.

**Comment:**

**39) It is noticed that JP Nigrie power plant is included under those 34 projects where all these projects are listed in the list of stressed power assets/ Non Performing Assets which is published in the report of 37<sup>th</sup> Parliamentary Energy Reports 2017-18 which is attached herewith for easy reference.**

**It is a humble request from the Commission to kindly direct the petitioner to file its actual debt portfolio and any default in debt payment to be explained in the petition.**

**Petitioner's response:**

*The contents of this paragraph are denied and disputed to the extent the same are not specifically affirmed by the Petitioner.*

*It is respectfully submitted that the inclusion of the Petitioner's Project in the list of stressed power assets submitted by the Reserve Bank of India ("RBI") to the Standing Committee on Energy 2017-18 has no bearing on the instant proceeding which is limited to the determination of Generation Tariff for the Project under Multi Year Tariff Framework for the control periods FY 2016-17 to FY 2018-19.*

**Comment:**

**40) It is noted in the petition that the petitioner has not filed the requisite data about the high Ex-Bus Energy (Variable) Charge shown in the public notice dated 25/8/2018. Hence, to comment on this matter is doubtful coming on any results would be wrong.**

**Petitioner's response:**

*The contents of this paragraph are denied and disputed to the extent the same are not affirmed by the Petitioner.*

*It is respectfully submitted that details regarding computation of Ex-Bus Energy (Variable) Charge have already been tendered by the Petitioner at Page Nos. 91 to 94 of the subject Petition. Therefore, the submission of the Stakeholder that the Petitioner has not filed the requisite data in this respect is erroneous and ought to be dismissed by this Hon'ble Commission.*

**Comment:**

**41) It is written in para 9.1 of the petition that the project cost after finished tariff time period would go upto Rs 12000 Crore whereas Commission approved Rs 10585.56 Crore on 31/03/2016. The petitioner has showed in para 5.1 in FY 2016-17 that there is additional capitalization of Rs. 177.86 Crore and during FY 2017-18 there is additional capitalization of Rs 109.53 Crore yet the requisite details about the additional capitalization fo FY 2016-17 to FY 2017-18 is not explained in the petition according to the Regulations 2015.**

**It is noted that that there is a difference of cost of around Rs. 4200 Crore in procurement of BTG equipment and BOP despite of settling it from the same agency. This can result into higher tariff charges which will be ultimately borne by the customers.**

**Since the petitioner has claimed higher project cost which will impact the tariff charges borne by the customer. Hence, it is requested from the Hon'ble Commission to direct that the CAG to audit the capital cost incurred by the Petitioner with respect to the Project.**

**It is requested from the Commission that kindly go through all suggestions/comments submitted by us.**

**Petitioner's Response:**

*The Stakeholder has maintained that the details regarding additional capitalization during FY 2016-17 and FY 2017-18 have not been mentioned in the subject Petition. It is respectfully submitted that the Stakeholder has proceeded on an erroneous reading of the subject Petition. It is respectfully submitted that the Petitioner has already filed the Audited Annual Accounts for FY 2016-17 along with the instant Petition thereby claiming additional*

expenditure actually incurred by the Petitioner. Further, it is respectfully submitted that the Petitioner had filed the present Petition on 05.02.2018 and in such a circumstance, could not have submitted the Audited Annual Accounts for FY 2017-18. Moreover, the Petitioner has categorically mentioned that the details of additional capital cost pertaining to FY 2017-18 are “proposed” and not actual in nature. It is noteworthy that the same is subject to be tried up against the order to be passed in the instant Petition. In these circumstances, the submission by the Stakeholder that the requisite details pertaining to FY 2016-17 and FY 2017-18 are not mentioned may kindly be dismissed.

Further, it is submitted that the allegation that there is a difference of cost in procurement of BTG equipment and BOP ought to be dismissed for want of knowledge. The Stakeholder has made the averment vis-à-vis fixed charges for the Project for FY 2016-17 without substantiating the same with relevant data to this extent and therefore, ought to be rejected by this Hon’ble Commission.

It is noteworthy that the Petitioner does not fall under the purview of an audit that can be conducted by the Comptroller and Auditor General of India (“CAG”) as it does not satisfy the criterion laid down under the Comptroller and Auditor General’s (Duties, Powers and Conditions of Service) Act, 1971. Therefore, it is wrong for the Stakeholder to suggest that the CAG ought to audit the capital cost incurred by the Petitioner with respect to the Project. Therefore, the submission by the Stakeholder to this extent ought to outrightly be rejected by this Hon’ble Commission.

It is respectfully submitted that the Stakeholder is misguiding the Hon’ble Commission by raising issues that have no bearing on the present proceeding, as they are not even remotely relevant to the determination of Generation Tariff of the Project under Multi-Year Framework. Therefore, the submissions made by the Stakeholder ought to be outrightly rejected on this ground.

It is respectfully submitted that the instant Petition is bonafide in nature and under the settled position of law, the Hon’ble Commission ought to allow the revenue requirements

*of the Petitioner owing to actual and proposed capital expenditure submitted with respect to the control periods FY 2016-17 to FY 2018-19.*

*In view of the aforesaid, it is respectfully submitted that the Submission made by the Stakeholder is without any merits and that the Petition filed by the Petitioner deserves to be allowed by the Hon'ble Commission.*