

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
5th Floor, "Metro Plaza", Bittan Market, Bhopal - 462016



Petition No. 10 of 2018

PRESENT:

Dr. Dev Raj Birdi, Chairman
Mukul Dhariwal, Member
Anil Kumar Jha, Member

IN THE MATTER OF:

Determination of the Final Generation Tariff for Unit No. 2 (600 MW) of 2 x 600 MW coal based Thermal Power Project at District Anuppur (M.P.) from its CoD to 31st March' 2017 and for FY 2017-18 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. M B Power (Madhya Pradesh) Limited

Petitioner

Versus

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

Respondents

ORDER

(Passed on this day of 29th November' 2018)

1. M/s M.B. Power (Madhya Pradesh) Ltd. (hereinafter called “the petitioner”) has filed the subject petition on 16th February' 2018 for determination of final generation tariff in respect of Unit No. 2 (600 MW) of its 2X600 MW (Phase I) sub-critical coal based Thermal Power Project at District Anuppur (Madhya Pradesh) for the period commencing CoD of the unit i.e. 07th April' 2016 to 31st March' 2017 and Multi-Year Tariff from FY 2017-18 to FY 2018-19. 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”).
2. Subsequently, by affidavit dated 07th March' 2018, the Petitioner also filed an Interlocutory Application No. IA No. 2/2018 in petition No. 10/2018 for condonation of Delay in filing the subject Petition
3. The petitioner’s power plant in the subject petition comprises of two generating units having capacity of 600 MW each. The Unit No. 1 and Unit No 2 of the petitioner’s power plant have been declared under Commercial Operation (CoD) on 20th May' 2015 and 07th April' 2016, respectively.
4. The petitioner executed long term Power Purchase Agreement (PPA) on 5th January' 2011 with Madhya Pradesh Power Management Company Ltd., (hereinafter called “MPPMCL” or “Respondent No. 1”) for supply of 30% power of the installed capacity of the Project for a period of 20 years 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 4th May' 2011 with the Government of Madhya Pradesh for supply of 5% of the net power (concessional power) generated at only variable charges determined by the Commission.

Background of the Petition:

5. A brief background of the subject petition is given below:
 - i. Vide order dated 29th July' 2015 in the Petition No. 31/2015, the Commission determined the provisional tariff for Unit No. 1 of petitioner’s power plant from its

COD (i.e. 20th May' 2015) to 31st March' 2016 with the directions to file the petition for determination of final tariff at the earliest along with Annual Audited Accounts and all other requisite details/documents. The provisional tariff for Unit No. 2 was not determined by the Commission as the Unit No. 2 was not synchronized by that time.

- ii. The petitioner filed Petition No. 14 of 2016 on 11th March' 2016 for determination of provisional tariff for Unit No. 2 of its 2x600 MW Coal based Thermal Power Plant (Phase-I) from anticipated COD of Unit No. 2 till 31st March' 2016.
- iii. The Unit No. 2 achieved COD on 7th April, 2016 and the petitioner had supplied 41.23 MUs from this Unit No. 2 to Respondent No. 1 for the period from 28.04.2016 to 16.05.2016. Thereafter, the Unit No. 2 of the project was under forced outage since 16th May' 2016, due to major breakdown in boiler of this Unit.
- iv. The petitioner filed I.A. No. 1 of 2016 in Petition No. 14 of 2016 on 20th May' 2016 seeking extension of the control period under the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012, to cover the COD of Unit No. 2 with the contention that the delay in COD of Unit 2 of the petitioner's Project was for the reasons beyond control of the petitioner.
- v. Further, on 14.06.2016, the petitioner filed another I.A. No. 2 of 2016 in the same Petition No. 14 of 2016 and requested for fixing Ad-hoc Tariff for the power supplied from Unit 2 from 07.04.2016 to 16.05.2016 i.e. till forced outage of Unit No. 2.
- vi. Vide Commission's order dated 24.08.2016, the I.A. No. 1 of 2016 in Petition No. 14 of 2016 was not found maintainable with the several observations and directions. Vide aforesaid order dated 24.08.2016, the Commission disposed of I.A. No. 2 of 2016 also in Petition No. 14 of 2016.
- vii. Vide order dated 1st October' 2016, the Commission disposed of Petition No. 14 of 2016 with the liberty granted to the petitioner to approach the Commission with a fresh petition in light of the provisions of MPERC Regulations 2015, as and when Unit No. 2 of the Project is revived for generation.
- viii. The petitioner had also filed a review Petition No. 67 of 2016 on 28.11.2016

seeking review of the Commission's order dated 24.08.2016 passed in I.A. No. 1 of 2016 (in Petition No. 14 of 2016). Vide order dated 30.11.2017, the review Petition No. 67 of 2016 was found devoid of merits hence, disposed of. However, the petitioner was provisionally allowed to recover the tariff of Unit No. 2 based on Commission's order dated 24.08.2016 passed in IA No. 1 of 2016.

- ix. The petitioner filed the petition No. 18/2017 for determination of provisional tariff of Unit No. 2. Vide order dated 28th October' 2017, the Commission determined the provisional tariff of Unit No. 2 from CoD of the unit (i.e. 07.04.2016) to 31st March' 2019 with the directions to file final tariff petition at the earliest along with the Annual Audited Accounts.
- x. The petitioner filed Petition No. 68 of 2016 for determination of final tariff of its Unit No. 1 based on Annual Audited Accounts. Vide order dated 1st December' 2017, the Commission determined the final tariff of Unit No. 1 from CoD of the unit (i.e. 20th May' 2015) to 31st March' 2015. The tariff for the control period FY 2016-17 to FY 2018-19 was provisionally determined subject to true-up based on Annual Audited Accounts

6. In the aforesaid tariff order dated 28th October' 2017 for Unit no. 2, following Annual Capacity charges and Energy Charges were provisionally determined by the Commission:

Table 1: Annual Capacity charges provisionally determined for Unit No. 2

| S. No. | Particulars | Unit | 2016-17 | 2017-18 | 2018-19 |
|----------|--|------------------|---------------|---------------|---------------|
| 1 | Return on Equity | Rs. Crore | 146.94 | 146.94 | 146.94 |
| 2 | Interest on Loan | Rs. Crore | 265.12 | 246.05 | 226.81 |
| 3 | Depreciation | Rs. Crore | 144.97 | 144.97 | 144.97 |
| 4 | O & M Expenses | Rs. Crore | 97.62 | 103.80 | 110.28 |
| 5 | Interest on Working Cpaital | Rs. Crore | 53.06 | 53.01 | 52.97 |
| 6 | Annual capacity (fixed) charges | Rs. Crore | 707.71 | 694.75 | 681.96 |
| 7 | Less: Non-Tariff Income | Rs. Crore | - | - | - |
| 8 | Net AFC (after adjusting Other Income) | Rs. Crore | 707.70 | 694.75 | 681.96 |
| 9 | Number of Days in Operation | Rs. Crore | 359 | 365 | 365 |
| 10 | AFC apportioned in actual days of operation | Rs. Crore | 696.07 | 694.75 | 681.96 |
| 11 | Annual Capacity charges corresponding to 30% of the installed capacity of the Unit | Rs. Crore | 208.82 | 208.43 | 204.59 |
| 12 | 90 % of the above AFC allowed to be recovered by the petitioner in this order | Rs. Crore | 187.94 | 187.58 | 184.13 |
| 13 | Rate of Energy Charge at ex bus | Rs./kwh | 1.917 | 1.917 | 1.917 |

7. In the subject petition, the petitioner broadly submitted the following:
- i. *The Unit-1 (600 MW) of the Project achieved Commercial Operation Date, hereinafter referred as 'COD', w.e.f. 00.00 Hours of 20th May 2015 and Unit-2 (600 MW) of the Project achieved COD w.e.f. 00.00 Hours of 07th April 2016.*
 - ii. *Regulation 8.2 of Tariff Regulations, 2015 provides for determination of separate tariff of Unit-1 and Unit-2 of the Project. Accordingly, the Petitioner is filing the instant Petition for determination of final tariff for supply of power from Unit-2 (600 MW) of its Project under PPA for the period commencing from 7th April 2016 till 31st March 2019 (Multi Year Tariff for the control period FY 2016-17 to FY 2018-19) under Tariff Regulations, 2015. The Petitioner craves liberty of the Hon'ble Commission to treat the details, documents and submissions tendered in various aforesaid Petitions as part and parcel of the instant Petition. The same are not being repeated/submitted again herein for the sake of brevity.*
 - iii. *The Petitioner craves liberty of the Commission to treat the details, documents and submissions tendered in various aforesaid Petitions as part and parcel of the instant Petition. The same are not being repeated/submitted again herein for the sake of brevity.*
 - iv. *The Commission vide Order dated 28.10.2017 in Petition No. 18 of 2017, issued the provisional tariff for Unit-2 of the Project for the period commencing from COD of Unit-2 (i.e. 07.04.2016) to 31.03.2019, subject to adjustment as per Regulation 8.15 of the Tariff Regulations, 2015 on determination of the final tariff by the Commission after submission of the Annual Audited Accounts and all other relevant details/documents and clarifications to the satisfaction of the Commission.*
 - v. *The Commission vide Order dated 01.12.2017 in Petition No. 68 of 2016, issued the Order for final tariff for Unit-1 of the Project.*
 - vi. *In Petition No. 68 of 2016, based on Annual Audited Accounts for FY 2015-16, the Petitioner had claimed/ submitted the capital cost of Unit-1 on accrual basis, as on*

its COD (i.e. 20.05.2015) as Rs.5137.58 Crore (inclusive of Short-term FERV loss amounting to Rs.46.69 Crore and un-amortized finance cost amounting to Rs.27.52 Crore). And the corresponding Auditor Certified Cash Capital expenditure was Rs.4771.40 Crore (inclusive of Short-term FERV loss amounting to Rs.46.69 Crore and un-amortized finance cost amounting to Rs.27.52 Crore). Further, this cash expenditure of Rs.4771.40 Crore was inclusive of Rs.201.11 Crore corresponding to Railway Siding capitalised post COD of Unit-1. Accordingly, the claimed capital cost (on cash basis) as on COD of Unit-1 was revised to Rs.4570.29 Crore (after reducing the expenditure towards Railway Siding). Further also, the Petitioner had claimed Additional Capital Expenditure, hereinafter referred as 'ACE' amounting to Rs.315.06 Crore for the period from COD of Unit-1 to 31.03.2016 (i.e. FY 2015-16) considering the Auditor certified cash expenditure of Rs.4885.35 Crore (Corresponding capital cost on accrual basis being Rs.5137.58 Crore) as on 31.03.2016 pertaining to Unit-1 of the Project.

- vii. Against the above claims & submissions of the Petitioner, the capital cost considered and not considered by the Hon'ble Commission in its Order dated 01.12.2017 for determination of final tariff of Unit-1 of the Project is as hereunder:

(Rs. Crore)

Table 2: Amount not considered by the Commission for final tariff of Unit No.1

| Particulars | Capital Cost claimed by the Petitioner for Unit-1 | Capital Cost considered by the Commission for final tariff of Unit-1 | Capital Cost not considered by the Commission for final tariff of Unit-1 |
|---|--|---|---|
| Opening Capital Cost (i.e. as on COD of Unit-1) | 4570.29 | 4047.95 | 522.34 |
| ACE during FY 2015-16 (for Unit-1) | 315.06 | 187.94 | 127.12 |
| Closing Capital Cost (i.e. as on 31.03.2016) | 4885.35* | 4235.89 | 649.45 |

* Excluding Un-discharged liabilities amounting to Rs.252.22 Crore as on 31.03.2016.

- viii. Further, while determining the final tariff of Unit-1 for the period from 01.04.2016 to 31.03.2019, the Commission has retained the capital cost of Unit-1 as Rs.4235.89 Crore as on 01.04.2016.
- ix. The PPA dated 05.01.2011, executed between the Petitioner and the Respondent

No. 1, and duly approved by this Commission vide its order dated 07.09.2012 through the Article 4.1.5 and 4.1.6 provides for Scheduled Commercial Operation Date hereinafter referred as '**SCOD**' and '**Revised SCOD**', respectively as under:

“4.1.5 Scheduled Commercial Operation Date

The Company shall achieve Commercial Operation Date for the first Unit within sixty (60) months from the date of signing of Implementation Agreement (i.e.01.12.2009) and second unit of the power station within six (6) months thereafter.

4.1.6 Revised Scheduled Commercial Operation Date

The Parties may mutually agree to revise the Scheduled COD for commissioning of any Unit or the Power Station (hereinafter referred to as Revised Scheduled Commercial Operation Date or Revised Scheduled COD) and such Revised Scheduled COD shall thereafter be the Scheduled COD.”

- x. *It is submitted that as per the PPA, SCOD of Unit-1 was 30.11.2014. However, due to reasons beyond the control of the Petitioner, COD of Unit-1 could only be achieved on 20.05.2015. The Petitioner requested MPPMCL to revise the SCOD of Unit-1 as 20.05.2015 and accordingly MPPMCL, vide its letters 16.04.2015 and 26.08.2015 approved and accepted the Revised SCOD of Unit-1 as 20.05.2015. Hence, in accordance with the above mentioned provisions of the PPA, the SCOD of Unit-1 is 20.05.2015. Copies of the above referred letters of MPPMCL dated 16.04.2015 and 26.08.2015 are already part of records of the Commission.*
- xi. *The Hon'ble Commission, under Paragraph 67(e) of its Order dated 01.12.2017 in Petition 68 of 2016 (for determination of final tariff of Unit-1 of the Project) has noted that the parties have concurrently revised the SCOD in terms of provisions under the PPA and has accordingly acknowledged that the revised SCOD of Unit-1 is 20.05.2015.*
- xii. *As stated above, in accordance with the provisions of the PPA and as also duly approved by this Hon'ble Commission in its Order dated 01.12.2017 in the Petition 68 of 2017, the SCOD of Unit-1 is 20.05.2015. Accordingly, in terms of the*

provisions of Article 4.1.5 of the PPA, the SCOD of Unit-2 is to be meaningfully read as to be achieved within six months thereafter i.e. by 19.11.2015.

xiii. *The SCOD of Unit-2 as Nov' 2015 has also been acknowledged, accepted and approved by both MPPMCL and the Hon'ble Commission in accordance with the provisions of the PPA as evident from the following:*

a) *MPPMCL vide its letter dated 22.04.2016 to the Petitioner (attached hereto and marked as ANNEXURE-2) has duly acknowledged that SCOD of Unit-2 as Nov' 2015.*

b) *Hon'ble Commission in its Order dated 28.10.2017 in the Petition 18 of 2017 (i.e. determination of provisionaltariff for Unit-2 of the Project) has duly approved SCOD of Unit-2 as Nov' 2015.*

xiv. *However, despite best efforts of the Petitioner, COD of Unit-2 was slightly delayed from its SCOD of Nov' 2015 due to reasons/factors beyond the control of the Petitioner. Anticipating this minor delay, the Petitioner duly kept MPPMCL informed in advance about this delay and the reasons thereof for such delay vide various communications from time to time starting from 17.11.2015 (i.e. before the SCOD of Unit-2). The various communications between the Petitioner and MPPMCL are attached hereto and marked as ANNEXURE-3(Colly). Vide these communications, the Petitioner had also offered to supply power (corresponding to power from Unit-2) to MPPMCL from alternative generation sources as per the terms of the PPA for the period corresponding to delay in COD of Unit-2. However, MPPMCL did not exercise its option to procure such power.*

xv. *COD of Unit-2 was achieved on 07.04.2016 and the same was duly accepted and approved by MPPMCL vide its letter dated 22.04.2016 (attached hereto and marked as ANNEXURE-2). It may be noted that vide its letter dated 22.04.2016, MPPMCL has considered the request of Petitioner for revision of SCOD of Unit-2 in terms of the provisions of the PPA and has duly accepted and approved the SCOD of Unit-2 as 07.04.2016.*

xvi. As brought out above, vis-à-vis it's Scheduled COD of Nov' 2015, Unit-2/Project achieved COD on 07.04.2016, which has been duly approved and accepted as Revised SCOD of Unit-2/Project by MPPMCL. Despite adhering to Prudent Utility Practices and despite the best efforts of the Petitioner, there was a minor delay of around 4 Months in achieving the COD of Unit-2/ Project due to the external factors/ reasons beyond the control of the Petitioner.

xvii. The detailed reasons for delay in achieving COD of the Unit-2/ Project along with the supporting documents/justifications have already been submitted by the Petitioner as under:

a) Petitioner's reply on affidavit submitted in the Hon'ble Commission on 30.03.2017 in response to the Hon'ble Commission's Query Letter dated 07.02.2017 in the Petition 68 of 2016. Page Nos. 7 to 14 of this reply may kindly be referred.

b) Petitioner's Petition 18 of 2017 filed before the Hon'ble Commission on 28.04.2017 for determination of provisional tariff of Unit-2 of the Project. Page Nos. 3 to 7 of the Petition 18 of 2017 may kindly be referred.

c) Petitioner's reply on affidavit submitted in the Hon'ble Commission on 31.07.2017 in response to the Hon'ble Commission's Query Letter dated 26.07.2017 in the Petition 18 of 2017. Page Nos. 12 to 21 of this reply may kindly be referred.

8. In the instant petition, the petitioner claimed the following Annual Capacity (fixed) Charges and Energy (variable) Charges for Unit No. 2 of its project from 07th April' 2016 to 31st March' 2017 and for the control period FY 2017-18 to FY 2018-19:

Table 3: Annual Capacity Charges and Energy Charges claimed for Unit No. 2

| Sr. No. | Particular | Units | From 07 th April' 2016 to 31 st March' 2017 | From 1 st April' 2017 to 31 st March' 2018 | From 01 st April' 2018 to 31 st March' 2019* |
|---------|------------------------------------|---------|---|--|--|
| 1 | Return on equity | Rs. Cr. | 143.19 | 192.38 | 201.58 |
| 2 | Interest & Finance charges on loan | Rs. Cr. | 339.06 | 335.38 | 327.92 |

| | | | | | |
|----|--|---------|---------------|---------------|---------------|
| 3 | Depreciation | Rs. Cr. | 168.47 | 179.80 | 188.39 |
| 4 | Operation & Maintenance expenses | Rs. Cr. | 97.62 | 103.80 | 110.28 |
| 5 | Secondary fuel oil expenses | Rs. Cr. | - | - | - |
| 6 | Interest on working capital | Rs. Cr. | 54.88 | 56.48 | 57.09 |
| 7 | Annual Capacity (fixed) charges | Rs. Cr. | 803.22 | 867.84 | 885.26 |
| 8 | No. of days of operation | Days | 359 | 365 | 365 |
| 9 | Capacity (Fixed) charges for no. of days of operation | Rs. Cr. | 790.02 | 867.84 | 885.26 |
| 10 | Share of MPPMCL as per Non-Concessional PPA | % | 30% | 30% | 30% |
| 11 | Annual Capacity (Fixed) Charges for Contracted Capacity (30%) | Rs. Cr. | 237.01 | 260.35 | 265.58 |
| 12 | Rate of Energy Charge from Coal | Rs./kWh | 1.917 | 1.917 | 1.917 |

**As per petition dated 16.02.2018*

9. With the aforesaid submission, the petitioner has prayed the following in the subject petition:
- (a) *Determine the final generation tariff for Unit No. 2 of the Project as required under the Non-Concessional PPA dated 05.01.2011 for the period from Unit-2 COD (i.e. 07.04.2016) till 31.03.2019;*
 - (b) *Allow one time recovery of the carrying cost amounting to Rs.14.87 Crore corresponding to the interest incurred by the Petitioner (proportionate to the Contracted Capacity (30%) under PPA with MPPMCL) on the debt portion of the expenditure not considered by Hon'ble Commission for the period between COD of Unit-1 (20.05.2015) and Unit-2 (07.04.2016) of the Project while determining the final tariff of Unit-1 as per Paragraph(s) 98-101 of the instant Petition;*
 - (c) *Allow the recovery of the application filing fees from the beneficiary as per Paragraph 102 of the instant Petition;*
 - (d) *Allow the recovery of the publication expenses from the beneficiary as and when incurred;*
 - (e) *Allow the recovery of other charges including but not limited to RLDC/ NLDC charges, Electricity Duty, Cess, Water Charges, other statutory charges, taxes &*

cess, re-imburement of any fee and/or expenses etc. on pass through basis from the beneficiary for the period from 01.04.2016 to 31.03.2019 as per Paragraph(s) 96-97 of the instant Petition;

- (f) *Permit recovery of expenses understated/ not considered/ missed in the instant Petition at a later stage, if required*
- (g) *Permit carrying cost on the deficit amount on account of under-recovery by the Petitioner due to difference between the provisional tariff and the final tariff of the of Unit-2 during the MYT Period of FY 2016-17 to 2018-19.*
9. The Commission has examined the subject petition in accordance with the provisions under Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, Annual Audited Accounts for FY 2016-17, Asset- Depreciation register and all other documents placed in record for determination of final tariff.

Procedural History

10. Motion hearing on the Interlocutory Application in the subject matter was held on 24th April' 2018, wherein the petitioner made out sufficient cause for delay in filing the subject petition. Vide Commission's order dated 25th April' 2018, the delay in filing the subject Petition was condoned and the IA No. 02/2018 in Petition No. 10/2018 was disposed of.
11. Thereafter, Motion hearing in the subject petition was held on 15th May' 2018. Vide Commission's order dated 16th May' 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 15th June' 2018.
12. Vide its letter dated 21st May' 2018, the petitioner informed that it has served copies of the subject petition to all the Respondents in this matter.
13. On preliminary scrutiny of the subject petition, vide Commission's letter dated 7th 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 5th July' 2018.
14. Vide letter dated 11th June' 2018, the petitioner filed draft public notice in Hindi &

English version for approval of the Commission.

15. Vide letter dated 11th June' 2018, Respondent No.1 (MPPMCL) sought four weeks' time extension for submission of its response/comments on the subject petition.
16. By affidavit dated 04th 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.
17. Vide letter dated 04th July' 2018, Respondent No. 1 (MPPMCL) requested to extend the deadline date for submission of their reply mentioning that the petition was received by them on 11th June' 2018. Hence, they sought further extension of 4 weeks for filing their reply.
18. By affidavit dated 24th July' 2018, Responder No. 1 filed its comments/response on the subject petition. By affidavit dated 30th July' 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 14th July' 2018 in the following newspapers:
 - i. The Hitavada (English), Bhopal
 - ii. Nav Duniya (Hindi), Bhopal
 - iii. Nai Dunia (Hindi), Gwalior
 - iv. Raj Express (Hindi), Indore.
20. The Commission received the comments from the stakeholders. By affidavit dated 04th August' 2018 and 17th August' 2018, 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 07th August' 2018 wherein one objector/stakeholder, Shri Alok Agarwal, the representatives of the petitioner and Respondent No.1 appeared.

CAPITAL COST

Petitioner's submission

Provision under Regulation:

22. Regarding capital cost of the project, Regulation 15 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides that,

“15.1 Capital cost as determined by the Commission after prudence check in accordance with this Regulation shall form the basis of determination of tariff for existing and new projects.

15.2 Capital cost for a Project shall include

- (a) the expenditure incurred or projected to be incurred up to the date of commercial operation of the project;*
- (b) Interest during construction and financing charges, on the loans (i) being equal to 70% of the funds deployed, in the event of the actual equity in excess 30% of the funds deployed, by treating the excess equity as normative loan, or (ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed; Any gain or loss on account of foreign exchange risk variation pertaining to the loan amount availed during the construction period shall form part of the capital cost.*
- (c) Increase in cost in contract packages as approved by the Commission;*
- (d) Interest during construction and incidental expenditure during construction as computed in accordance with Regulation 17 of these Regulations;*
- (e) capitalised Initial spares subject to the ceiling rates specified in Regulation 19 of these Regulations;*
- (f) expenditure on account of additional capitalization and de-capitalisation determined in accordance with Regulation 20 of these Regulations; and*
- (g) adjustment of revenue due to sale of infirm power in excess of fuel cost prior to the COD as specified under Regulation 24 of these Regulations;*

15.3 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 Regulations 21-----.”*

Petitioner's submission on capital costs

23. Regarding the capital cost claimed in the subject petition, the petitioner broadly submitted the following:

- i. *The Petitioner submits that the Annual Audited Accounts for previous periods upto 31.03.2016 i.e. (FY 2009-10 to FY 2015-16) have been already placed on record with the Hon'ble Commission in the Petitioner's reply dated 15.06.2017 under Petition No. 68 of 2016 (i.e. Annexure-1(Colly) at Page Nos. 18 to 222 of the Petitioner's reply dated 15.06.2017). These financial statements had been prepared in accordance with the Generally Accepted Accounting Principles in India', hereinafter referred as '**Indian GAAP**' to comply with Accounting Standards notified under Section 133 of the Companies Act, 2013, read with Paragraph 7 of the Companies (Accounts) Rules, 2014.*
- ii. *However, it is pertinent to bring to the kind notice of the Hon'ble Commission that the Petitioner has adopted for the first time Indian Accounting Standards hereinafter referred as '**Ind AS**' notified under the Companies (Indian Accounting Standards) Rules, 2015 under Section 133 of the Companies Act, 2013, while preparing the Annual Audited Accounts for FY 2016-17. This was done to comply with the Gazette Notification dated 16.02.2015 issued by Ministry of Corporate Affairs, a copy of the relevant extracts of the same is attached hereto and marked as ANNEXURE-14. For the purpose of comparatives, Balance sheet as on 01.04.2015 and the Annual Audited Accounts for year ended 31.03.2016 have also been prepared based on Ind AS.*
- iii. *The reconciliation of the details of fixed assets as on 31.03.2017 based on transition from Indian GAAP to Ind AS has been clearly explained in Note No. 50 of the Annual Audited Accounts for FY 2016-17 attached hereto and marked as ANNEXURE-13.*
- iv. *The Petitioner submits that the estimated capital cost of the Project (comprising of Unit-1 and Unit-2) was considered at Rs.8702.23 Crore on accrual basis in its Petition No. 68 of 2016 as well in Petition No. 18 of 2017, which was calculated on the basis of capitalized assets/expenditures as on COD of Unit-1(20.05.2015), capitalized assets & capital work-in-progress and balance commitments/provision of expenditures till the*

COD of Unit-2 (07.04.2016) as reflected in the Annual Audited Accounts of FY 2015-16. This cost also includes the FERV losses of Rs.158.49 Crore charged to P&L as well as unamortized finance cost to borrowings amounting to Rs.34.93 Crore booked under Current Assets in the Annual Audited Accounts of FY 2015-16.

- i. However, the Petitioner further submits that based on the Annual Audited Accounts for FY 2016-17, the capital cost of the Project has been re-estimated and reconciled as follows:

(Rs. Crore)

| Particulars | Amount |
|--|----------------|
| Gross Fixed Assets as on 31.03.2017 (based on Indian GAAP) | 7927.05 |
| Capital Work-in-progress as on 31.03.2017 (based on Indian GAAP) | 21.21 |
| Actual Balance Commitment as on 31.03.2017 | 44.82 |
| Sub Total | 7993.08 |
| Add: FERV Losses charged to P&L | 158.49 |
| Add: Unamortized Finance Cost to Borrowings | 34.93 |
| Add: Provision for Custom Duty/Excise duty less Rs.28.75 Crore already capitalized | 163.97 |
| Total | 8350.47 |

- ii. Hence, the Petitioner submits that the estimated capital cost of the Project is now reduced to Rs.8350.47 Crore from the earlier submitted estimated capital cost of Rs.8702.23 Crore as mentioned in Paragraph 51 of the instant Petition.
- iii. The item wise details of the revised estimated capital cost vis-à-vis the earlier submitted estimated capital cost is as hereunder:

(Rs. Crore)

| S. No | Particulars | Earlier submitted estimated Project cost as per Petition 18 of 2017 | Revised estimated Project cost | Variance |
|--------------|---------------------------|--|---------------------------------------|-----------------|
| 1 | Freehold Land | 122.42 | 150.53 | 28.11 |
| 2 | Lease hold Land | 21.58 | 21.58 | - |
| 3 | Plant and Machinery | 4565.83 | 4565.83 | - |
| 4 | Building and Civil Works | 895.11 | 895.11 | - |
| 5 | Pre-operative Expenditure | 432.48 | 437.99 | 5.51 |
| 6 | IDC/Finance Charges | 1895.35 | 1893.29 | -2.06 |
| 7 | Custom Duty/Excise duty | 576.03 | 192.72 | -383.31 |

| S. No | Particulars | Earlier submitted estimated Project cost as per Petition 18 of 2017 | Revised estimated Project cost | Variance |
|--------------|---|--|---------------------------------------|-----------------|
| | Sub Total | 8508.81 | 8157.05 | -351.75 |
| 8 | Add: FERV Losses charged to Revenue | 158.49 | 158.49 | - |
| 9 | Add: Unamortized Finance Cost to Borrowings | 34.93 | 34.93 | - |
| | Grand Total | 8702.23 | 8350.47 | -351.75 |

- iv. *The reasons/justifications for the item wise variances in capital cost are detailed in para 55 and 56 of the petition.*
- v. *In regard to unit-wise cash expenditure as on COD of Unit-2 (07.04.2016) , the Petitioner had already submitted Auditor Certificate dated 26.04.2017 certifying unit-wise cash expenditure as on 31.03.2016 and on the COD of Unit-2 (i.e. 07.04.2016) in Petition No. 18 of 2017 as Annexure 11 (Page Nos. 166-170). A copy of the same is attached hereto and marked as ANNEXURE-17.*
- vi. *As brought out in Paragraph 11 in the instant Petition, the Petitioner submits that the Hon'ble Commission has considered the capital cost of Rs.4235.89 Crore as against the claimed cost of Rs.4885.35 Crore for determination of final tariff of Unit-1. As such, the cost component amounting to Rs.649.45 Crore associated with common assets/ facilities of the Project has not been considered by the Hon'ble Commission as a part of capital cost of Unit-1. Accordingly, this component of Rs.649.45 Crore is now being included by the Petitioner's part of Capital Cost of Unit-2 as on its COD. The Petitioner humbly prays the Hon'ble Commission to consider and allow the same as part of Capital Cost of the Unit-2 as on its COD.*
24. *The Petitioner submits that the total cash expenditure and un-discharged liabilities/balance provisions for Unit-2 as on its COD (i.e. 07.04.2016) including the expenditure not considered while determining the final tariff for Unit-1 is as under:*

(Rs.Crore)

| S. No | Particulars | Estimated Capital Cost of Unit-2 | Liabilities/ Provisions for Unit-2 as on 07.04.2016 | Cash Expenditure for Unit-2 as claimed on 07.04.2016 | Cash Expenditure not considered by Commission for Unit-1 as on 07.04.2016 * | Total Cash Expenditure for Unit-2 as on 07.04.2016 |
|--------------|---|---|--|---|--|---|
| | | A | B | C=A-B | D | E=C+D |
| 1 | Land and Site Development | 43.49 | 33.91 | 9.58 | 39.46 | 49.04 |
| 2 | Plant and Machinery | 1773.32 | 146.46 | 1626.85 | 134.66 | 1761.52 |
| 3 | Building and Civil Works | 142.31 | 33.94 | 108.37 | 235.04 | 343.41 |
| 4 | Pre-operative Expenditure | 168.17 | 14.45 | 153.72 | 28.63 | 182.37 |
| 5 | Finance Charges/IDC | 801.09 | 3.94 | 797.15 | 177.21 | 974.36 |
| 6 | a) Custom duty/Excise duty | 1.34 | 163.97 | 1.34 | 27.41 | 28.75 |
| | b) Provision against Custom / Excise duty | 163.97 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7 | Capital Expenditure | 3093.69 | 396.67 | 2697.03 | 642.42 | 3339.45 |
| 8 | Add: FERV Losses charged to Revenue | 111.80 | 0.00 | 111.80 | 0.00 | 111.80 |
| 9 | Add: Unamortized Finance Cost to Borrowings | 7.41 | 0.00 | 7.41 | 7.05 | 14.46 |
| | Capital Expenditure for Unit-2 | 3212.90 | 396.67 | 2816.24 | 649.45 | 3465.70 |

*: Please refer Paragraph 11 of the instant Petition

Commission's Analysis

25. The Commission has examined the capital cost claimed in the subject petition based on the details and documents filed by the petitioner and the provisions under MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015.

26. It is observed that the Asset-cum-Depreciation Register for the plant is based on IGEEP Accounting Standards and the tariff/true-up determined by the Commission for FY 2016-17 for other generating units/stations are also based on IGEEP Accounting Standards. Considering the reconciliation statement filed by the petitioner and in view of the approach adopted by the Commission in order dated 6th September' 2018 in petition No. 11 of 2018 regarding the true-up of Unit No. 1 for FY 2016-17, the Commission has considered the opening GFA as on CoD and for each financial year accordingly.

27. The petitioner submitted the Annual Audited Accounts for FY 2016-17 along with expenditure incurred and capitalized duly certified by the Chartered Accountant. On detailed scrutiny of the subject petition, the Commission observed the following:
- i. The estimated capital cost of Rs. 8702.23 Crore and approved by BoD on 16.02.2016 on accrual basis filed by the petitioner in petition No. 68 of 2016 and 18 of 2017.
 - ii. The estimated capital cost of the project has now revised to Rs. 8350.47 Crore mainly due to variation in estimated cost in custom & excise duty.
 - iii. Out of above total estimated cost, the cost of Unit No. 1 and Unit No. 2 was Rs. 5137.68 Crore and Rs 3212.90 Crore respectively.
 - iv. Cash expenditure of the project as on 07th April' 2016 is Rs. 7701.59 crore which comprises of cash expenditure of Rs 4885.35 Crore towards Unit No. 1 and Rs. 2816.24 Crore towards Unit No. 2.
 - v. Liabilities pertaining to Unit No. 1 as on 07th April' 2016 on accrual basis is Rs. 252.23 Crore and revised liabilities for Unit No. 2 as on 07th April' 2016 is Rs. 396.67 crore.
 - vi. An amount of Rs. 649.45 pertaining to common facilities of Unit No. 2 was deferred in Commission's order dated 01.12.2017 in Petition No. 68/2016.
 - vii. Total cash expenditure towards Unit No. 2 as on 07th April' 2016 as certified by the Auditor and claimed by the petitioner is Rs. 3465.70 Crore.

Investment Approval:

28. Investment approval for the project was accorded on 21st October' 2009 by the Board of Director's of the petitioner's Company with total capital cost of Rs. 6240.12 Crores, which has been subsequently revised to Rs. 8306.03 Crores on 30th June' 2014. The capital cost of the project as per the latest BoD approval dated 16th February' 2016 is Rs. 8702.23 Crores.

29. The petitioner filed the following capital cost as approved by BOD of the company on different dates for Unit No. 1&2:

| Capital cost as approved by BOD of the company | | | | (Rs. in Crore) |
|---|---------------------------------|-----------------------------|-----------------------------|-----------------------------|
| Sr. no. | Particulars | BOD as on 21/10/2009 | BOD as on 30/06/2014 | BOD as on 16/02/2016 |
| 1 | Cost of Land & Site Development | 101.75 | 149.05 | 144.00 |
| 2 | Plant & Machinery | | | |

| | | | | |
|----|--|-----------------|-----------------|-----------------|
| | Boiler, Turbine & Generator (BOP Facilities) | 3,825.00 | 4,124.36 | 4,267.34 |
| | Barrage at River (incl. Raw Water Pipeline & Pump House) | 78.24 | 145.47 | 156.08 |
| | Railway Siding | 35.00 | 124.43 | 142.40 |
| | Total | 3,938.24 | 4,394.26 | 4,565.83 |
| 3 | Building & Civil works (including Ash Dyke) | 995.67 | 1,132.88 | 895.11 |
| 4 | Pre-operative/Pre-commissioning Expenses | 179.00 | 456.10 | 432.48 |
| 5 | Interest during Construction/Finance Charges | 926.47 | 1,597.72 | 1,895.35 |
| 6 | Working Capital Margin | 98.99 | - | - |
| 7 | Custom & Excise Duty on Offshore/Onshore Equipments | - | 576.03 | 576.03 |
| 8 | Capital Expenditure | 6,240.12 | 8,306.03 | 8,508.81 |
| 9 | FERV Charged to Revenue | - | - | 158.49 |
| 10 | Unamortized Finance Cost to Borrowings | - | - | 34.93 |
| 11 | Total Capital Expenditure | 6240.12 | 8306.03 | 8702.23 |

Hard Cost:

30. On preliminary scrutiny of the capital cost claimed in the petition vis-à-vis recorded in CA certificate and also in Annual Audited Accounts, the following was observed:
- A difference in the figure of total capital cost of Rs. 7835.12 crore as mentioned in CA certificate dated 6th February' 2018 and Rs. 7813.82 crore as recorded in Annual Audited Accounts as on 31st March, 2017.
 - It was further observed that there is a difference in the figures of capital cost mentioned in CA certificate and indicated in TPS 5A as on 31st March, 2017.
 - The opening capital cost for Unit No. 2 as indicated in para 71 of petition is Rs. 3465.70 Crore whereas the CA certificate dated 6th February' 2018 indicated the same as Rs. 2816.24 Crore.
31. In view of the above, Vide Commision's letter dated 07th June' 2018, the petitioner was asked to explain the reasons for aforesaid discrepancies in the figures of capital cost.
32. By affidavit dated 04th July' 2018, the petitioner submitted the following:

In regard to Query No. (i), it is submitted that light of Para(s) 47-50 of the present Petition, the value of Gross Fixed Assets (“GFA”) of Rs.7813.82 Crore as on 31.03.2017 is as per Indian Accounting Standards (“IND AS”) (for which the Petitioner has submitted the Annual Audited Accounts for FY 2016-17 as Annexure 13 of the present Petition) and the corresponding value of GFA as per Generally Accepted Accounting Principles in India (“Indian GAAP”/“IGAAP”) is Rs.7927.05 Crore. Copy of the same is attached herewith and marked as ANNEXURE-5(Colly).

With respect to GFA (Rs 7927.05 Crore) as per IGAAP accounting standards, the Petitioner has submitted the total cash expenditure of Rs.7835.12 Crore incurred till 31.03.2017 for the Project attached as Annexure 18 of the present Petition. Copy of the same is attached herewith and marked as ANNEXURE-6.

With respect to above, the Petitioner humbly submits that the cash expenditure of Rs 7835.12 Crore as on 31.03.2017 for the project is well within the Gross value of Fixed Assets (as per IGAAP i.e. Rs 7927.05 Cr) capitalized as on 31.03.2017.

In regard to Query No. (ii), it is submitted that in light of Para(s) 51-55 of the present Petition, the total estimated capital cost of the Project has been revised from Rs 8702.23 Crore (as estimated earlier on accrual basis) to Rs 8350.47 Crore (the reasons thereof for the variations in the estimated capital cost have been submitted). The same has been indicated in TPS Form 5A whereas the CA certificate dated 06.02.2018 indicates the total cash expenditure of Rs 7835.12 Crore incurred till 31.03.2017.

In regard to Query No. (iii), it is submitted that as per auditor certificate dated 06.02.2018, the total cash expenditure as on COD of Unit-2 i.e. 07.04.2016 is Rs.7701.59 Crores. Out of this Rs.4885.35 Crore pertains to Unit-1 and balance Rs.2816.24 Crore pertains to Unit-2. However, as against the Petitioner's claim of capital cost of Rs.4835.35 Crore for Unit-1, in Petition No. 68 of 2016, Hon'ble Commission vide order dated 01.12.2017 has only approved Rs.4235.89 Crore pertaining to Unit-1. The balance amount of Rs.649.46 Crore was not considered by

this Hon'ble Commission, to become a part of Capital cost for Unit-1, considering the same as pertaining to common assets/facilities for the Project, though the same were capitalized in the books. Accordingly, the same has now been claimed as part of capital cost of Unit-2 in addition to auditor certified cash capital cost of Rs.2816.24 Crore for Unit-2.

In view of above, the opening capital cost for Unit-2 in terms of cash expenditure claimed as on COD of Unit-2 has been worked out as Rs.3465.70 Crore.

33. Further, while examining the above tables for capital cost of Unit No.1&2, it is observed that the initial estimated project cost of Rs. 6240 Crore has been revised to Rs. 8702.23 Crore which was further revised to Rs. 8350.47 Crore. Against the aforesaid final revised cost estimate of Rs. 8350.47 Crore towards Unit No. 1&2, the actual cash expenditure of Rs. 7701.59 and Rs. 7745.88 Crore towards both the Units has been incurred as on 07th April' 2016' and 31st March' 2017 respectively. The aforesaid actual cash expenditure has been certified by the Chartered Accountant.
34. Vide Commission's letter dated 07th June' 2018, the petitioner was asked to explain in detail, the reasons for increase in initial project cost from of Rs. 6240 crore (as approved in Board's Resolution dated 21st October, 2009) to the actual project cost of Rs. 7701.59 crore incurred upto COD of Unit No. 2 under each component of capital cost as mentioned in CA certificate individually on account of each of the following factors:
- a. Increase in Price/Rate variation in different packages from scheduled COD to actual COD.
 - b. Exchange rate variation towards loan taken in foreign currency.
 - c. Exchange rate variation towards payment in foreign component towards contract signed in foreign component.
 - d. Additional works
 - e. Taxes & Duties and others.
 - f. The above items are to be mentioned in two parts:
 - i. Cost increased upto Schedule COD of Unit-2
 - ii. Between Schedule COD to actual COD of Unit-2

35. By affidavit 04th July' 2018, the petitioner submitted the following:
The details of the Project cost (along with break up) as per various investment approvals/Board Approvals along with break-up of Project cost towards Unit-1 & Unit-2 is attached herewith and marked as ANNEXURE-7.
The Petitioner further submits that the cost variations in estimated capital cost of the Project under various investment approvals/Board Approvals are attached as ANNEXURE-8, 9 and 10 detailing the reasons for Revision of Capital Cost from Rs 6240 Crore to Rs 8306.03, Revision of Capital Cost from Rs 8306.03 Crore to Rs 8702.23 and Revision of Capital Cost from Rs 8702.23 Crore to Rs 8350.47 respectively.
With respect to this Hon'ble Commission's observation regarding project cost being Rs. 7701.59 Crore on the date of COD of Unit-2, it is humbly submitted that the amount of Rs. 7701.59 Crore is not the Project cost, but it is the actual cash expenditure (i.e. net of liabilities) incurred for the Project on the date of COD of Unit-2 against the revised capital cost of Rs 8350.47 Crore on the date of COD of Unit-2 (on accrual basis).
36. Against the aforesaid estimated capital cost of Rs. 8350.47 Crore, the petitioner has incurred cash expenditure of Rs 7701.59 Crore and 7745.88 Crore as on 07th April' 2016 and 31st March' 2017, respectively. Out of aforesaid estimated cash expenditure of Rs.7701.59 Crore, the petitioner has allocated Rs 4885.39 Crore and 2816.24 crore towards Unit No 1 and Unit No 2, respectively.
37. The Commission vide its order dated 01st December' 2017 approved Rs 4235.89 Crore against the petitioner claim of Rs 4885.39 Crore towards Unit No 1. The difference of Rs 649.45 Crore was on account of the amount towards Common facilities of Unit No. 2 deferred in the said order and to be considered at the time of determining the final tariff of Unit No. 2.
38. Accordingly, the petition has claimed Rs 2816.24 Crore along with Rs. 649.45 Crore as on 07th April' 2016 towards Unit No. 2 i.e., Rs 3465.70 Crore.
39. On scrutiny of the details filed with the petition and form TPS 5B and documents placed on record with the Commission related to aforesaid claim of petitioner towards

capital cost of Unit No 2 , the Commission observed that cost incurred towards land and site development, BTG & BOP, civil & structural works,barrage & railway siding are within the original scope of work and as per regulation 15.2 of MPERC tariff Regulations, 2015.

40. Accordingly, the Hard Cost considered in this order is given below:

Table 4: Summary of Hard Cost Considered

(Rs. in Crores)

| Particulars | Claimed as on 07.04.2016 | Considered As on 07.04.2016 |
|--|-----------------------------|-----------------------------------|
| | Unit No.2 | Unit No. 2 |
| Land & Site Development | 49.04 | 49.04 |
| BOP | 399.36 | 399.36 |
| BTG | 1227.49 | 1227.49 |
| Civil Works & Structural Works (Including Taxes) | 343.41 | 343.41 |
| Barrage (including Land and Taxes) | 65.00 | 65.00 |
| Railway Siding | 69.67 | 69.67 |
| Hard Cost | 2153.97 | 2153.97 |

Soft Cost:

Interest during Construction and Finance charges:

41. Regulation 17.1 and 17.2 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides as under;

17.1“Interest during construction shall be computed corresponding to the loan from the date of infusion of debt fund, and after taking into account the prudent phasing of funds upto SCOD.

17.2 In case of additional costs on account of IDC due to delay in achieving the SCOD, the generating company shall be required to furnish detailed justifications with supporting documents for such delay including prudent phasing of funds:

Provided that if the delay is not attributable to the generating company and is due to uncontrollable factors as specified in Regulation 18 of these Regulations, IDC may be allowed after due prudence check:

Provided further that only IDC on actual loan may be allowed beyond the SCOD to the extent, the delay is found beyond the control of generating company after due prudence and taking into account phasing of funds.”

42. Vide Commission's letter dated 07th June' 2018, the petitioner was asked to furnish certain details/documents regarding interest during construction and finance charges duly certified by the statutory auditor along with soft copy of computation in excel sheet.
43. By affidavit dated 02nd July' 2018, the petitioner submitted the following break-up of expenditure towards Interest during Construction and Finance Charges for Unit No. 2:

| S. No | Particulars (Rs. in Crore) | As on SCOD of Unit-1 (19.11.2015) | As on COD of Unit-1 (31.03.2016) | As on 06.04.2016 | As on 31.03.2017 |
|-------------------------|--|--|---|-----------------------------|-----------------------------|
| 1 | Interest during Construction | 641.45 | 710.91 | 710.91 | 714.85 |
| 2 | Finance Charges including Unamortized Cost to borrowings | 77.53 | 93.66 | 93.66 | 93.66 |
| IDC including FC | | 718.98 | 804.57 | 804.57 | 808.51 |

SCOD & COD:

44. With regard to Scheduled date of commercial operation, Regulation 4.1(zs) of MPERC (Terms & Conditions for determination of Generation Tariff) Regulations, 2015 provides as under:

“Scheduled Commercial Operation Date or SCOD’ shall mean the date(s) of commercial operation of a generating station or generating unit or block thereof as indicated in the Investment Approval or as agreed in power purchase agreement, whichever is earlier.”

45. Vide resolution dated 21st October, 2009, Board of Directors of Petitioner's Company accorded the investment approval for the project at capital cost of Rs. 6240 Crore. However, the schedule Commercial Operation date was not mentioned in the Investment Approval.
46. Regarding the Scheduled Commercial Operation date and revised Schedule Commercial date, in Article 4.1.5 and 4.1.6 of the PPA dated 05th January' 2011 executed between the parties the following is mentioned:

4.1.5 Scheduled Commercial Operation Date: *The company shall achieve*

Commercial Operation Date for the first Unit within sixty (60) Months from the date of signing of Implementation Agreement (i.e.01st December 2009) and second Unit of the Power Station within six (6) Month thereafter.

4.1.6 Revised Scheduled Commercial Operation Date: *The Parties may mutually agree to revise the Scheduled CoD for Commissioning of any Unit or the Power Station (hereinafter referred to as Revised Scheduled Commercial Operation Date or Revised Scheduled COD) and such Revised Scheduled CoD shall thereafter be the Scheduled COD.*

47. In para 14 of the petition, the petitioner mentioned that as per the PPA, the SCOD of Unit No. 1 was 20.11.2014. However, due to reasons beyond the control of the petitioner, CoD of Unit No. 1 could only achieved on 20th May' 2015.
48. The petitioner further submitted that vide letters dated 16th April' 2015 and 26th August' 2015, the MPPMCL approved and accepted the revised SCOD of unit No. 1 as 20th May' 2015. Therefore, in accordance with the provisions of the PPA, the SCOD of Unit No. 1 is 20th May' 2015.
49. Regarding the SCOD and CoD of Unit No. 2, the petitioner in para 16 to 19 of the subject petition, submitted the following:

In accordance with the provisions of the PPA and as also duly approved by this Hon'ble Commission in its Order dated 01.12.2017 in the Petition 68 of 2017, the SCOD of Unit-1 is 20.05.2015. Accordingly, in terms of the provisions of Article 4.1.5 of the PPA, the SCOD of Unit-2 is to be meaningfully read as to be achieved within six months thereafter i.e. by 19.11.2015.

The SCOD of Unit-2 as Nov' 2015 has also been acknowledged, accepted and approved by both MPPMCL and the Hon'ble Commission in accordance with the provisions of the PPA.

However, despite best efforts of the Petitioner, COD of Unit-2 was slightly delayed from its SCOD of Nov' 2015 due to reasons/factors beyond the control of the Petitioner. Anticipating this minor delay, the Petitioner duly kept MPPMCL informed in advance about this delay and the reasons thereof for such delay vide various

communications from time to time starting from 17.11.2015 (i.e. before the SCOD of Unit-2). The various communications between the Petitioner and MPPMCL are attached hereto and marked as ANNEXURE-3(Colly). Vide these communications, the Petitioner had also offered to supply power (corresponding to power from Unit-2) to MPPMCL from alternative generation sources as per the terms of the PPA for the period corresponding to delay in COD of Unit-2. However, MPPMCL did not exercise its option to procure such power.

COD of Unit-2 was achieved on 07.04.2016 and the same was duly accepted and approved by MPPMCL vide its letter dated 22.04.2016 (attached hereto and marked as ANNEXURE-2). It may be noted that vide its letter dated 22.04.2016, MPPMCL has considered the request of Petitioner for revision of SCOD of Unit-2 in terms of the provisions of the PPA and has duly accepted and approved the SCOD of Unit-2 as 07.04.2016

50. Respondent No. 1 (MPPMCL) in its response on SCOD of the Unit has submitted the following:

- In Para 13 to 15 the Petitioner has given the background of change of Scheduled Commercial Operating Date (SCOD) and the Revised SCOD of Unit 1. In Para 16 of the Petition, the Petitioner has quoted the provision of PPA with respect to Scheduled Commercial Operating Date (SCOD) of Unit 2 being six months after COD of Unit-1.*
- It is humbly submitted that the Respondent had given reasons for not accepting above contention made by the Petitioner in Petition No. 18 of 2017 also. It is most humbly prayed to refer the same (not being reproduced here for the sake of brevity).*
- In Para 17 of the Petition, the Petitioner has made reference to a letter of Respondent No. 1 and the Order Dated 28.10.2017 passed by the Hon'ble Commission in P. No. 18 of 2017 as regards acknowledgement of the revised SCOD to November 2015. In Para 18 and 19 of the Petition, the Petitioner has*

stated that the COD of Unit 2 was further delayed and ultimately achieved on 07.04.2016, which was duly accepted and approved by the Respondent No. 1 vide letter Dated 22.04.2016 (attached as Annexure 2 of Petition).

- In above context, it is most humbly submitted that bare perusal of the Annexure 2 (Letter Dated 22.04.2016 written by the Respondent), filed by the Petitioner, reveals that the request for extension of the Scheduled COD of Unit 2 was accepted by the Respondent subject to certain conditions, which are not repeated here for the sake of brevity.*
- The Petitioner, vide its Letter No. 7972 dated 13.06.2016, had accepted all above conditions. It is, therefore, most humbly prayed that the Hon'ble Commission may graciously be pleased to exercise due prudence while determining the tariff and give effect to conditions accepted by the Petitioner in this regard for the benefit of consumers.*
- In Paras 20 to 44 of the Petition, the Petitioner has given alleged reasons for the delay in achieving COD of Unit 2, which are denied and disputed. These reasons for delay were also cited in P. No. 18 of 2017, which were contested by the Respondent in its reply dated 19.08.2017. The Petitioner seeks to rely on the same and are not being repeated here for the sake of brevity. The contention of the Petitioner regarding requirement of 72 hours trial run, raised in Para 40, has been replied by this Respondent in the reply for Petition no. 67 of 2016 filed on 23 September 2017, which are again not being repeated here for the sake of brevity. The Petitioner could have followed modern Project Management techniques by carrying out parallel activities for both Units. It is humbly prayed once again that all the reasons point to bad planning and none of the reasons mentioned by the Petitioner is attributable to this Respondent and hence, may not be accepted.*

51. In para 16 of the petition, the petitioner has mentioned that the scheduled COD of the Unit No. 2 of the project was 19th November, 2015 (within six month from actual CoD of Unit No. 1) whereas, the Unit No. 2 has actually been declared under commercial operation on 7th April, 2016. Vide Commission's letter dated 07th June; 2018, the petitioner was asked to inform the following:

- i. What date has been indicated as SCOD of petitioner's Unit No. 2 and generating station in "Investment Approval" as defined at Regulation 4.1 (zd) of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015. A copy of the Investment Approval be submitted to the Commission.
 - ii. Detailed reasons for delay in achieving CoD of the generating Unit.
 - iii. Whether the delay in CoD was attributable to the delay in completion of works by the contractors/agencies?
 - iv. If yes, whether any Liquidated Damages/penalty have been recovered/to be recovered? The provisions under the contract for deduction of penalty/LD on account of delay in completion of works be informed.
 - v. The costs overrun due to delay in CoD of Unit No. 1&2 be informed for each component of the capital cost.
 - vi. The petitioner is required to specify the delay in number of days on account of each of the above reasons. Supporting documents be also filed in this regard.
 - vii. Whether the "Start Date" or "Zero Date" is indicated in the aforesaid Investment Approval.
52. By affidavit dated 04th July' 2018, the petitioner filed the following justification for each and every event of delay in achieving CoD of the generating unit along with the supporting documents as given below:

It is submitted that the Board of Directors of the Petitioner ("BoD") vide Board Resolution dated 21.10.2009 had accorded the approval for setting-up of the Project. However, this was an in-principle approval to pursue the Project developmental activities. Further, no specific Project Start Date/Zero Date and/or Project implementation timelines and/or unit-wise SCOD had been indicated in this Board Resolution. A copy of the said Board Resolution dated 21.10.2009 is attached herewith and marked as ANNEXURE-2.

Subsequent to issuance of this Board Resolution, the Petitioner signed definitive agreements with the Government of Madhya Pradesh and its nominated agency (MPPMCL) viz. Implementation Agreement (signed on 01.12.2009), PPA (signed

on 05.01.2011) etc. wherein the Project Start Date/Zero Date, Project Implementation timeline, unit-wise SCOD etc. were firmed-up. It is humbly submitted that the Petitioner has considered these unit-wise SCOD specified in the PPA for implementation of the Project.

It is submitted that MPERC Tariff Regulations 2015, for the first time introduced the concept of linking SCOD to the investment approval. It is submitted that as per Regulation 1.3 of the MPERC Tariff Regulations 2015, the said Tariff Regulations came into force with effect from 01.04.2016 and as such, this may only be prospectively applicable to such projects where the investment approval has been accorded after issuance of MPERC Tariff Regulations 2015. The concept cannot be applied retrospectively to the projects like that of Petitioner's Project wherein the in-principle approval was accorded way back in 2009 and the SCOD of Unit-1 of the Project has already been decided by this Hon'ble Commission in accordance with the provision of the PPA. The Petitioner submits that in such cases, the PPA would continue to remain as the sole binding force for determination of the SCOD of Unit-2 of the Project.

This Hon'ble Commission by its Order dated 07.09.2012 passed in Petition No. 7 of 2012 and Order dated 04.02.2013 passed in Petition No. 82 of 2012 has accorded its regulatory approval to the aforesaid PPA dated 05.01.2011. Accordingly, the PPA which has been approved by this Hon'ble Commission is the sole document governing the Project implementation timelines. As such, provisions of the said PPA solely and squarely cover the provisions for determination of SCOD of both Unit-1 & Unit-2 of the Project. Accordingly, in terms of the provisions of the PPA, the Project Start Date/ Project Zero Date is 01.12.2009.

Reply to Query Nos. (ii) & (vi)

As stated in reply to Query No. 1 above, certain external reasons/factors beyond the control of the Petitioner delayed the commencement of Project construction by more than 14 months, which has also been duly acknowledged and endorsed by

this Hon'ble Commission in its order dated 01.12.2017 passed in Petition No. 68 of 2017. The above delay of more than 14 months in commencement of Project construction on account of the external reasons/factors beyond control of the Petitioner not only delayed the COD of Unit-1 but resulted in consequent and cascading delay in over Project implementation i.e. COD of Unit-2.

Anticipating a delay in COD of Unit-2/ Project, the Petitioner kept MPPMCL duly informed in advance about the delay and the reasons thereof vide various communications from time to time. It is further submitted that by way of these communications, the Petitioner also offered to supply power (corresponding to power from Unit-2) to MPPMCL from alternative generation sources as per the terms of the PPA for the period corresponding to delay in COD of Unit-2. However, MPPMCL did not exercise its option to procure such power.

The external factors/ reasons beyond the control of the Petitioner affecting overall Project implementation thereby resulting in delay in COD of the Project/ Unit-2 are attached herewith and marked as ANNEXURE-3(Colly).

It is submitted these external factors/ reasons beyond the control of the Petitioner had a cumulative impact of more than 14 months on the overall Project implementation. As stated above, this Hon'ble Commission has duly recognized these external factors/ reasons and has acknowledged and endorsed that due to these external factors/ reasons beyond the control of the Petitioner, the commencement of Project construction was delayed by more than 14 months.

Despite this uncontrollable initial delay of 14 months, the Petitioner, through efficient and meticulous Project planning, management and execution skills and judicious allocation and utilization of manpower and resources, has been able to achieve COD of Unit-1 with a delay of only ~ 5.5 months and that of Unit-2/ Project with a delay of only ~10 months. Therefore, the Petitioner through its additional efforts was able to mitigate the initial delay of 14 months to only around 10 months in the overall Project execution (31.05.2015 Vs 07.04.2016).

It is submitted that out of this overall delay of ~10 months in the overall Project completion, a delay of ~ 5.5 months was experienced in COD of Unit-1. It may

kindly be noted here that in order to expedite COD of Unit-1 for supply of power to MPPMCL at the earliest, the Petitioner was compelled to divert the material, manpower and resources originally deployed for Unit-2 for completion of Unit-1. As such, reasons for delay which affected the COD of Unit-1 had a consequential effect and cascading effect on COD of the Project/ Unit-2.

It may kindly be appreciated that this Hon'ble Commission has duly recognized these external factors/ reasons beyond the control of the Petitioner and has acknowledged and endorsed that due to these uncontrollable factors, commencement of Project construction was delayed by more than 14 months. As such, these uncontrollable factors constitute force majeure events in accordance with the Regulation 18 of the MPERC Tariff Regulation, 2015.

In view of the above submissions, the Petitioner prays that this Hon'ble Commission may be pleased to kindly condone the delay in COD of Unit-2/ Project and accordingly in line with the Regulation 17 of the MPERC Tariff Regulation, 2015, no reduction/ deduction in the overall Project cost/ Unit-2 cost including IDC, IEDC etc may be directed by this Hon'ble Commission while determining final tariff of Unit-2 of the Petitioner's Project in the present Petition.

Reply to Query Nos. (iii) & (iv)

It is submitted that no liquidated damages have been recovered by the Petitioner from its contractors/vendors till date. There may be certain delays which may be attributable to the Contractors/Vendors. However, the same have not yet been quantified by the Petitioner and have not been included in the present proceedings. In terms of EPC Contract, the final settlement/ contract closure is pending. The Petitioner's EPC Contractor is M/s Lanco Infratech Limited ("LANCO") and it is understood that insolvency proceedings have been initiated against LANCO and its lenders/ creditors have filed proceedings against LANCO before the National Company Law Tribunal ("NCLT", a quasi-judicial body that adjudicates issues relating to Indian Companies). A copy of public announcement to

this effect issued by Insolvency and Bankruptcy Board of India (“IBBI”) is attached herewith and marked as ANNEXURE-4.

In such a scenario, final settlement/ contract closure with LANCO has become complicated and a time consuming process. Nonetheless, the Petitioner is rigorously pursuing the matter with LANCO and is hopeful of the final settlement/ contract closure in the ongoing financial year. At this juncture the liquidated damages/penalty that may be attributable to the contractors/vendors, if any, for delay in completion of works cannot be quantified. Accordingly, the Petitioner humbly prays that no adjustments in tariff of account of Liquidated Damages recoverable (if any) from Contractors/Vendors be made by this Hon’ble Commission in the current proceedings for determination of final tariff of Unit-2 of the Petitioner’s Project for FY 2016-17.

Notwithstanding above, the Petitioner undertakes to quantify such liquidated damages/penalty at the time of final contract settlement. Any such liquidated damages/penalty to be recovered from the contractors/vendors would be discussed and finalized at the time of final contract settlement and shall be accordingly submitted before this Hon’ble Commission.

Reply to Query No. (v):

It is submitted that there is no cost overrun in the hard-cost of the Project. Further, as stated in the preceding paragraphs, delay in COD of Unit-2/ Project is on account of the external reasons/ factors beyond control of the Petitioner. As such, no cost overrun in the soft-cost of the Project during this delay period is attributable to the Petitioner.

53. Regarding the CoD of Unit No. 2, the petitioner submitted that in accordance with clause 4.1.5 of the PPA the SCOD of Unit No. 2 was to be achieved 6 months after the CoD of Unit No.1. The petitioner mentioned that as per the PPA, the SCOD of Unit No. 2 was 30.11.2015. However, due to reasons beyond the control of the petitioner, the Commercial Operation Date of Unit No. 2 could only be achieved on 07.04.2016. The petitioner further submitted that it had requested MPPMCL to revise

the SCOD of Unit No. 2 as 07.04.2016 and accordingly MPPMCL, vide its letter dated 22nd April' 2018 accepted the Revised SCOD of Unit 2 as April' 2016 subject to certain conditions which includes “ no claim towards IDC for delayed COD”

54. In para 21 of the petition, the petitioner also submitted the detailed reasons in respect of delay in achieving CoD of Unit No. 2. The Commission has observed the following regarding delay in achieving CoD:
- a. According to clause 4.1.5 of the Power Purchase Agreement (PPA) entered into between the petitioner and the respondents on 5th January' 2011, the CoD of the first unit of the petitioner's plant was to be achieved by November' 2015.
 - b. Further, as per the terms of clause 4.1.6 of the aforesaid PPA, the parties may mutually agree to revise the scheduled CoD and such revised SCOD shall thereafter be schedule COD.
 - c. The petitioner requested MP Power Management Company Limited, Jabalpur (Respondent No.1) to re-schedule CoD of Unit No.2 from November, 2015 to 07th April' 2016 citing delay in project due to delay in granting Forest Clearance by MoEF Agitations/Demonstrations at the Project Site, material movement restrictions on account of the unprecedented rainfall in the region, delay in barrage construction and other external factors.
 - d. Vide letters dated 22nd April' 2016 , Respondent no.1 (MPPMCL) conveyed its consent to the petitioner to revise/ extend the CoD of the Unit No. 2 of M.B. Power Plant from November, 2015 to April' 2016 imposing certain conditions including “**no claim towards IDC for delayed COD**”.
 - e. The Commission has noted that the scheduled date of commercial operation is defined and detailed in the PPA executed between the petitioner and Respondents. Further, the MPPMCL agreed to revise the scheduled date of commercial operation in terms of provisions under the same PPA subject to certain conditions. The revised scheduled CoD of Unit No. 2 is 07th April' 2016 subject to the condition that the IDC shall not be claimed by the petitioner.

55. On perusal of the reasons and documents submitted by the petitioner on record for delay in achieving CoD of Unit No.2, it is observed that the delay up to actual COD of Unit No.1 is primarily on account of obtaining Stage-II Forest Clearance from MoEF as certain portion of forest land was falling within the Main Plant Area. As submitted by the petitioner with the copy of correspondence with Ministry of Environment & Forest, Govt. of India regarding Stage I & Stage II forest clearance, there has also been delay in handing over of forest land to the petitioner on account of certain litigations before Hon'ble High Court. Thus, the commencement of various main construction activities of the power plant was delayed by more than 14 months. It is observed that CoD of Unit No.2 was equally delayed along with the delay in achieving CoD of Unit No. 1 on account of various reasons mentioned in the subject petition and also in petition No. 68 of 2016. The chronology of all such events has been placed on record by the petitioner in earlier petitions for determination of final tariff of Unit No 1 and provisional tariff for unit No. 2. The petitioner has submitted these reasons in subject petition also for delay in achieving CoD of Unit No. 2.
56. In view of the above mentioned facts and the reasons mentioned by the petitioner alongwith the documents placed on record in support of all such reasons, the delay in achieving commercial operation of the Unit No. 1 was not attributable to the petitioner. The delay in achieving CoD of Unit No. 1 has been considered by the Commission in its order dated 01.12.2017 in Petition No. 68 of 2016. Further, the Scheduled CoD of Unit No. 2 would be after six months from actual CoD of unit no. 1 which comes to 19th November' 2015 as per provisions under PPA between the Petitioner & Responent No. 1. Accordingly, the duration for consideration before the Commission in respect of delay in CoD in the subject petition is between 19th November' 2015 and 07th April' 2016 for which the Respondent No. 1 has considered revision of SCOD from 30th November' 2015 to April' 2016 as per communication between the petition & respondent No. 1 filed with the subject petition. However, the procurer (MPPMCL), irrespective of the reasons given by petitioner for the delay in achieving CoD of Unit No.2, agreed to revise SCOD with the condition of **“no claim towards IDC”** in public interest. Therefore, the Commission has considered the SCoD of Unit No. 2 as on 07th April' 2016 with the condition of **“no claim of IDC beyond 19th November' 2015.**
57. In view of the above, vide letter dated 7th June' 2018, the petitioner was asked to file the unit-wise break-up of IDC and IEDC as on SCOD and as on actual CoD separately duly reconciled with the Annual Audited Accounts. and certified by the statutory auditor.

58. By affidavit dated 4th July' 2018, the petitioner filed the actual cash expenditure towards IDC and Finance Charges for Unit-2 as on its SCOD (20.11.2015), Actual COD (07.04.2016) & 31.03.2017 duly certified by auditor are as given below:

| Particulars | Rs. Crore | | | |
|--|------------|------------|------------|------------|
| | 19.11.2015 | 31.03.2016 | 06.04.2016 | 31.03.2017 |
| Interest during Construction | 641.45 | 710.91 | 710.91 | 714.85 |
| Finance Charges including Unamortized cost to Borrowings | 77.53 | 93.66 | 93.66 | 93.66 |

59. Accordingly, the Commission has worked out the IDC and FC of Rs. 904.90 Crore against the petitioner claim of Rs. 974. 36 Crore as given below:

Table 5: Computation of IDC (Rs. In Crores)

| Particulars | Amount |
|--|---------------|
| IDC claimed as on actual CoD (A) | 710.9 |
| Less: IDC Disallowance beyond Scheduled COD (B) | 69.46 |
| Net IDC Allowed as on Actual COD (C) | 641.44 |
| Finance Charges including Unamortized cost to Borrowings (D) | 93.66 |
| Less: Unamortized cost to Borrowings(E) | 7.41 |
| Add: Finance charges (F) | 86.25 |
| Total (C+F) | 727.69 |
| Add: IDC amount towards common facilities pertaining to unit No. 2 deferred in Commission's order dated 01.12.2016 in petition No. 68. | 177.21 |
| Approved Figures IDC and FC for Unit No 2 | 904.90 |

60. On perusal of Form TPS 5B filed with the petition, it is observed that the estimated expenditure towards pre-operative expenditure (including start-up fuel) initially approved by the BoD was Rs. 432.48 Crore which was subsequently revised to Rs. 437.99 Crore for the project. However, the petitioner has claimed Rs. 182.37 Crore towards these expenses for Unit No. 2 as on its CoD which includes Rs 134.03 Crore towards establishment charges and Rs. 48.34 Crore towards start-up fuel expenses.
61. On further scrutiny of the subject petition, it is observed that out of total pre-operative expenses of Rs. 182.37 Crore claimed by the petitioner, the expenses of Rs. 153.72 Crore are as on 6th April' 2016 and balance expenses of Rs. 28.65 Crore deferred by the Commission towards common facilities in the final tariff order issued by the

Commission for Unit No. 1.

62. It is also observed that the pre-operative expenses claimed by the petitioner are recorded in Annual Audited Accounts for FY 2016-17 and certified by the Auditor.

Infirm Power

63. Regulation 24 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides that,

“Supply of infirm power shall be accounted as deviation and shall be paid for from the regional/ state deviation settlement fund accounts in accordance with the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related matters) Regulations, 2014, as amended from time to time or any subsequent re-enactment thereof:

Provided that any revenue earned by the generating company from supply of infirm power after accounting for the fuel expenses shall be applied in adjusting the capital cost accordingly

64. The petitioner submitted that the Unit No. 2 of its Power Project was synchronized with the grid on 12th March’ 2016 and achieved COD on 7th April, 2016. With the subject petition, the petitioner filed a copy of certificate issued by the Power System Operation Corporation Limited certifying the first time synchronization of Unit No. 2 with the grid. The petitioner also filed copies of various documents/certificates confirming 07th April’ 2016 as the date of commercial operation of Unit No. 2 of its power plant.
65. On scrutiny of the subject petition, it was found that the petitioner has not filed the CA certificate regarding fuel expenditure for generation of infirm power till CoD of the Unit No. 2.
66. Therefore, vide Commission letter dated 07th June’ 2018, the petitioner was asked to file the following details:
- a) Month-wise details of infirm power generated from Unit No.2 and revenue earned from sale of infirm power along with the statement from concerned Load Despatch Centre duly reconciled with Annual Audited Accounts.

- b) Detailed break-up of fuel expenses incurred for generation of infirm power duly certified by the CA. The break-up of quantity and landed cost of FSA and Non-FSA coal he provided.
- c) Whether the revenue earned from sale of infirm power has been accounted for in the capital cost of the project claimed in the petition. Supporting documents be filed in this regard.
- d) The petitioner was asked to file the copy of bill invoice for purchase of coal and oil for generation of infirm power.
- e) The petitioner was askd to inform the detailed break-up of quantity, rate and cost of coal and oil consumed during pre-commissioning activities and generation of infirm power from different sources.

67. By affidavit dated 04th July' 2018, the petitioner submitted the following:

- i. *In regard to Query 10(a), the details of monthly statements issued by Western Regional Power Committee ("WRPC") containing details of infirm power injected in the grid and revenue earned from sale of infirm power during the commissioning activities of Unit-2 as is attached herewith and marked as ANNEXURE-12(Colly). According to these statements, the total revenue accrued from sale of infirm power during pre-commissioning activities of Unit-2 till 06.04.2016 (COD of Unit-2 being 07.04.2016) amounts to Rs 13.68 Crore (i.e. Receivables: Rs 14.02 Crore; Payable: Rs 0.34 Crore).*
- ii. *In regard to Query No. 10(b), the Petitioner hereby submits, in light of Annual Audited Accounts for FY 2016-17 (no impact in terms of accounting standards being IGAAP or Ind AS), the auditor certificate regarding fuel expenditure & revenue realized from sale of infirm power during pre-commissioning activities for Unit-2 as on its COD (07.04.2016) is attached herewith and marked as ANNEXURE-13.*
- iii. *In regard to Query No. 10(c), the Petitioner submits that the revenue earned from the sale of infirm power amounting to Rs. 13.46 Crore has been accounted for in the*

capital cost which can be inferred from the Note No. 5 of the Annual Audited Accounts for FY 2016-17.

- iv. In regard to Query No. 10(d), the copies of bill/invoices for purchase of coal and oil during the pre-commissioning activities of Unit-2, being in bulk numbers, the sample bills/invoices for purchase of coal and oil during the pre-commissioning period of Unit-2 are attached herewith and marked as ANNEXURE-14.
- v. In regard to Query No. 10(e), the detailed break up of coal and oil consumed during the pre-commissioning activities of Unit-2 in terms of quantity, rate and cost and generation of infirm power during the period is as hereunder:

| S.No. | Period | Fuel | Unit | Consumed Quantity | Amount in Rs. Crore |
|--|-----------------------------|-------------|-------------|--------------------------|----------------------------|
| 1 | Upto 31.03.2016 | HFO | KL | 3229.41 | 8.54 |
| | | LDO | KL | 1927.32 | 7.23 |
| | | Coal* | MT | 61280.5 | 16.77 |
| 2 | 01.04.2016 to 06.04.2016 | HFO | KL | 168.6 | 0.45 |
| | | LDO | KL | 101.02 | 0.4 |
| | | Coal* | MT | 53874.9 | 14.95 |
| <i>Total Cost of Start-up Fuel/Pre-commissioning expenses till COD of Unit-2</i> | | | | | 48.34 |
| <i>Less: Revenue realized in cash from sale of Infirm Power till COD of Unit-2</i> | | | | | 1.03 |
| <i>Net Cost of Start-up Fuel/Pre-commissioning Expenses (Net off Infirm Power)</i> | | | | | 47.31 |

*Only FSA coal has been used in pre-commissioning activities.

68. In its additional submission, the petitioner further filed a statement for infirm power injected into grid from Unit No. 2 from synchronization to CoD of the unit. The petitioner also filed the copies of revised weekly statements issued by Western Regional Power Committee in this regard. The details of net infirm power supply and net revenue realized has been summarized below:

Table 6: Details of Net infirm power supply and net revenue realized

| WRPC Statements submitted as Annexure 12 (Colly) | Injection (-) / Drawl (+) | Net Receivable | Net Payable | Net Receivable(+) / Payable (-) |
|---|---------------------------------|---|-------------------------------|---|
| | MU | Rs Lakh | Rs Lakh | Rs Lakh |
| 14th March 2016 - 20th March 2016 | -9.239345 | 121.81 | -19.18 | 102.62 |
| 21st March 2016 - 27th March 2016 | -21.016164 | 269.42 | -9.17 | 260.25 |
| 28th March 2016 - 3rd April 2016 | -48.328973 | 591.40 | -5.47 | 585.93 |
| 4th April 2016 - 6th April 2016 | -28.486508 | 411.39 | 0.00 | 411.39 |
| Net Injection (-)/Drawl (+) - A | 106.086572 | 1394.02 | -33.82 | 1360.19 |
| | | | | |
| Correction in WRPC statements (Receivables (+)/Payables (-) | Earlier WRPC Statement (Rs) | Revised WRPC Statement (30.01.2017) (Rs) | Variation in Receivables (Rs) | Impact incorporated in Book of accounts for FY 2016-17 in Rs Lakh |
| 13th April 2015 - 19th April 2015 | 12803360 (issued on 01.05.2015) | 11942220 | -861140 | -8.61 |
| 20th April 2015 - 26th April 2015 | 3385195 (issued on 07.05.2015) | 2860452 | -524743 | -5.25 |
| Total Variation - B | | | | -13.86 |
| | | | | |
| Net - Sale from infirm power booked in Book of Accounts for FY 2016-17 (A – B) | | | | 1346.33 |

69. The petitioner submitted the break up of pre-operative expenses of Rs 153.72 Crore claimed in the petition as under:

Table 7: Breakup of Pre-operative expenses (Rs. in Crore)

| Particulars | Amount |
|--|---------------|
| Project Management Expenses (including Employee expenses & other expenses) | 153.27 |
| Less: Income during Construction | -46.86 |
| Pre-Commissioning Expenses | 48.34 |
| Less: Revenue from sale of infirm power | -1.03 |
| Total IEDC | 153.72 |

70. On examination of petitioner claim towards Pre-operative expenses, it is observed that out of total cash receipt of Rs. 13.46 Crore, the petitioner has realized only Rs. 1.03 Crore as on 07th April' 2016 and balance amount was account for during FY 2016-17.

71. However, for the purpose of tariff determination, the Commission has considered the total cash receipt of Rs. 13.46 crore as on 07th April' 2016. Accordingly, the following pre-operative expenses are considered in this order.

Table 8: Pre-operative expenses considered in this Order (Rs. in Crores)

| Particulars | As on 06.04.2016 |
|--|---------------------|
| Project Management Expenses (including Employee expenses & other expenses) | 153.27 |
| Less: Income during Construction | -46.86 |
| Pre-Commissioning Expenses | 48.34 |
| Less: Revenue from sale of infirm power | -13.46 |
| Total Pre-Operative Expenses | 141.29 |
| Add: Diversion from Unit No 1 to unit No 2 | 28.65 |
| Total Pre-operative Expenses considered in this order | 169.94 |

Foreign Exchange Rate Variation:

Provisions under Regulations:

72. Regulations 50 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under;

“50 Foreign Exchange Rate Variation (FERV)

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 full in the discretion of the Generating Company.

50.2 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.

50.3 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.

50.4 The 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.”

73. With regard to Foreign Exchange Rate Variation (FERV), it is observed that the petitioner in its BoD dated 16th February’ 2016 submitted an amount of Rs.158.49 Crore towards FERV out of which Rs. 111.80 Crore has been allocated towards Unit No. 2 as on its COD and 31st March 2017.

74. Vide Commission’s letter dated 07th June’ 2018, the petitioner was asked to explain the detailed reasons for FERV loss and gain along with all relevant supporting documents and prevailing exchange rate variation towards its claim in light of Regulation 50 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015. The petitioner was also asked to provide the details in the following format:

A. Break-up of FERV:

| S.No. | Nature of Transaction | Value of Transaction in foreign Currency | Exchange Rate along with dates on the basis of which loss or gain has been computed | FERC Gain or Loss amount | Hedging amount, if any |
|-------|-----------------------|--|---|--------------------------|------------------------|
| 1 | | | | | |
| 2 | | | | | |

B. The above information was required to be furnished as on the following dates:

(i) Schedule COD of Unit-2

(ii) 07th April, 2016 and

(iii) 31st March, 2017

C. Under which head of the capital cost, the hedging amount if any, has been recorded.

D. In case the petitioner has not hedged foreign exchange exposure in respect of the Interest on foreign currency loan and repayment thereof, the reasons for not securing the foreign exchange exposure be submitted.

E. The petitioner was asked to clearly indicate the amount of FERV loss or again, in the profit and loss account of FY 2016-17.

75. By affidavit dated 04th July’ 2018, the petioner submitted the following:

It is submitted that under the MPERC Tariff Regulations 2015, it is at the discretion of Generating Company to hedge the foreign exchange exposure in respect of the interest on foreign currency loan and repayment of foreign loan acquired for the generating station. Any extra rupee liability towards interest payment and loan repayment corresponding to the normative foreign currency loan in the relevant Year shall be permissible under these Regulations. The only test in this regard is to check that the extra rupee liability towards interest payment and loan repayment corresponding to the normative foreign currency loan in the relevant Year is not attributable to the Generating Company or its suppliers or contractors. The relevant extracts of these are reproduced hereunder:

“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.

...

50.4 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.”

76. The explanation given in the Para(s) below clearly establishes that the extra rupee liability towards interest payment and loan repayment cannot be attributed to either Petitioner or its suppliers or contractors.

77. It is submitted that the Petitioner has claimed a total Forex Loss of Rs. 158.49 Crore till 31.03.2016 as part of the capital cost of the Project in Petition No. 68 of 2016 & Petition No. 18 of 2017 and has allocated Rs. 46.69 Crore towards capital cost of Unit-1 up-to the date of COD of Unit-1 & Rs 111.80 Crore towards capital cost of Unit-2. The total aggregate Foreign Exchange Rate Variation (loss) of Rs 158.49 Crore charged to P&L on the basis of actual loss/gain incurred in relation to the short term monetary items (including Buyer’s Credit & current payables) as on the date of

COD of Unit-2. The Petitioner has also submitted the reasons for Foreign Exchange Rate Variation (FERV) Losses considered as a part of capital cost in the above mentioned petitions the details of which are attached herewith and marked as ANNEXURE-9.

In view of the above, the specific response of the Petitioner to this Hon'ble Commission's Queries in light of Annual Audited Accounts for FY 2016-17 are as under:

Break up of FERV losses/gain for the Project as on various specified dates is as follows:

| Nature of Transaction | Realized FERV Loss in Rs. Crore on | | |
|---|---|------------------------|------------------------|
| | 19.11.2015 | 07.04.2016 | 31.03.2017 |
| <i>Loss on Offshore Supply Contract payments</i> | <i>(27.49)</i> | <i>(34.73)</i> | <i>(40.57)</i> |
| <i>Loss on Buyers Credit/Loss on conversion of Buyer's Credit into ECB</i> | <i>(92.33)</i> | <i>(113.31)</i> | <i>(113.31)</i> |
| FERV Loss for the Project | <i>(119.82)</i> | <i>(148.04)</i> | <i>(153.88)</i> |
| FERV losses realized and allowed by this Hon'ble Commission for Unit-1 as on its COD | <i>(46.69)</i> | <i>(46.69)</i> | <i>(46.69)</i> |
| FERV losses realized for Unit-2 | <i>(73.13)</i> | <i>(101.35)</i> | <i>(107.19)</i> |

The relevant supporting document in form of spreadsheet for the calculation of FERV losses/gains is attached herewith and marked as ANNEXURE-20. As per the attached spreadsheet for the calculation of FERV losses/gains, the Petitioner submits that the total FERV loss amounts to Rs. 199.08 Crore as on 31.03.2017, however, till dated realized FERV losses for the Project amounts to Rs. 153.88 Crore. The balance unrealized FERV loss is on account of reinstatement of Forex liabilities against the retention payments of under the Off-shore supply contract as on 31.03.2017 and is expected to be realized within the cut off date and become the part of capital cost of the Project.

The Petitioner submits that no hedging amount/charge has been recorded in the Project cost as substantial savings in the Project cost were achieved by using unhedged Buyer's Credit. Further, it is submitted that the Petitioner was intending to

refinance the Buyer's Credit with External Commercial Borrowings (ECB) which was subsequently obtained from IIFCL UK, which has now been fully hedged.

The Petitioner submits that the entire Project cost was initially funded by Rupee Term Loans (RTL) and there was no foreign currency loan/ ECB envisaged. However, the amounts to be paid against the offshore supply portion of the Project cost (included in the EPC Contract) were converted into Buyer's Credit in USD to ensure that the overall cost related to the funding of such expenditure is minimized. By use of Buyer's Credit as compared to Rupee Term Loans as envisaged earlier, the Petitioner has been able to achieve a saving of Rs 78.85 Crore in the Project cost as per the details tabulated hereunder

| Particulars as on 31.03.2016 | Amount in Rs. | Remarks |
|--|----------------------|--|
| Buyer's Credit availed | 8,399,648,448 | INR value of buyers credit as per transaction date rate |
| Cost incurred for Buyers Credit | | |
| Interest Cost | 175,204,040 | Actual interest paid on buyers Credit availed |
| Buyers Credit Charges | 640,141,037 | Actual cost paid to the lenders for availing of Buyer's Credit |
| FERV Losses | 1,152,692,721 | This is the amount of FERV losses charged to P&L considering Buyer's Credit as short term monetary item, till the date of hedge. |
| Total | 1,968,037,798 | |
| Equivalent RTL | 8,399,648,448 | |
| Interest Cost | 2,756,496,592 | Interest on equivalent RTL calculated on the basis of weighted average of interest @13.27% |
| Net Savings | 788,458,794 | |

In order to protect the Foreign Exchange Rate Variation against the offshore supplies and to reduce the overall cost of borrowing by reducing the exposure of Rupee Term Loans facility, the Petitioner has also got sanction of US \$150 Million of foreign

loan/External Commercial Borrowings (ECB) from India Infrastructure Finance Company (UK) Limited (IIFCL) for the Project on 28.03.2014. Till date, the Petitioner has drawn the ECB facility of US \$127.68 Million which is fully hedged (currency as well as interest) for the period of 10 years through State Bank of India and has utilized the same to repay the Buyer's Credit facility.

The amount of FERV gain or loss in the Profit and Loss account of FY 2016-17 is unrealized gain of Rs 4.73 Crore.

78. On detail scrutiny of the above reply, it is observed that the actual realized FERV loss is Rs. 148.04 Crore against the estimated FERV loss of Rs 158.49 crore. Out of total FERV loss of Rss 148.04 Crore, the Commission had considered Rs 46.69 Crore towards Unit No 1 in its order dated 01st December' 2017, (in petition No. 68 of 2016) and balance of Rs. 101.35 Crore has been allocated to Unit No. 2 in this Petition. Therefore, the petitioner revised its claim of FERV as on CoD of Unit No. 2 from Rs. 111.80 Crore to Rs. 101.35 Crore.
79. In view of the aforesaid facts/figures and in accordance with the above provisions under Regulations, the Commission has considered Rs 101.35 Crore towards loss of FERV actually incurred by the petitioner towards Unit No. 2 as on its COD in this order.

Custom Duty/Excise Duty

80. Regarding the custom duty/excise duty, the petitioner had earlier considered estimated expenditure towards custom/excise duty of Rs. 516.03 Crore. Vide revised BoD approval dated 16th February' 2016, the petitioner considered the estimated cost of Rs 192.72 Crore towards custom and exercise duty. Against the aforesaid estimated cost of Rs. 192.72 Crore, the petitioner submitted that it has actually incurred cash expenditure of Rs. 28.75 Crore for Unit No. 1&2 out of which expenditure of Rs 27.41 Crore pertains to Unit No. 1 and Rs. 1.34 Crore pertains to Unit No. 2 as on COD of Unit No.2.
81. In para 56 of the subject petition, the petitioner submitted the following:

With regard to estimated provision of Rs.576.03 Crore, the Petitioner has incurred Rs.528.26 Crore in terms of Bank Guarantees and Cash payments against Customs & Excise duty as follows:

(Rs. Crore)

| Particulars | BG Value | Payment in Cash | Total |
|---------------------|-----------------|------------------------|--------------|
| <i>Customs Duty</i> | 448.38 | 24.29 | 472.65 |
| <i>Excise</i> | 51.15 | 4.46 | 55.61 |
| Grand Total | 499.53 | 28.75 | 528.26 |

In terms of the above referred MoP letter, the BGs amounting to Rs.335.56 Crore (67.175% of the total BGs against Customs and Excise duty) is due for release and the balance BG amount of Rs.163.97 Crore is kept as provision in capital cost.

Additionally, an amount of Rs.28.75 Crore has been paid by the Petitioner in cash towards Custom and Excise Duty for equipment procured for the Project in the initial period i.e. from 06.06.2011 to 08.02.2012. Out of this amount of Rs.28.75 Crore, an amount of Rs. 14.79 Crore was paid in cash by the Petitioner towards Custom Duty prior to the issuance of the provisional Mega Power Certificate dated 18.01.2012 by the Ministry of Power. This amount was paid for import of foundation bolts on merit rate to enable start of construction as per the schedule. The balance amount of Rs.13.96 Crore comprises of two components i.e. Rs.9.48 Crore towards Custom Duty and Rs.4.48 Crore towards Excise Duty, which was paid post issuance of provisional Mega Power Certificate pending registration of the Project with the appropriate authorities.

The Petitioner further submits that there is no process/provision for refund of this amount of Rs.28.75 Crore paid in cash by the Petitioner towards Custom and Excise Duty as the material has already been assessed on merit rate. Further even the above referred MoP letter dated 29.12.2017 only provides for release of BGs to the extent of 67.175% of the total BG Value and does not provide for proportionate refund of the cash amount of Rs.28.75 Crore. As such the Petitioner humbly requests the Hon'ble Commission to kindly consider Rs.28.75 Crore as a part of the Project cash expenditure for the purpose of tariff determination. Nonetheless, in the event of

receiving any refund against this amount, the Petitioner would duly approach the Hon'ble Commission for suitable adjustment in the Project capital cost.

Henceforth, the total against this head of Rs.192.72 Crore (Rs.163.97 Crore under BGs + Rs.28.75 Crore, already paid in cash) has been kept in the revised capital cost of the Project.

82. On perusal of above reply regarding custom and excise duty, it is observed that the petitioner has obtained the provisional Mega Power Certificate from the Govt. of India, Ministry of Power.
83. Subsequently, the Ministry of Power on 12.04.2017 issued an amendment to Mega Power Policy for Provisional Mega Power Projects and provided further extension of 60 months granted to the Provisional Mega Power Projects including the petitioner's project for tie-up of Project capacity through Long Term PPAs. Accordingly, the petitioner has now been provided with a timeline up-to March 2022 for achieving power tie-up of the entire Project capacity through Long Term PPAs required for issuance of final mega power status of the project.
84. In view of the above, the cash expenditure of Rs 28.75 Crore claimed in the subject petition towards actual expenses of Customs and Excise Duty allocated to Unit No. 2 is not considered in this order. However, the petitioner is directed to keep on updating its position in true-up petition/(s) about Mega Power Status of its power project to the Commission with regard to its claim in the subject petition.

Unamortized Finance cost to Borrowing

85. The petitioner has envisaged the cost of Rs 34.93 Crore towards unamortized finance cost to borrowing in its BoD approval dated 16th February' 2016 which is being actually incurred towards unamortized finance cost to borrowings for Unit No.1&2 (as on COD of Unit No.2), out of which it has claimed Rs. 14.46 Crore towards Unit No.2.
86. The aforesaid claim of Rs. 14.46 Crore by the petitioner is inclusive of Rs. 7.41 Crore towards Unit No. 2 and Rs. 7.05 Crore in the expenditure towards common facilities and pertains to Unit No. 2 which was deferred by the Commission in order dated 01.12.2017.

87. It is observed that the petitioner has shown the un-amortized finance cost to borrowing of Rs. 14.46 Crore for Unit No 2 in the Annual Audited accounts.
88. During the proceeding in Petition No. 18/2017 for determination of Provisional Tariff of Unit No. 2, the petitioner filed the detailed justification of the claim towards unamortized finance cot Borrowings and same was mentioned at para 73 of the order dated 28th October' 2017.
89. In view of the above, the Commission has observed that the petitioner has amortized the finance cost to borrowing as per the accounting policy of amortizing the cost incurred in raising funds over the period for which the funds are acquired or within five years, whichever is less in the profit and loss account. In para 105 to 112 of Commission's order dated 01st December' 2017 in petition no. 68 of 2016, the Commission has examined in details the claim of unamortized Finance Cost to borrowings for the petitioner's project. Out of total unamortized finance cost to borrowing of Rs. 34.93 Crore, unamortized finance cost of Rs. 20.47 Crore was considered in aforesaid order. In the instant petition, the Commission has been requested to consider the remaining un-amortized finance cost to borrowing in the capital cost hence, in view of above observations, the balance amount of Rs. 14.46 Crore towards un-amortized finance cost to borrowing is considered in this order.

Capital Spares

90. With regard to the capital spares, Regulation 19 (a) of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations 2015, prescribed the ceiling norms for capitalization of initial spares for coal based thermal generating stations, which is capped at 4.0% of the Plant & Machinery cost.
91. In form TPS 5B of the petition, the petitioner has not indicated the capital spares separately. Therefore, vide Commission's letter dated 7th June' 2018, the petitioner was asked to file details of the Initial Spares capitalized as on CoD of Unit No.2 and also 31st March' 2017
92. By affidavit dated 04th July' 2018, the petitioner submitted the following:
The details of initial spares capitalized as on COD of Unit-2 (07.04.2016) and also as on 31.03.2017 in light of Regulation 19 of MPERC Regulations 2015 is attached herewith and marked as ANNEXURE-19. The total amount of Capital Spares capitalized under Unit-2 as on the date of COD of Unit 2 is Rs 53.83 Crore (Refer Note 4 of Annual Audited accounts for FY 2016-17).

93. The details of the capital spares as filed by the petition in additional submission dated 04th July' 2018 (Annexure 19) are as follows:

| Initial Spares | As on 07.04.2016 (Rs. Crore) |
|---|---|
| BTG Spares | |
| Boiler and its Auxiliaries | 36.20 |
| Turbine and its Auxiliaries | 6.57 |
| Generator and its Auxiliaries | 2.04 |
| BOP Spares | |
| Mechanical Mandatory Spares | 5.78 |
| Electrical Mandatory Spares | 2.33 |
| C&I Mandatory Spares | 0.97 |
| Total Initial Spares capitalized with Unit No. 2 | 53.89 |

94. In view of aforesaid Regulation 19, it is observed that the petitioner has claimed the capital spares of Rs. 53.89 Crore capitalized towards Unit No. 2 as on its COD and same has been included under Capotal Cost of Unit No. 2. Accordingly, the capital spare in term of percentage of total approved Plant & Machinery cost is worked out as 3.24%, which is within the norms prescribed under Regulations, 2015 and indicated at Note-4. The petitioner submitted that the capital sapres have been capitalized in Annual Audited Accounts for FY 2016-17. Accordingly, the amount of Rs. 53.89 Crore for capital spares towards Unit No.2 is considered in this order.

Carrying Cost

Petitioner's Submission

95. The claimed carrying cost on account of the balance amount of common facilities pertains to Unit No. 2 of Rs.649.45 Crore and was not considered by the Commission for the purpose of final tariff determination of Unit-1 of the Project. The petitioner broadly submitted the following:

“The Commission vide its order dated 01.12.2017 in Petition no. 68 of 2016 had allowed the capital cost for Unit-1 to Rs.4,235.89 Crore against the actual cash expenditure of Rs.4,885.35 Crore as claimed by the Petitioner. It is to be noted despite Rs.4,885.35 Crore been capitalized as actual cash expenditure for Unit-1 in the Annual Audited Accounts of the Petitioner, the balance amount of Rs.649.45 Crore was not considered by the Hon’ble Commission for the purpose of final tariff determination of Unit-1 of the Project. The break-up of the claimed cash expenditure for Unit-1 (i.e. capitalized in the Annual Audited Accounts of the Petitioner) vis-à-vis allowed by the Hon’ble Commission is as hereunder:

(Rs. Crore)

| Particulars | Claimed Cash Expenditure | Expenditure Considered by the Commission | Expenditure not considered by the Commission |
|--|---------------------------------|---|---|
| Cash Expenditure as on Unit-1 COD 20.05.2015) | 4570.29 | 4047.95 | 522.34 |
| Additional Capital Expenditure during FY 2015-16 | 315.06 | 187.94 | 127.12 |
| Cash Expenditure as on 31.03.2016 | 4885.35 | 4235.89 | 649.45 |

The Petitioner further submits that the above amount of Rs.649.45 Crore, not been considered by the Hon’ble Commission for determination of the final tariff of Unit-1, has resulted into under recovery of Annual Fixed Charges (corresponding to the contracted capacity of 30% under PPA with MPPMCL).

Keeping in view, the concept of time value of money and servicing of the actual interest on the debt corresponding to the above mentioned cash expenditure not considered by the Hon’ble Commission, the Petitioner humbly prays the Hon’ble Commission to allow the one-time recovery of carrying cost towards the same as per the methodology proposed by the Petitioner under Paragraph 101 of the instant Petition while determining the final tariff of Unit-2.

Proposed Methodology for one-time adjustment/recovery of carrying cost:

| Item No. | Particulars | Amount (Rs. Cr.) |
|-----------------|---|-------------------------|
| 1 | <i>Expenditure as on Unit-1 COD (i.e.20.05.2015) not considered by the Hon'ble Commission for determination of final tariff of Unit-1.</i> | 522.33 |
| 2 | <i>Debt Component of Item No.1 as per the approved Debt-Equity Ratio of 72.25%:27.75% (i.e. 72.25% x Item No.1)</i> | 377.39 |
| 3 | <i>Additional Expenditure during the period between COD of Unit-1 (20.05.2015) and Unit-2 (07.04.2016), not considered by Hon'ble Commission for determination of final tariff of Unit-1 of the Project.</i> | 127.12 |
| 4 | <i>Debt Component of Item No.3 as per the approved Debt-Equity Ratio of 72.25%:27.75% (i.e. 72.25% x Item No.3)</i> | 91.84 |
| 5 | <i>Total Debt Component of Expenditure not considered by the Hon'ble Commission till COD of Unit-2 (07.04.2016) (i.e. Item No. 2 + Item No. 4)</i> | 469.23 |
| 6 | <i>Average Debt Component of Expenditure not considered by the Hon'ble Commission till COD of Unit-2 (07.04.2016) [i.e. (Item No. 2 + Item No. 5)/2]</i> | 423.31 |
| 7 | <i>Weighted Average rate of Interest (WAROI) for FY 2015-16 as approved by the Hon'ble Commission.</i> | 13.27% |
| 8 | <i>Number of days between COD of Unit-1 (20.05.2015) and Unit-2 (07.04.2016)</i> | 323 |
| 9 | <i>Total Interest on Expenditure not considered by Hon'ble Commission for determination of final tariff of Unit-1. (Avg. Debt Component * WAROI * No. of Days between COD of Unit-1 & Unit-1/366). [i.e. (Item No. 5 * Item No. 7 * Item No. 8) / 366]</i> | 49.57 |
| 10 | <i>Carrying Cost in terms of Interest incurred by the Petitioner on the debt portion of the Expenditure not considered by Hon'ble Commission for final tariff of Unit-1 proportionate to the Contracted Capacity (30%) under PPA with MPPMCL. (i.e. 30% * Item No. 9)</i> | 14.87 |

Commissions Analysis:

96. Vide Commission's letter dated 07th June' 2018, the petitioner was asked to explain the reasons with justification of claiming above carrying cost in light of the Annual Audited Accounts.

97. By affidavit dated 04th July' 2018, the petitioner submitted its justification for claiming the carrying cost. The petitioner reiterated the same contention as filed in the subject petition. The petitioner, while referring the judgments of Hon'ble Appellate Tribunal for Electricity has submitted the following:

“It is respectfully submitted that the issue of carrying cost has been comprehensively dealt with by the Petitioner under Para(s) 98-102 of the present Petition. In this regard, the Petitioner reiterates its submissions as under.

As per the Annual Audited Accounts of the Petitioner for FY 2015-16, the Petitioner had capitalized Rs 4,885.35 Crore as actual cash expenditure for Unit-1. However, this Hon’ble Commission while determining the tariff of Unit-1 allowed the capital cost for Unit-1 as Rs.4,235.89 Crore against the actual cash expenditure of Rs.4,885.35 Crore made by the Petitioner.

It is submitted that it is a settled position of law that whenever a payment/ recovery against the expenditure already incurred is deferred or delayed, then carrying cost is payable along with the deferred payment. The principle of carrying cost has been well established in the various judgments of the Hon’ble Supreme Court and the Hon’ble Appellate Tribunal for Electricity (“Hon’ble APTEL”). The carrying cost is the compensation for time value of money or the monies denied at the appropriate time and paid after a lapse of time. In this context reliance is placed on:-

- a) Satinder Singh v. Umrao Singh: AIR 1961 SC 908 (Paras 10, 19 to 21).*
- b) South Eastern Coalfields Ltd. v. State of M.P.: (2003) 8 SCC 648 (Paras 21 – 24)*
- c) North Delhi Power Limited v. Delhi Electricity Regulatory Commission: 2007 ELR (APTEL) 193. (Para 40)*
- d) North Delhi Power Limited v. Delhi Electricity Regulatory Commission: 2010 ELR (APTEL) 891. (Para 45, 46 &58)*

It is noteworthy that the Hon’ble APTEL in its judgment passed on 27.04.2011 in Appeal No. 72 of 2010 (Maharashtra State Power Generation Co. Ltd. v. Maharashtra Electricity Regulatory Commission) has also acknowledged, endorsed and upheld the entitlement of the generating company for carrying cost/ IDC on deferred capital cost of the common facilities till the commissioning of the subsequent unit. The relevant extracts of the said judgment is provided hereinbelow:-

*“11.2 Provision of common facilities is done mainly for optimum utilization of resources including land, benefit of which is ultimately passed on to the consumers. There could be two approaches for capitalization of cost of common facilities. In the first approach, the common facilities essential for operation of the first unit could be loaded to this unit. This will ensure timely servicing of capital cost incurred and eventually reduce the capital cost of the subsequent unit including the IDC on deferred capital cost of common facilities till the commissioning of the subsequent unit. The second approach is to apportion the total cost to each unit. **In this case the generating company will be entitled to IDC on the deferred capital cost of common facilities till the commissioning of the subsequent unit.** There is, however, no specific Regulation on apportioning of cost of common facilities. In our opinion, where the gap between two generating units is more, it would be prudent to allow cost of common facilities essential for commissioning of the first unit alongwith the capital cost of the first unit.”*

Further, Hon'ble APTEL in another recent judgment passed on 13.04.2018 in Appeal No. 210 of 2017 (Adani Power Ltd. v. CERC & Ors.), has allowed the carrying cost to the Appellants. The relevant extract of the said judgment is provide herein below:-

“In the present case we observe that from the effective date of Change in Law the Appellant is subjected to incur additional expenses in the form of arranging for working capital to cater the requirement of impact of Change in Law event in addition to the expenses made due to Change in Law. As per the provisions of the PPA the Appellant is required to make application before the Central Commission for approval of the Change in Law and its consequences. There is always time lag between the happening of Change in Law event till its approval by the Central Commission and this time lag may be substantial. As pointed out by the Central Commission that the Appellant is only eligible for surcharge if the payment is not made in time by the Respondent Nos. 2 to 4 after raising of the supplementary bill arising out of approved Change in Law event and in PPA there is no compensation mechanism for payment of interest or carrying cost for the period from when Change in Law becomes operational till the date of its approval by the Central Commission. We also observe that this Tribunal in SLS case after considering time value of the money has held that in case of re-determination of tariff the interest by a way of compensation

is payable for the period for which tariff is re-determined till the date of such re-determination of the tariff. In the present case after perusal of the PPAs we find that the impact of Change in Law event is to be passed on to the Respondent Nos. 2 to 4 by way of tariff adjustment payment as per Article 13.4 of the PPA...

From the above it can be seen that the impact of Change in Law is to be done in the form of adjustment to the tariff. To our mind such adjustment in the tariff is nothing less then re-determination of the existing tariff.

Further, the provisions of Article 13.2 i.e. restoring the Appellant to the same economic position as if Change in Law has not occurred is in consonance with the principle of 'restitution' i.e. restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgement of the Hon'ble Supreme Court in case of Indian Council for Enviro-Legal Action vs. Union of India &Ors., we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority..."

Keeping in view, the prudent utility concept of time value of money and servicing of the actual interest on the debt corresponding to the above mentioned cash expenditure deferred by this Hon'ble Commission, an amount of Rs 14.87 Crore has been claimed by the Petitioner as a one-time recovery of carrying cost towards the portion of expenditure (i.e. Rs. 649.45 Crore) already incurred by the Petitioner on the common facilities of the Project at the time of COD of Unit-1. The tariff on this expenditure has been deferred by this Hon'ble Commission till COD of Unit-2, due to which corresponding recovery could not be made by the Petitioner for the period between COD of Unit-1 and COD of Unit-2.

98. The petitioner has complied with the Accounting Standards while capitalizing the assets in its books of accounts on put-to-use basis. However, the Commission vide order dated 01.12.2017 in Petition No. 68/2016 has allocated cost between unit 1

and unit 2 of the plant for determination of tariff in compliance with the regulatory provisions. On account of this allocation, the IDC on these common assets pertaining to Unit No. 2 (already capitalized in books of accounts) was not considered while determining tariff for Unit No. 1 of the project.

99. However, the tariff is claimed at cost of Rs 3465.70 Crores as on 7th April' 2016 wherein the amount pertains to common facilities is Rs. 649.45 Crore (Rs. 522.34 Cr. till CoD of Unit No. 1 and Rs. 127.12 Cr. during FY 2015-16 as Additional Capitalization). The petitioner has requested to pass on amount of Rs.14.87 Crores as the Interest on the debt portion of the expenditure not considered by the Commission for final tariff of Unit-1 proportionate to the Contracted Capacity under PPA with MPPMCL. (i.e. 30%), over and above the Annual Capacity Charges.
100. In the preceeding part of the order, the Commission has not considered IDC amount from 19.11.2015 to 07.04.2016 in terms of para 56 of this order, therefore, the carrying cost (IDC on common assets pertaining to Unit No. 2) from 19.11.2015 to 07.04.2016 is also not considered in this order.
101. Accordingly, the amount of Rs 28.09 Crores is worked out in the table below and is considered in the capital cost of Unit No. 2 for determination of tariff.
102. Hence, in view of the above mentioned facts and figures and in accordance with the above, the Commission has considered an amount of Rs 28.09 crore towards Carrying Cost in terms of interest incurred by the Petitioner on the debt portion of the expenditure for arriving at the capital cost of petitioner's project in the subject matter. The computation is shown below:

| | | (Rs. Crore) |
|----------------|---|--------------------|
| Sr. No. | Particular | (Rs. Crore) |
| 1 | Expenditure as on Unit-1 COD (i.e.20.05.2015) not considered by the Hon'ble Commission for determination of final tariff of Unit-1. | 522.33 |
| 2 | Debt Component of Item No.1 as per the approved Debt-Equity Ratio of 72.25%:27.75% (i.e. 72.25% x Item No.1) | 377.39 |
| 3 | Additional Expenditure during the period between COD of Unit-1 (20.05.2015) and Unit-2 (07.04.2016), not considered by Hon'ble Commission for determination of final tariff of Unit-1 of the Project. | 127.12 |
| 4 | Debt Component of Item No.3 as per the approved Debt-Equity Ratio of 72.25%:27.75% (i.e. 72.25% x Item No.3) | 91.84 |

| | | |
|---|--|--------------|
| 5 | Total Debt Component of Expenditure not considered by the Hon'ble Commission till COD of Unit-2 (07.04.2016) (i.e. Item No. 2 + Item No. 4) | 469.23 |
| 6 | Average Debt Component of Expenditure not considered by the Hon'ble Commission till COD of Unit-2 (07.04.2016) [i.e. (Item No. 2 + Item No. 5)/2] | 423.31 |
| 7 | Weighted Average rate of Interest (WAROI) for FY 2015-16 as approved by the Hon'ble Commission. | 13.27% |
| 8 | Number of days between Unit-1 COD (20.05.2015) and Unit-2 SCOD (19.11.2015) (since, IDC has been disallowed in this order) | 183 |
| 9 | Total Interest on Expenditure not considered by Hon'ble Commission for determination of final tariff of Unit-1. (Avg. Debt Component * WAROI * No. of Days between COD of Unit-1 & Unit-1/366). [i.e. (Item No. 5 * Item No. 7 * Item No. 8) / 366] | 28.09 |

103. Summary of Capital cost Considered for Unit No 2 are as given below:

Table 9: Summary of Capital cost considered for Unit No.2 (Rs. in Crores)

| Particulars | Capital Cost Considered for Unit No.2 as on its COD |
|--|---|
| Land & Site Development | 49.04 |
| BOP | 399.36 |
| BTG | 1227.49 |
| Civil Works & Structural Works (Including Taxes) | 343.42 |
| Barrage (including Land and Taxes) | 65.00 |
| Railway Siding | 69.67 |
| Hard Cost | 2153.97 |
| Pre Operative Expense | 169.94 |
| IDC and FC | 904.90 |
| FERV | 101.35 |
| Custom and Excise | 0.00 |
| Unamortized Finance Cost | 14.46 |
| Carrying Cost | 28.09 |
| Soft Cost | 1218.74 |
| Total Capital cost including IDC, FC, | 3372.71 |

A. Additional capitalization for Unit 2 between 07th April' 2016 to 31st March' 2017

104. The petitioner filed the additional capitalization of Rs. 44.28 Crore during FY 2016-17. In para No. 62 of the petition the petitioner submitted that out of un-discharged liabilities of Rs.396.67 Crore, pertaining to Unit-2 as on its COD (i.e. 07.04.2016), it has discharged an amount of Rs.44.28 Crore and has claimed the same as ACE for the FY 2016-17 as shown below:

| Particulars | (Rs. Crore) |
|---------------------------------------|--|
| | Discharges of Liabilities / ACE for Unit-2 during FY 2016-17 |
| Plant and Machinery | 13.28 |
| Building and Civil Works | 25.51 |
| Pre-operative Expenditure | 6.88 |
| Finance Charges/IDC | (1.38) |
| Capital Expenditure for Unit-2 | 44.28 |

Provision in Regulations:

105. 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.

106. Vide Commission's letter dated 07th June' 2018', the petitioner was asked to file a comprehensive reply to the following issues with all relevant supporting documents along with the details of works under additional capitalization in light of Regulation

20.1 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 as under:

- i. Whether the addition of assets is on account of the reasons (i) to (v) in Regulation 20.1 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.
- ii. Whether the assets capitalized during the year are under original scope of work. Supporting documents need to be filed by the petitioner in this regard.
- iii. The assets addition of Rs. 44.28 Crore claimed in the petition are to be reconciled with the figures recorded in the Assets cum Depreciation Register.
- iv. The petitioner was asked to reconcile the figure of total additional capitalization (project- towards Units No.1&2) as indicated in the Annual Audited Accounts with the figures shown in CA certificate enclosed with the Petition.
- v. If there is any delay in completion of works from contractor side, the details of penalty if any, imposed on the contractor be informed. The petitioner was asked to file the status of Liquidated Damages if any, recovered/to be recovered from the different vendors as on 31st March' 2017.

107. By affidavit 04th July' 2018, the petitioner submitted the following:

In regard to Query No. (i), it is submitted that the additional capitalization with respect to Unit-2 is in accordance with the following Regulations of the MPERC Tariff Regulations, 2015:

- a. *Regulation 20.1(i)(a) - Undischarged liabilities.*
- b. *Regulation 20.1(i)(b) - Works deferred for execution.*

In regard to Query No. (ii), it is submitted that the additional capitalization with respect to Unit-2 is within the original scope of works.

In regard to Query No.(iii), it is submitted that the Asset cum Depreciation Register is prepared based on accrual system of accounting and as such, the values depicted in this register includes liabilities also. In light of this, the additional capital expenditure ("ACE") amounting to Rs. 44.28 Crore (on Cash basis) for Unit-2 during FY 2016-17 has been claimed against the liabilities/Provision of Rs. 396.67 Crore as on

07.04.2016 as per submitted capital cost stated in Para 59 of the present Petition. The break-up of ACE claimed for FY 2016-17 pertaining to Unit-2 is as follows:

a. Discharges of outstanding liabilities corresponding to allowed assets/works as on 07.04.2016 under original scope of work: Rs 36.46 Crore.

b. Physical addition of following assets under Unit-2 during the FY 2016-17 under original scope of works: Rs 7.81 Crore, with the further break-up as under:

| S. No. | Works/Assets | Amount in Rs Crore |
|---------------|--|---------------------------|
| 1 | Plant and Machinery | 5.77 |
| 2 | Others (including Furniture and fixtures, Vehicles, Office Equipments, EDP/Computer Software | 2.04 |
| 3 | Total Assets capitalized during FY 2016-17 (on Cash basis) | 7.81 |

In regard to Query No. (iv), the reconciliation of total additional capitalization (Project-towards Unit-1 & Unit-2) is attached herewith and marked as ANNEXURE-11.

In regard to Query No. (v), the Petitioner reiterates the submissions in response to above queries which have not been repeated for the sake of brevity.

108. In the subject petition, the petitioner has filed an additional capitalization of Rs. 44.28 Crore between 07.04.2016 to 31.03.2017 towards Unit No. 2. Out of aforesaid additional capitalization, the petitioner has incurred Rs. 10.39 Crore towards BTG & BOP, Rs. 25.51 Crore towards Civil & Structural Work, Rs. 0.32 Crore towards Barrage, Rs. 2.57 Crore towards Railway Siding and Rs. 6.88 Crore towards Pre-operative expenses.

109. On perusal of the aforesaid submissions with details of various works filed by the petitioner the Commission has observed the following:

- i. The said additional capitalization under various heads is recorded in the Audited Accounts of the petitioner for FY 2016-17.
- ii. The additional assets has also been recorded in Assets cum depreciation registers filed by the petitioner.
- iii. Chartered Accountant vide its certificate dated 6th February' 2018 has also certified the cash expenditure on additional capitalization of Rs. 44.28 Crores

from CoD of Unit No. 2 till 31st March' 2017.

- iv. The said additional capitalization is within the cut-off date of the project.
- v. The petitioner confirmed that the additional capitalization with respect to Unit-2 is filed under Regulation 20.1(i)(a) and (b) of Regulations, 2015 and within the original scope of works.

110. In view of the above, the Commission has considered the additional capitalization towards BTG, Civil & Structural Work, Barrage and Railway Siding in this order..

111. Further, the claims on account of Pre-operative expenditure under additional capitalization for Unit No.2 are not considered in this order as these expenses are post claimed COD of the Unit No. 2.

112. Based on above discussions, the following item wise capital cost considered in the order as on 31st March' 2017 towards Unit No. 2 are as under:

Table 10: Capital cost considered as on 31.03.2017 for Unit No. 2 (Rs. in Crores)

| Particulars | As on | Additions | Capital |
|--|----------------|--------------|----------------|
| | 07.04.2016 | (Post CoD) | Cost as on |
| | Unit 2 | Unit 2 | Unit 2 |
| Land & Site Development | 49.04 | 0.00 | 49.04 |
| BOP | 399.36 | 0.00 | 399.36 |
| BTG | 1227.49 | 10.39 | 1237.88 |
| Civil Works & Structural Works (Including Taxes) | 343.41 | 25.51 | 368.92 |
| Barrage (including Land and Taxes) | 65.00 | 0.32 | 65.32 |
| Railway Siding | 69.67 | 2.57 | 72.24 |
| Hard Cost | 2153.97 | 38.79 | 2192.76 |
| Pre Operative Expense | 169.94 | 0.00 | 169.94 |
| Infirm Power | 0.00 | 0.00 | 0.00 |
| IDC and FC | 904.90 | -1.38 | 903.53 |
| Liquidated Damages | 0.00 | | 0.00 |
| FERV | 101.35 | 0.00 | 101.35 |
| Custom and Excise | 0.00 | 0.00 | 0.00 |
| Unamortized Finance Cost | 14.46 | 0.00 | 14.46 |
| Carrying Cost | 28.09 | 0.00 | 28.09 |
| Soft Cost | 1218.74 | -1.38 | 1217.36 |
| Total Capital cost including IDC, FC, | 3372.71 | 37.41 | 3410.12 |

DEBT – EQUITY RATIO AND FUNDING OF THE PROJECT

Petitioner's Submission:

113. Regarding the Debt-Equity ratio as on CoD of Unit No. 2, the petitioner submitted that the debt equity ratio as on CoD of unit No 2 is 73.51:26.49. The same has been certified by the Auditor and submitted with the petition as Annexure-17.
114. The petitioner further submitted that the above ratio has been considered for the purpose of tariff in the subject petition. Accordingly, the opening equity and opening gross loan as on CoD of Unit No 2 works out to Rs.893.43 Crore and Rs. 2479.28 Crore respectively.
115. Further, the petitioner has claimed additional capitalization of 44.28 Crore upto 31.03.2017 and the funding of the aforesaid additional capitalization has also been considered in the same ratio of 73.51:26.49.

Provisions under Regulation:

116. With regard to funding of the project, Regulation 25 of MPERC (Terms and 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.-----“.

Commission’s Analysis:

117. As per the Auditor’s certificate dated 06th February’ 2017, the actual cash expenditure as on 07th April’ 2016 for the project (Unit No.1&2) is Rs. 7701.59 Crores. The Auditor has mentioned that the aforesaid capital cost has been funded through the loan and equity of Rs. 5825.27 Crores and Rs. 2098.75 Crores respectively with debt – equity ratio of 73.51/ 26.49. The balance is closing cash and bank balances.

118. In para 72 of the petition, the petitioner mentioned that the expenditure incurred till the CoD of unit No. 2 has been funded with the debt – equity ratio of 73.51/ 26.49 and the same has been certified by its Statutory Auditor.

119. It is observed that the subject petition is filed for determination of final generation tariff based on the actual expenditure certified by CA/Auditor. Therefore, the funding of expenditure pertaining to Unit No. 2 of the project has been considered at the same debt – equity ratio (73.51/ 26.49) as that of the total actual capital expenditure funded as on COD of Unit No. 2 and certified by the Auditor.

120. Based on the above, the funding of the actual capital expenditure duly certified by the Statutory Auditor and debt : equity ratio as on COD as well as for additional capitalization during FY 2016-17 of Unit No. 2 of Petitioner’s power project is considered in this order as given below:

Table 11: Funding of capital cost as on CoD and additional capitalization as on 31.03.2018 considered in this order of Unit No. 2 (Rs. in Crores)

| Sr. | Particulars | As on CoD | Additional | Total as on |
|-----|-------------|-----------|------------|-------------|
|-----|-------------|-----------|------------|-------------|

| No | | | capitalization during FY 2016-17 | 31.03.2017 |
|----|--------------------|-------------|----------------------------------|-------------|
| 1 | Gross Fixed Assets | 3372.71 | 37.41 | 3410.12 |
| 2 | Opening Loan | 2479.28 | 27.50 | 2506.78 |
| 3 | Opening Equity | 893.43 | 9.91 | 903.34 |
| 5 | Debt:Equity | 73.51/26.49 | 73.51:26.49 | 73.51:26.49 |

DETERMINATION OF TARIFF

121. The Commission has determined the tariff for Unit No.2 (600MW) of the M B Power Limited for the following period:-

- (i) Final tariff from CoD of Unit No. 2 to 31st March' 2017 based on Annual Audited Accounts for FY 2016-17 under Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.
- (ii) Tariff for FY 2017-18 to FY 2018-19 under Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 on provisional basis subject to true-up based on Annual audited Accounts for respective year.

Annual Capacity (fixed) Charges

122. As per Regulation 27 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, the Annual Capacity (Fixed) Charges shall consist of the following components:

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

Return on Equity

Petitioner's Submission

123. *The petitioner claimed return on equity by applying the base rate of return for FY*

2016-17 and by grossing up the rate of return on equity with “Minimum Alternate Tax” for the control period FY 2017-18 and FY 2018-19 which is given below:

Table 12: Return on Equity claimed by the petitioner (Rs. In Crores)

| S. No. | Particulars | 2016-17 | 2017-18 | 2018-19 |
|--------|---|----------------|-----------------|-----------------|
| 1 | Opening Equity as on COD of unit No. 2 i.e., 07 th April' 2016 | 917.92 | 929.65 | 1,022.98 |
| | Add: Increase due to addition during the year/period | 11.73 | 93.33 | - |
| 2 | Closing equity | 929.65 | 1,022.98 | 1,022.98 |
| 3 | Average equity | 923.79 | 976.32 | 1,022.98 |
| 4 | Base rate of Return on Equity | 15.500% | 15.500% | 15.500% |
| 5 | Tax Rate (MAT Rate) | 0.000% | 21.342% | 21.342% |
| 6 | Rate of return on equity | 15.500% | 19.705% | 19.705% |
| 7 | Return on equity | 143.19 | 192.38 | 201.58 |

124. The petitioner submits that for the FY 2016-17 it has neither paid any Normal Tax nor MAT. As such, Return on Equity for FY 2016-17 has been claimed considering base rate of 15.50%. However, the Return on Equity for FY 2017-18 and FY 2018-19 has been claimed considering the prevailing MAT rates.

Provision under Regulations:

Return on Equity:

125. 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 determined in accordance with Regulation 25.

30.2 Return on equity shall be computed at the base rate of 15.50% for thermal generating stations and hydro generating stations:

Provided that:

- (a) in case of projects commissioned on or after 1st 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 generating 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 grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid in the respective financial year in line with the provisions of the relevant Finance Acts by the concerned generating company. The actual income tax on other income stream including deferred tax 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:*

Rate of pre-tax return on equity = Base rate / (1-t) Where “t” is the effective tax rate in accordance with Clause 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 FY2016-17 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 = Rs 240 Crore/ Rs 1000 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

126. While determining the return of equity for FY 2016-17, the Commission has considered opening equity of Rs. 893.43 Crore (26.49% of the opening capital cost) which is within the norms prescribed under the Regulations, 2015. Further, the Commission has also considered equity addition of Rs. 9.91 Crore during FY 2016-17 to the extent of additional capitalization considered in this order which is also within the norms.
127. Closing equity balances (as on 31st March' 2017) admitted for FY 2016-17 by the Commission in this order is considered as the opening equity balance as on 01st April' 2017. The Commission has not considered the proposed additional capitalization during FY 2017-18 and its corresponding equity in this order.
128. Further, the petitioner has not filed the equity addition during FY 2018-19. Therefore, the equity balance as on 1st April' 2017 shall remain unchanged till 31st March' 2019.
129. The petitioner claimed return on equity for FY 2016-17 on the base rate of return (15.50%) without considering any tax rate for grossing up the base rate. Therefore, the Commission has computed the ROE at base rate of 15.50% for FY 2016-17.
130. For FY 2017-18 and FY 2018-19, the petitioner claimed ROE by grossing up the base rate of return with MAT.
131. 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 this purpose the effective tax rate shall be considered on the basis of actual tax

paid in the respective financial year by the generating company.

132. In terms of the above Regulation, the Commission shall deal with the tax liability based on the Annual Audited Accounts during truing- up exercise for FY 2017-18 and FY 2018-19. Accordingly, while computing the return on equity in this order, the Commission has not considered the grossing up of the base rate of return (i.e.15.5%) with MAT at this stage and worked out the Return on Equity for FY 2017-18 and FY 2018-19 at the base rate.

133. Based on the above, the return on equity is worked out as given below:

Table 13: Return on Equity Allowed

| Sr. No | Particular | Unit | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|--------|--|----------------|---------------|---------------|---------------|
| 1 | Opening Equity as on COD of Unit 2 i.e. 07th April' 2016 | Rs. Cr. | 893.43 | 903.34 | 903.34 |
| 2 | Addition in Equity during FY 2016-17 | Rs. Cr. | 9.91 | 0.00 | 0.00 |
| 3 | Closing Equity as on 31st March | Rs. Cr. | 903.34 | 903.34 | 903.34 |
| 4 | Average Equity | Rs. Cr. | 898.39 | 903.34 | 903.34 |
| 5 | Base Rate of Return on Equity | % | 15.50% | 15.50% | 15.50% |
| 6 | Annual Return on Equity | Rs. Cr. | 139.25 | 140.02 | 140.02 |

Interest and Finance Charges on Loan

Petitioner's Submission

134. In the subject petition, the petitioner submitted the following:

*The above Regulation stipulates that the rate of interest shall be weighted average rate of interest calculated on the basis of the actual loan portfolio after providing appropriate adjustment for interest capitalized. Accordingly, the Petitioner submits that the weighted average rate of interest (WAROI) of 13.67% (on the basis of Banker's Certificate for interest paid upto 31.03.2017 attached hereto and marked as **ANNEXURE-19**) has been considered for computation of interest on loan for the control period 2016-19, for the present. The interest on loan claimed has been computed as shown below. .*

135. Based on above, the interest on loan as worked out by the petitioner is as given below:

Table 14: Interest on Loan claimed by the Petitioner

| Sr. No. | Particulars | Unit | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|----------------|---|-------------|-------------------|-------------------|-------------------|
| 1 | Opening Loan | Rs. Cr. | 2547.77 | 2414.62 | 2493.88 |
| 2 | Add: Increase in Normative Loan | Rs. Cr. | 32.55 | 259.05 | 0.00 |
| 3 | Less: Normative Repayment during the year | Rs. Cr. | 165.70 | 179.80 | 188.39 |
| 4 | Closing Normative Loan | Rs. Cr. | 2414.62 | 2493.88 | 2305.48 |
| 5 | Average Normative Loan | Rs. Cr. | 2481.20 | 2454.25 | 2399.68 |
| 6 | Weighted average Rate of Interest of actual Loans | % | 13.67% | 13.67% | 13.67% |
| 7 | Interest on Normative loan | Rs. Cr. | 339.06 | 335.50 | 328.04 |

Provision under Regulations:

136. With Regard to Interest and finance charges, Regulation 32 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:

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 each of 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 upto 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 depreciation allowed for the year or part of the year.

32.5 The rate of interest shall be the weighted average rate of interest calculated on

the basis of the actual loan portfolio after providing appropriate accounting adjustment for interest capitalized:

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

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

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 Madhya Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, as amended from time to time. Provided that the 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

137. While determining the interest charges on loan capital, the Commission has considered the opening loan as on COD of Unit No. 2 of Rs. 2479.28 Crore, which is 73.51% of the funding considered in this order. Further, the Commission has also considered the loan addition of Rs. 27.50 Crore during FY 2016-17 to the extent of additional capitalization considered in the same ratio of funding as considered in this order.

138. The petitioner's Project has been financed by a consortium of banks and financial institutions. The Lender Consortium comprises of State Bank of India as the Lead Bank and Power Finance Corporation Ltd., Rural Electrification Corporation, PTC India Financial Services Ltd., Axis Bank, L&T Infra, Life Insurance Corporation of India, Punjab National Bank, State Bank of Patiala, State Bank of Bikaner and Jaipur and Federal Bank as Consortium partners. The petitioner has signed the Common Loan Agreement on 16.11.2010.
139. However, the Commission has not considered the additional capitalization during FY 2017-18 and FY 2018-19. Therefore, the Commission has not considered the proposed loan addition during FY 2017-18 and its corresponding loan in this order. Loan balances (as on 31st March' 2017) admitted in this order for FY 2016-17 by the Commission is considered as the base figures for loan balance as on 01st April' 2017.
140. On scrutiny of the subject petition, it was observed by the Commission that the interest rate of some of funding agencies during FY 2016-17 is on very higher side as compared to the interest rate in FY 2015-16.
141. On further scrutiny of the petition, it was found that the rate of interest is not worked out according to Provisions under Regulations. The Regulation 32.5 of Regulations, 2015 stated that the rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio.
142. The same issue of higher weighted average rate of interest was also raised by the Commission during proceeding in Petition No. 11 of 2018 in the matter of truing up exercise of Unit No. 1 of the peroject. The petitioner was asked to file the weighted average rate of interest in accordance to the Provisions under Regulations.
143. By additional affidavit dated 27th August' 2017, the petitioner filed the revised weighted average rate of interest on the basis of actual effective interest rate considering the actual time of loan closure for the cases where the loans are fully repaid.
144. Accordingly, the Commission has considered the actual weighted average rate of interest 13.30% for FY 2016-17 and for the period FY 2017-18 and FY 2018-19 as filed by the petitioner in its additional submission. The repayment equivalent to depreciation during the year is considered as per the provision under the Regulations, 2015.

145. Considering the above, the interest on loan for FY 2016-17 is determined in this order as given below:-

- i. Gross Normative Opening loan of Rs. 2479.28 Crore has been considered as per order dated
- ii. Net Addition of normative loan amount of Rs. 27.50 Crore has been considered.
- iii. Annual repayment of Loan equal to annual depreciation has been considered.
- iv. Weighted Average Rate of Interest @13.30% filed by the petitioner based on the actual loan portfolio has been considered.

146. Accordingly, the interest on loan for FY 2016-17 and for the control period FY 2017-18 and FY 2018-19 is determined in this order as given below:-

Table 15: Interest on loan Allowed

| Sr. No. | Particular | Unit | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|----------|---------------------------------------|----------------|---------------|---------------|---------------|
| 1 | Opening Loan Balance | Rs. Cr. | 2479.28 | 2345.66 | 2180.95 |
| 2 | Loan Additions during the year | Rs. Cr. | 27.50 | 0.00 | 0.00 |
| 3 | Repayment of Loan equal to dep. | Rs. Cr. | 161.12 | 164.71 | 164.71 |
| 4 | Closing Loan Balance | Rs. Cr. | 2345.66 | 2180.95 | 2016.24 |
| 5 | Average Loan | Rs. Cr. | 2412.47 | 2263.30 | 2098.59 |
| 6 | Weighted Average Rate of Interest | % | 13.30% | 13.30% | 13.30% |
| 7 | Annual Interest amount on Loan | Rs. Cr. | 320.86 | 301.02 | 279.11 |

Depreciation

Petitioner's Submission

147. In the subject petition, the Petitioner submitted the following:

The Petitioner submits that it has accordingly computed weighted average rate of depreciation of 4.83% for FY 2016-17 and 4.88% for 2017-19 considering Fixed Asset Register based on Previous Indian GAAP and considering the rates of depreciation as per Appendix-2 as stated above. The working of weighted average rate of depreciation is presented at Form-11 of the Tariff Forms.

In compliance to Hon'ble Commission's direction in Paragraph 128 of its Order dated 28.10.2017 for provisional tariff of Unit-2 and also to Hon'ble Commission's direction in Paragraph 154 of its Order dated 01.12.2017 for final tariff of Unit-1, the Petitioner

hereby submits the Asset-cum-Depreciation Register for the Project is attached hereto and marked as ANNEXURE-20. The Auditor's Certificate towards reconciliation of Gross Fixed Assets as per Indian GAAP and Ind AS is attached hereto and marked as ANNEXURE-15.

148. The depreciation claimed for tariff period 2016-19 is computed as shown below:

Table 16: Depreciation claimed by the Petitioner (Rs. in Crores)

| Particulars | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|--|-------------------|-------------------|-------------------|
| <i>Opening Capital Cost</i> | 3465.70 | 3509.98 | 3862.36 |
| <i>Closing Capital Cost</i> | 3509.98 | 3862.36 | 3862.36 |
| Average Capital Cost | 3487.84 | 3686.17 | 3862.36 |
| <i>Freehold land (included above)</i> | 36.17 | 36.17 | 36.17 |
| <i>Weighted average rate of depreciation</i> | 4.83% | 4.88% | 4.88% |
| <i>Depreciable value</i> | 3106.50 | 3285.00 | 3443.57 |
| <i>Remaining depreciable value</i> | 3106.50 | 3119.29 | 3098.07 |
| Depreciation (for the period) | 165.70 | 179.80 | 188.39 |
| Depreciation (annualized) | 168.47 | 179.80 | 188.39 |
| <i>Net Cumulative depreciation at the end of the</i> | 165.70 | 345.50 | 533.90 |

Provision in Regulations

149. With regard to Depreciation, Regulation 33 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:

For the purpose of Tariff, depreciation shall be computed in the following manner:

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 station, the salvage value shall be as provided in the agreement signed by the developers with the State Government for development of the Plant:

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

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

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

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 31st March of the year closing after a period of 12 years from the effective date of commercial operation of the station shall be spread over the balance useful life of the assets.

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 upto 31.3.2016 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

150. While determining the depreciation, the Commission has considered the opening GFA of Rs. 3372.71 Crore as on CoD of the Unit No. 2 as approved in this order. The Commission has also considered assets addition of Rs. 37.41 Crore during the year in respect of additional capitalization considered in this Order. The closing Gross Fixed Assets as on 31st March' 2017, is worked out after considering the asset addition during the year as considered in this order.

151. Gross Fixed Assets (as on 31st March' 2017) admitted in above paras for FY 2016-17 by the Commission is considered as the base figures for Gross Fixed Assets as on 01st April' 2017. The proposed additional capitalization during FY 2017-18 and its corresponding depreciation is not considered in this order.

152. The petitioner has not filed any assets addition during FY 2018-19. Accordingly, the Gross Fixed Assets as on 01 April' 2017 is considered same for the FY 2017-18 and FY 2018-19.
153. The petitioner has filed the assets cum depreciation register, wherein the weighted average depreciation rate of 4.83% for FY 2016-17 and 4.88% for FY 2017-18 and 2018-19 is worked out based on the rates of depreciation specified in the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.
154. The asset addition during FY 2017-18 is not considered by the commission in this order. Therefore, it will not be appropriate to consider the weighted average rate of depreciation on the assets proposed to be capitalized during FY 2017-18. In view of the above, the Commission has considered the same weighted average rate of depreciation 4.83% for FY 2017-18 and FY 2018-19 as worked out by the petitioner for FY 2016-17 based on the Asset-cum-Depreciation register.
155. Based on the above. the Commission has considered the same weighted average rate of depreciation as filed by the petitioner. Accordingly, the following depreciation is determined by the Commission in this order:

Table 17: Depreciation Allowed

| Sr. No. | Particular | Unit | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|----------------|--|---------------|-------------------|-------------------|-------------------|
| 1 | Opening Gross Fixed Assets as on CoD of the unit 2 | Rs Cr. | 3372.71 | 3410.12 | 3410.12 |
| 2 | Assets Addition during the year | Rs Cr. | 37.41 | 0.00 | 0.00 |
| 3 | Closing Gross Fixed Assets as on 31.03.2017 | Rs Cr. | 3410.12 | 3410.12 | 3410.12 |
| 4 | Average Gross Fixed Assets | Rs Cr. | 3391.42 | 3410.12 | 3410.12 |
| 5 | Weighted Average Rate of Depreciation (%) | % | 4.83% | 4.83% | 4.83% |
| 6 | Annual Depreciation | Rs Cr. | 163.82 | 164.71 | 164.71 |
| 7 | Cumulative Depreciation | Rs Cr. | 161.12 | 325.83 | 490.54 |

Operation & Maintenance Expenses
Petitioner's Submission

156. The petitioner filed the Operation and Maintenance expenses for Unit No.2 for FY 2016-17 to FY 2018-19 as given below:

Table 18: Operation & Maintenance Expenses claimed (Rs. in Crore)

| Sr No. | Particular | Units | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|--------|---------------------|-------------|--------------|---------------|---------------|
| 1 | Annual O&M expenses | Rs in Crore | 97.62 | 103.80 | 110.28 |

Provision in Regulations:-

157. The norms for Operation and Maintenance Expenses prescribed under Regulation 35.7 of the Regulations, 2015 for the generating Unit of “600 MW and above” for FY 2016-17 are as given below:

Table 19: Norms for O&M Expenses (Rs. lakh/MW/Year)

| Units (MW) | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|---------------|------------|------------|------------|
| 45 | 32.07 | 34.09 | 36.24 |
| 200/210/250 | 27.00 | 28.70 | 30.51 |
| 300/330/350 | 22.54 | 23.96 | 25.47 |
| 500 | 18.08 | 19.22 | 20.43 |
| 600 and above | 16.27 | 17.30 | 18.38 |

Commission’s Analysis

158. 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 generating unit of “600 MW and above” for FY 2016-17 to FY 2017-18 and FY 2018-19 as given below:

Table 20: O& M Expenses for Generating Unit

| Particular | Units | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|--------------------------------|--------------------|--------------|---------------|---------------|
| Generating Unit Capacity | MW | 600 | 600 | 600 |
| Per MW O&M Expenses Norms | Rs in Lakh/MW | 16.27 | 17.30 | 18.38 |
| Annual O&M expenses | Rs in Crore | 97.62 | 103.80 | 110.28 |

**Interest on Working Capital
Petitioner’s Submission**

159. The petitioner submitted the following in the subject petition:

The Petitioner submits that it has claimed the working capital requirement for the control period FY 2016-17 to FY 2018-19 in accordance with Regulation stated above. Further the rate of interest on working capital has been taken on normative basis and considered as the bank rate as as on 1.4.2016 (Base rate 9.30% + 350 bps) for the tariff period 2016-19. The calculation of Interest on Working Capital is as shown below:

Table 21: Interest on Working Capital claimed (Rs. In Crores)

| Particulars | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|--|-------------------|-------------------|-------------------|
| <i>Cost of Coal towards Stock (non-pit head)</i> | 65.84 | 65.84 | 65.84 |
| <i>Cost of Coal</i> | 65.84 | 65.84 | 65.84 |
| <i>Cost of Main Secondary Fuel Oil</i> | 0.99 | 0.99 | 0.99 |
| <i>O & M Expenses</i> | 8.14 | 8.65 | 9.19 |
| <i>Maintenance Spares</i> | 19.52 | 20.76 | 22.06 |
| <i>Receivables</i> | 268.40 | 279.17 | 282.08 |
| Total Working Capital | 428.74 | 441.26 | 446.00 |
| <i>Rate of Interest</i> | 12.80% | 12.80% | 12.80% |
| Interest on Working Capital | 54.88 | 56.48 | 57.09 |

Provision in Regulations:

160. Regarding working capital for coal based generating stations, Regulation 34 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 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 annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil;*
- (d) Maintenance spares @ 20% of operation and maintenance expenses specified in Regulation 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 1.4.2016 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.

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

161. Regulation 34.2 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 further provides as under:

“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 preceding three months and no fuel price escalation shall be provided during the Tariff

period.”

Commission’s Analysis

(a) Cost of Coal for Working Capital

162. The petitioner power station is non pit head station. Therefore, the cost of two months’ coal stock for working capital purpose is worked out based on the norms for non-pit head power station prescribed under the Regulations, 2015. The weighted average rate of coal and GCV of coal for FY 2016-17 worked out as per the details filed by the petitioner.

163. Accordingly, the two months cost of coal stock for working capital at normative availability is worked out as under:

Table 22: Two months cost of coal stock for working capital for FY 2016-17 and for the control period FY 2017-18 and FY 2018-19

| Particular | Units | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|-------------------------------------|------------------|---------------|---------------|---------------|
| Installed Capacity of the Unit | MW | 600 | 600 | 600 |
| Gross Station Heat Rate | kCal/kWh | 2361.51 | 2361.51 | 2361.51 |
| Gross Generation | MUs | 4467.60 | 4467.60 | 4467.60 |
| Gross Calorific Value of Coal | kCal/Kg | 3587.09 | 3587.09 | 3587.09 |
| Sp. Coal Consumption | kg/kWh | 0.6623 | 0.6623 | 0.6623 |
| Annual Coal Consumption | MT | 2958673 | 2958673 | 2958673 |
| Two months Coal Stock | MT | 493112 | 493112 | 493112 |
| Rate of Coal | Rs./MT | 2707.52 | 2707.52 | 2707.52 |
| Coal Cost (Two months stock) | Rs in Cr. | 133.51 | 133.51 | 133.51 |

(b) Cost of Secondary fuel oil for Working Capital

164. Regarding the cost of secondary fuel oil for working capital, provision of the aforesaid Regulation 34.1 (c) provides that “in case of use of more than one secondary fuel oil, cost of fuel oil stock shall be provided for the main secondary fuel oil”. Therefore, the cost of main fuel oil (HFO) is taken into account while determining the cost of oil for working capital.

165. In the subject petition, the petitioner worked out weighted average rate of HFO as Rs. 23681/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 by the Commission in this order. Accordingly, the cost of two months’ main fuel oil stock at normative availability is worked out as given below:

Table 23: Cost of Main Secondary Fuel Oil for 2 Months stock

| Particular | Units | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|--|----------------------|-------------|-------------|-------------|
| Installed Capacity of the Unit | MW | 600 | 600 | 600 |
| NAPAF | % | 85.00% | 85.00% | 85.00% |
| Gross Generation | MUs | 4467.60 | 4467.60 | 4467.60 |
| Normative Specific Oil Consumption | ml/kWh | 0.50 | 0.50 | 0.50 |
| Quantity of Sec Fuel Oil required | KL | 2233.80 | 2233.80 | 2233.80 |
| Two months' stock of main fuel oil (HFO) | KL | 372.30 | 372.30 | 372.30 |
| Weighted Avg. Rate of Secondary Fuel Oil (HFO) | Rs./KL | 23,681 | 23,681 | 23,681 |
| Oil Cost (Two Months Stock) | Rs. in Crores | 0.88 | 0.88 | 0.88 |

(c) O&M Expenses for Working Capital

166. O&M Expenses of one month for working capital purpose is worked out as given below:

Table 24: O&M expenses for one Month for Working Capital (Rs in Crore)

| Particular | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|----------------------------|------------|------------|------------|
| Annual O&M Expenses | 97.62 | 103.80 | 110.28 |
| O&M Expenses for One Month | 8.14 | 8.65 | 9.19 |

(d) Cost of Maintenance Spares for Working Capital

167. Maintenance spares for working capital worked out as per norms (20% of annual O&M expenses) under the Regulations are as follows:

Table 25: Maintenance Spares for Working Capital

| Particular | Units | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|---------------------------------------|---------------------|--------------|--------------|--------------|
| Generating Unit Capacity | MW | 600 | 600 | 600 |
| Per MW O&M Expenses Norms | Rs Lakh/MW | 16.27 | 17.30 | 18.38 |
| Annual O&M Expenses | Rs. in Crore | 97.62 | 103.80 | 110.28 |
| 20% of Annual O&M Expenses | Rs. in Crore | 19.52 | 20.76 | 22.06 |

(e) Receivables for Working Capital

168. Receivables for computation of working capital have been worked out on the basis of the Annual Capacity (fixed) charges and energy charges for two months on Normative Plant Availability Factor are as given below:-

Table 26: Receivables of Two Months for Working Capital (Rs. in Crore)

| Particular | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|--------------------------------|-------------------|-------------------|-------------------|
| Variable Charges- two months | 134.50 | 134.50 | 134.50 |
| Fixed Charges- two months | 130.34 | 127.19 | 124.32 |
| Receivables- two months | 264.84 | 261.70 | 258.82 |

169. Further, 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.

170. 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%.

171. Based on the above, the interest on working capital for Unit No. 2 for FY 2016-17 to FY 2017-18 and 2018-19 is determined as given below:

Table 27: Interest on Working Capital allowed (Rs. in Crore)

| Sr. No. | Particular | Norms | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|----------------|---|--------------|-------------------|-------------------|-------------------|
| 1 | Cost of Coal | 2 months | 133.51 | 133.51 | 133.51 |
| 2 | Cost of Main Secondary Fuel Oil | 2 months | 0.88 | 0.88 | 0.88 |
| 3 | O&M Expenses for One Months | 1 Month | 8.14 | 8.65 | 9.19 |
| 4 | Maintenance Spares 20% of O&M expenses | 20% of O&M | 19.52 | 20.76 | 22.06 |
| 5 | Receivables for Two Months | 2 Months | 264.84 | 261.70 | 258.82 |
| 6 | Total Annual Working Capital | | 426.89 | 425.50 | 424.46 |
| 7 | Rate of Interest on Working Capital | % | 12.80% | 12.60% | 12.20% |
| 8 | Annual Interest on working Capital | | 54.64 | 53.61 | 51.78 |

Non-Tariff Income

Provisions in Regulations:-

172. Regarding the non-tariff income, Regulations 31 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:-

“(a) 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 de-capitalized/written off assets, income from advertisements, interest on advances to suppliers/contractors, income from sale of ash/rejected coal, and any other miscellaneous receipts other than income from sale of energy shall constitute the non tariff income.

(b) The amount of Non-Tariff 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:

173. On scrutiny of the subject petition, it was observed that the petitioner has not filed any actual non-tariff income during FY 2016-17, therefore, vide Commission’s letter dated 07th June’ 2018, the petitioner was asked to furnish the information/break-up of non-tariff income as per the Annual Audited Accounts for FY 2016-17.

174. By affidavit 04th July’ 2018, the petitioner submitted the following:

It is submitted that under Note 25 and 26 of the Annual Audited Accounts for 2016-17, the total other income for the Project was Rs 122.15 Crores as per the following break-up:

| S. No. | Head of Other Income | Amount on accrual basis (Rs Crore) | Description |
|---------------|-----------------------------|---|--|
| 1 | Insurance compensation | 86.97 | Accrued receivables towards material damage on account of accident occurred in the boiler of |

| S. No. | Head of Other Income | Amount on accrual basis (Rs Crore) | Description |
|---------------------------------|---|---|---|
| | <i>against machinery loss</i> | | <i>Unit-2 of the Project on 16.05.2016; the corresponding expenses are recorded under repair and maintenance of Unit-2 as per Note No. 31 of Annual Audited Accounts for FY 2016-17; hence impact on P&L for FY 2016-17 is nil.</i> |
| 2 | <i>Liabilities written back</i> | 19.40 | <i>Provisions made in earlier years towards possible liabilities for entry tax for the Project are now reversed in books of accounts for FY 2016-17.</i> |
| 3 | <i>Foreign exchange fluctuation (net)</i> | 4.73 | <i>Accounting adjustment for unrealized gain on Foreign Exchange (Forex) post COD of Unit-2 (07.04.2016)</i> |
| 4 | <i>Gain on sale of investment</i> | 0.93 | <i>Gain on sale of Investment realized from short term surplus funds in operation</i> |
| 5 | <i>Interest on Bank Deposit</i> | 8.55 | <i>Interest Income realized on the margin money kept in term deposits with banks for issue of Bank Guarantees for Custom/Excise duty, PPA etc.</i> |
| 6 | <i>Scrap Sales</i> | 0.29 | <i>Income from sale of scrap (Realized)</i> |
| 7 | <i>Others</i> | 0.04 | <i>Other Incomes (Realized)</i> |
| Sub Total - Other Income | | 120.95 | <i>As per Note No. 26 of Books of Accounts as on 31st March 2017</i> |
| 8 | <i>Sale of Fly Ash</i> | 1.20 | <i>Income from sale of Fly Ash (realized) as per Note No. 25 of Books of Accounts as on 31st March 2017</i> |
| Total – Other Income | | 122.15 | |

175. With respect to above, a copy of the auditor certificate for total other income for the Project during for FY 2016-17 is attached herewith and marked as ANNEXURE-28.

176. The Petitioner further submitted that in line with above table, the other income based on actual cash realization under the Project for FY 2016-17 is as follows:

| S. N | Head of Other Income | Amount on accrual basis (Rs Crore) | Description |
|---------------------------------|-----------------------------|---|---|
| 1 | Gain on sale of investment | 0.93 | Gain on sale of Investment realized from short term surplus funds in operation |
| 2 | Interest on Bank Deposit | 8.55 | Interest Income realized on the margin money kept in term deposits with banks for issue of Bank Guarantees for Custom/Excise duty, PPA etc. |
| 3 | Scrap Sales | 0.29 | Income from sale of scrap (Realized) |
| 4 | Others | 0.04 | Other Incomes (Realized) |
| Sub Total - Other Income | | 9.82 | As per Note. 26 of Annual Audited Accounts for FY 2016-17 |
| 5 | Sale of Fly Ash | 1.20 | Income from sale of Fly Ash (realized) as per Note. 25 of Annual Audited Accounts for FY 2016-17 |
| Total – Other Income | | 11.02 | |

177. Accordingly, the Petitioner submitted that the “non-tariff income” for FY 2016-17 to be considered for the purpose of tariff determination is Rs 11.02 Crore. Further, this “non-tariff income” of Rs 11.02 Crore is with respect to the entire Project capacity of 1200 MW.

178. In light of the above, it is submitted that above “non-tariff income” of **Rs 11.02 Crore** during FY 2016-17 may be accordingly be apportioned between Unit-1 and Unit-2 on 50:50 basis by this Hon’ble Commission for determination of final tariff of Unit-2 and true-up of tariff of Unit-1 for FY 2016-17.

179. The aforesaid provision under the Regulations, 2015 provides that the non-tariff income shall also be trued up based on the Audited Accounts. On perusal of the aforesaid additional submission filed by the petitioner, it is observed that the non-tariff income of Rs. 11.02 Crore towards Unit No. 1 and Unit No. 2 out of total income recorded in Note-23 & 24 of the Annual Audited Accounts for FY 2016-17. Accordingly, the Commission has considered Rs. 5.51 Crore towards each Unit.

180. Therefore, the non-tariff income of Rs 5.51 Crore for Unit No. 2 as informed by the petitioner is considered by the Commission in this order. The break-up of nontariff income is as given below:

Table 28: Non- Tariff Income Allowed (Rs. in Crores)

| Sr. No. | Particulars | Amount |
|---------|----------------------------|--------------|
| 1 | Sale of FLY ASH | 1.20 |
| 2 | Gain on sale of Investment | 0.93 |
| 3 | Interest on Bank Deposit | 8.55 |
| 4 | Scrap Sales | 0.29 |
| 5 | Other | 0.05 |
| 6 | Total for Unit No. 1 and 2 | 11.02 |
| 7 | 50% for Unit No. 1 | 5.51 |

Summary of Annual Capacity (fixed) Charges:

181. As per MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, Normative Annual Plant Availability Factor for recovery of annual capacity charges is 85%. The Annual Capacity (fixed) charges for FY 2016-17 have been pro-rated for 359 days. Considering the above, the annual capacity (fixed) charges for Unit No. 2 of petitioner's Power plant, which are determined for the control period FY 2016-17 to FY 2018-19 in this order are as given below:

Table 29: Summary of Annual Capacity (fixed) Charges for Unit No. 2

| S. No. | Particulars | Unit | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|--------|--|-----------|------------|------------|------------|
| 1 | Return on Equity | Rs. Crore | 139.25 | 140.02 | 140.02 |
| 2 | Interest on Loan | Rs. Crore | 320.86 | 301.02 | 279.11 |
| 3 | Depreciation | Rs. Crore | 163.82 | 164.71 | 164.71 |
| 4 | Interest on Working Capital | Rs. Crore | 54.64 | 53.61 | 51.78 |
| 5 | O & M Expenses | Rs. Crore | 97.62 | 103.80 | 110.28 |
| 6 | FERV | Rs. Crore | 5.84 | 0.00 | 0.00 |
| 7 | Annual capacity (fixed) charges | Rs. Crore | 782.03 | 763.16 | 745.90 |
| 8 | Less: Non-Tariff Income | Rs. Crore | 5.51 | - | - |
| 9 | Net AFC (after adjusting Other Income) | Rs. Crore | 776.52 | 763.16 | 745.90 |
| 10 | Number of Days in Operation | Rs. Crore | 359 | 365 | 365 |

| | | | | | |
|----|--|-----------|---------------|---------------|---------------|
| 11 | AFC apportioned in actual days of operation | Rs. Crore | 763.75 | 763.16 | 745.90 |
| 12 | Annual capacity (Fixed) charges corresponding to 30% of the installed capacity of the Unit | Rs. Crore | 229.13 | 228.95 | 223.77 |

182. The Annual Capacity (fixed) Charges as determined above for the period upto 31st March' 2017 are final as these charges are based on Annual Audited Accounts of FY 2016-17. The Annual Capacity Charges for FY 2017-18 and FY 2018-19 are determined on provisional basis subject to true-up based on the Annual Audited Accounts for the respective year.

183. The recovery of Annual Capacity (Fixed) charges shall be made by the petitioner in accordance with Regulations 36.2 to 36.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.

Energy Charges

Petitioner's submission

184. The petitioner claimed the energy charges from COD of Unit No.2 (i.e. 07th April' 2016) to 31st March' 2017 and for control period FY 2017-18 to FY 2018-19 based on the preceding three months actual fuel price and calorific value (January' 2016 to March' 2016) as per Regulation 36.5, 36.6, 36.7 of MPERC (Terms and Conditions for Determination of Generation tariff) Regulations, 2015.

185. With the above approach, the energy charges for Unit No.2 for the period from COD (07th April' 2016) till 31st March 2017 and MYT for FY 2017-19 is claimed by the petitioner in the subject petition are as follows:

Table 30: Energy Charges Claimed

| | Particulars | Unit | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|----|---|-----------|---------------|---------------|---------------|
| 1 | Installed Capacity | MW | 600 | 600 | 600 |
| 2 | Normative Annual Plant Load Factor (NAPAF) | % | 0.85 | 0.85 | 0.85 |
| 3 | Gross Generation at generator terminals | MU's | 4467.60 | 4467.60 | 4467.60 |
| 4 | Net Generation at ex-bus | MU's | 4210.71 | 4210.71 | 4210.71 |
| 5 | Gross Station Heat Rate | kCal/kWh | 2361.51 | 2361.51 | 2361.51 |
| 6 | Sp. Fuel Oil Consumption | ml/kWh | 0.50 | 0.50 | 0.50 |
| 7 | Aux. Energy Consumption | % | 5.75% | 5.75% | 5.75% |
| 8 | Transit and handling Loss | % | 0.80% | 0.80% | 0.80% |
| 9 | Weighted average GCV of Oil | kCal/ltr. | 9920 | 9920 | 9920 |
| 10 | Weighted average GCV of Coal (as fired) | kCal/kg | 3587.09 | 3587.09 | 3587.09 |
| 11 | Weighted Average price of Coal | Rs./MT | 2729.35 | 2729.35 | 2729.35 |
| 12 | Heat Contributed from Oil | kCal/kWh | 4.96 | 4.96 | 4.96 |
| 13 | Heat Contributed from Coal | kCal/kWh | 2356.55 | 2356.55 | 2356.55 |
| 14 | Specific Coal Consumption | kg/kWh | 0.657 | 0.657 | 0.657 |
| 15 | Sp. Coal consumption including transit loss | kg/kWh | 0.662 | 0.662 | 0.662 |
| 16 | Rate of Energy Charge from Coal | Rs./kWh | 1.917 | 1.917 | 1.917 |

Provisions in Regulations

186. For determining the Energy Charges of thermal power stations, Regulations 36.5, 36.6 and 36.7 of the MPERC (Terms and Conditions for Determination of Generation tariff) Regulations, 2015 provides as under:

“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 = 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)

SFC = 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 three months -----

Commission’s Analysis:

Operating Parameters:

187. The base rate of energy charges shall cover primary and secondary fuel cost and 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. The Commission has scrutinized the Energy Charges in this order based on the following approach.

a) Gross Station Heat Rate

188. The petitioner has claimed the Gross Station Heat Rate for Unit No. 2 as 2361.51 KCal/kWh in accordance to MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015. While determining the Gross Station Heat Rate for Unit No. 2, the Petitioner considered the designed turbine cycle heat rate and designed boiler efficiency as guaranteed by the equipment manufacturer/supplier.

189. Regarding the Gross Station Heat Rate of thermal generating units, Regulation 39.3 (C) 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. New thermal generating stations achieving COD on or after 1.4.2016:

(b) Coal-based Thermal Generating Stations = 1.045 X Design Heat Rate (kCal/kWh)

Where the Design Heat Rate of a Unit means the Unit heat rate guaranteed by the supplier at conditions of 100% MCR, zero percent make up, design coal and design cooling water temperature/back pressure: Provided that the design heat rate shall not exceed the following maximum design Unit heat rates depending upon the pressure and temperature ratings of the Units:

Table 31: Maximum design Unit Heat Rate as per Norms

| Pressure Rating (Kg/cm²) | 150 | 170 | 170 | 247 |
|--|--------------------------|-----------------------|-----------------------|-----------------------|
| <i>SHT/RHT (0C)</i> | <i>535/535</i> | <i>537/537</i> | <i>537/565</i> | <i>565/593</i> |
| <i>Type of BFP</i> | <i>Electrical Driven</i> | <i>Turbine Driven</i> | <i>Turbine driven</i> | <i>Turbine Driven</i> |
| Max Turbine Cycle of Heat rate | | | | |

| | | | | |
|--|-------------|-------------|-------------|-------------|
| (kCal/kWh) | | | | |
| <i>Minimum Boiler Efficiency</i> | | | | |
| <i>Sub-Bituminous Indian Coal</i> | 0.86 | 0.86 | 0.86 | 0.86 |
| <i>Bituminous Imported Coal</i> | 0.89 | 0.89 | 0.89 | 0.89 |
| Max. Design Unit Heat Rate (kCal/kWh) | | | | |
| <i>Sub-Bituminous Indian Coal</i> | 2273 | 2267 | 2250 | 2151 |
| <i>Bituminous Imported Coal</i> | 2197 | 2191 | 2177 | 2078 |

Provided further that in case pressure and temperature parameters of a Unit are different from above ratings, the maximum design Unit heat rate of the nearest class shall be taken:

Provided also that where Unit heat rate has not been guaranteed but turbine cycle heat rate and boiler efficiency are guaranteed separately by the same supplier or different suppliers, the Unit design heat rate shall be arrived at by using guaranteed turbine cycle heat rate and boiler efficiency

Provided also that if one or more Units were declared under commercial operation prior to 1.4.2016, the heat rate norms for those Units as well as Units declared under commercial operation on or after 1.4.2016 shall be lower of the heat rate norms arrived at by above methodology and the norms as per the Regulation 35.

Note: In respect of Units where the boiler feed pumps are electrically operated, the maximum design Unit heat rate shall be 40 kCal/kWh lower than the maximum design Unit heat rate specified above with turbine driven BFP.

190. The Commission has observed that the Unit No. 2 of petitioner power plant achieved COD on 07th April' 2016, therefore, the Station Heat Rate for Unit No. 2 shall be determined under the Provisions of MPERC (Terms and Conditions for determination of generation tariff) Regulations' 2015.
191. Vide Commission's order dated 28th October' 2017, the Commission determined the Provisional tariff of Unit No 2. In the aforesaid order dated 28th October' 2017, the Gross Station Heat Rate of 2361.70 kcal/kwh was determined by the Commission based on the documents for guaranteed performance parameters and other details and documents submitted by the petitioner.
192. In view of the above, the Gross Station Heat Rate of 2361.51 Kcal/kWh for Unit No. 2 of the petitioner's Power Project as filed by the Petitioner and is in accordance with

MPERC (Terms and conditions for determination of Generation tariff) Regulations, 2015 and same has been considered in this order as follows:

Table 32: Gross Station Heat Rate Decide by the Commission

| Technical Parameters | Unit of Measurement | Values |
|--|----------------------------|----------------|
| Designed Turbine Cycle Heat Rate (Actual) (a) | kCal/kWh | 1,945.70 |
| Designed Boiler Efficiency (Actual)(b) | % | 86.10% |
| Designed Heat Rate (Actual) (c = a/b) | kCal/kWh | 2259.81 |
| Allowable Max Turbine Cycle Heat Rate(as per tariff Regulations) (d) | kCal/kWh | 1,950.00 |
| Min. Allowable Boiler Efficiency as per Tariff Regulations, 2015 (e) | % | 86.00 |
| Maximum Allowable Heat Rate (as per Regulation) (f = d/e) | kCal/kWh | 2267.44 |
| Least of (c) & (f) = (g) | kCal/kWh | 2259.81 |
| Gross Station Heat Rate (h = 1.045 x g) determined and considered in this order | kCal/kWh | 2361.51 |

b) Auxiliary Energy Consumption

193. While determining the Energy Charges, the petitioner considered Auxiliary Energy Consumption 5.75% in accordance to MPERC (Terms and conditions for determination of Generation tariff) Regulations, 2015.

194. Regulation 39.3 (E) prescribed the norms for Auxiliary Energy Consumption for thermal generating unit(s) / stations as given below:

Table 33: Norms for Auxilliary Energy Consumption

| | |
|---|--------------|
| <i>200 / 300 MW series</i> | <i>8.50%</i> |
| <i>500 MW & above Steam driven boiler feed pumps</i> | <i>5.25%</i> |
| <i>500 MW & above Electrically driven boiler feed pumps</i> | <i>7.75%</i> |
| <i>45 MW Series</i> | <i>10%</i> |

Provided further that for thermal generating stations with induced drafts cooling towers, the norms shall be further increased by 0.5%.

Provided also that Additional Auxiliary Energy Consumption as follows may be allowed for plants with Dry Cooling Systems -----“

195. In view of the aforesaid Provisions under Regulations, the Commission considered normative Auxiliary Consumption of 5.25% or Unit No. 2. Further, there is a Provision under Regulation to consider additional 0.5% Auxiliary Energy Consumption for

induced draft cooling tower. Therefore, the total Auxiliary Energy Consumption of 5.75% as filed by the petitioner is considered for Unit No. 2 in this order as follows:

Table 34: Auxiliary energy consumption

| Sr. No. | Particular | Percentage |
|----------------|---|-------------------|
| 1 | Auxiliary energy consumption for unit 500 MW & above | 5.25% |
| 2 | Add: auxiliary energy consumption for induced draft cooling tower | 0.5% |
| 3 | Total auxiliary energy consumption considered | 5.75% |

c) Specific Fuel Oil Consumption:

196. The petitioner in the subject petition considered the Specific Secondary fuel oil Consumption of 0.50 ml/kWh in accordance to Regulation 39.3 (D) of MPERC (Terms and conditions for determination of Generation Tariff) Regulations, 2015. The Commission has considered the same Specific Secondary fuel oil Consumption of 0.50 ml/kWh for Unit No. 2 in this order.

d) Transit and Handling losses:

197. Regarding the normative transit and handling loss, Regulation 36.8 of MPERC (Terms and conditions for determination of Generation Tariff) Regulations, 2015, provides as under:

“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 below:

Pithead generating stations : 0.2%

Non-pithead generating stations : 0.8%

Provided that in case of pit head stations if coal is procured from sources other than the pit head mines which is transported to the station through rail, transit loss of 0.8% shall be applicable:

Provided further that in case of imported coal, the transit and handling losses shall be 0.2%.

198. The Commission has observed that the petitioner’s power project is Non pit-head and therefore, the normative transit and handling losses of 0.80 % is considered in this order.

199. The parameters like Gross Station Heat Rate, Aux. Energy Consumption, Sp. Secondary Fuel oil consumption and transit and handling losses considered for determining the energy charges for Unit No. 2 in this order are summarized as given below:

Table 35: Operating Parameters considered for FY 2016-17 and control period FY 2017-18 and FY 2018-19

| Sr. No. | Particular | Norms |
|----------------|------------------------------------|--------------|
| 1 | Gross Station Heat Rate (kCal/kWh) | 2361.51 |
| 2 | Auxiliary Consumption (%) | 5.75 |
| 3 | Specific Fuel Consumption (ml/kWh) | 0.50 |
| 4 | Transit Losses (%) | 0.80 |

Landed Cost of Coal

200. The petitioner submitted that the weighted average Landed cost of the Primary fuel is calculated on the basis of actual values of the average landed cost of coal actually billed for preceding three months i.e. January 2016, February 2016 and March 2016. Based on the above, the weighted average landed cost of coal worked out by the petitioner is as given below:

Table 36: Weighted Average Prices of Coal during FY 2015-16

| S. No. | Months | Coal | Average Landed Cost of Primary Fuel Rs/MT |
|---|---------------|------------------|--|
| 1 | Jan 2016 | Domestic FSA | 2147.42 |
| | | Non Domestic FSA | 4257.99 |
| 2 | Feb 2016 | Domestic FSA | 2133.58 |
| | | Non Domestic FSA | 3977.86 |
| 3 | March 2016 | Domestic FSA | 2152.02 |
| | | Non Domestic FSA | 3537.39 |
| Weighted Average Landed cost of coal | | | 2729.35 |

201. With regard to landed cost of coal, Regulation 36.8 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under;

“The landed cost of coal shall include price of coal corresponding to the grade and quality of coal 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 Charges, 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.

202. Regulation 34.2 of the Regulations, 2015 further provides that the cost of fuel shall be based on the landed cost incurred by the generating company as per the actual for the three months preceding the first month for which tariff is to be determined.

203. On perusal of the aforesaid details filed by the petitioner, the Commission observed that the petitioner received and consumed both FSA and Non FSA coal and claim weighted average rate of both type of coal.

204. Vide commission' s letter dated 07th June' 2018, the petitioner was asked to file the detailed calculation for arriving at the weighted average landed cost coal claimed while determining the energy charges in the petition along with supporting documents. The petitioner was also asked to submit the month-wise details of quantity and landed cost of coal purchased from all sources:

205. By affidavit dated 04th July' 2018, the petitioner submitted the detailed calculations for arriving at the weighted average landed cost. In para 92 of the petition, the petitioner further submitted the supporting documents towards the same i.e., invoices raised on the Respondent (MPPMCL) for the three months Jan' 2016, Feb' 2016 and March' 2016 preceding the CoD of Unit No. 2 has also been submitted as Annexure 22 of the petition. The petitioner also mentioned that the invoices raised to the Respondents and related TPS 15 with detailed information in respect of coal for computation of Enery Charges are attached as Annexure 30 of the additional submission.

206. Regulation 36.7 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides as under;

“The generating company shall provide to the beneficiaries of the generating station the 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 the weighted average GCV of the fuels as received shall also be provided separately, along with the bills of the respective month.

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

207. Further, Regulation 36.6 provides that for determination of energy charge rate, weighted average landed price of primary fuel, in Rupees per kg, during the month shall be considered. In case of blending of fuel from different sources, the weighted average landed price of primary fuel shall be arrived in proportion to blending ratio.

208. On perusal of the aforesaid details filed by the petitioner, the Commission observed that while determining the landed cost of coal for preceding three months, the petitioner considered normative transit and handling losses. However, while determining the energy charges in Provisional tariff dated 28th October’ 2017,the Commission had considered normative transit and handling losses and landed cost of coal was considered without transit and handling losses.

209. In view of the above, the Commission considered the transit and handling losses as given below. The impact of transit losses has been taken while determining the energy charges.

Table 37: Weighted average prices of coal

| S. No. | Months | Coal | Quantity of Coal | Rate of Coal | Average Landed Cost of Primary Fuel Rs/MT |
|--------|----------|------------------|------------------|--------------|---|
| 1 | Jan 2016 | Domestic FSA | 221285 | 2130.24 | 2871.85 |
| | | Non Domestic FSA | 121375 | 4223.93 | |
| 2 | Feb 2016 | Domestic FSA | 198871 | 2116.51 | |
| | | Non Domestic FSA | 94352 | 3946.04 | |

| S. No. | Months | Coal | Quantity of Coal | Rate of Coal | Average Landed Cost of Primary Fuel Rs/MT |
|--------|------------|---|------------------|--------------|---|
| | | | | | 2705.21 |
| 3 | March 2016 | Domestic FSA | 219891 | 2134.81 | 2526.65 |
| | | Non Domestic FSA | 87701 | 3509.09 | |
| | | Domestic FSA | 640047 | | 2127.54 |
| | | Non Domestic FSA | 303428 | | 3930.01 |
| | | Weighted Average Landed cost of coal | | | 2707.52 |

Gross Calorific Value (GCV) of Coal

210. With regard to the Gross Calorific Value of Coal, the petitioner mentioned that the weighted average GCV of the Primary fuel (on received basis) is calculated on the basis of actual values of the average GCV of the primary fuel (coal) for preceding three months i.e. January 2016, February 2016 and March 2016.

211. Regulation 36.6 (a) of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides as under;

(a) Weighted Average Gross calorific value of coal as received, in kCal per kg for coal based stations

(b) In case of blending of fuel from different sources, the weighted average Gross calorific value of primary fuel shall be arrived in proportion to blending ratio.

212. In para 92 of the petition, the petitioner worked out the weighted average GCV as received basis for preceding three months and same has been applied for claiming the energy charges.

213. Vide Commission's letter dated 07th June' 2018, the petitioner was asked to file the calculation sheet for arriving at the weighted average GCV of coal claimed in the petition along with supporting documents like laboratory report etc.

214. By affidavit dated 04th July' 2018, the petitioner filed the aforesaid details desired by the Commission. Based on the aforesaid Regulation and details filed by the petitioner, the weighted average GCV of coal as received basis considered in this order is worked out as given below:

Table 38: Weighted Average GCV of Coal during FY 2015-16

| Month | Type of Coal | Quantity of Coal | GCV of Coal | Wt. average GCV |
|----------------------|--------------|------------------|-------------|-----------------|
| | | MT | Kcal/kg | Kcal/kg |
| Jan. 2016 | FSA | 221285 | 3614 | 3584.95 |
| | Non FSA | 121375 | 3532 | |
| Feb. 2016 | FSA | 198871 | 3615 | 3585.72 |
| | Non FSA | 94352 | 3524 | |
| March, 2016 | FSA | 219891 | 3621 | 3590.78 |
| | Non FSA | 87701 | 3515 | |
| Total | FSA | 640047 | | 3616.72 |
| | Non FSA | 303428 | | 3524.60 |
| Weighted average GCV | | | | 3587.09 |

215. Accordingly, the Commission has considered the weighted average GCV of coal as received basis is 3587.09 Kcal/kg in this order.

Landed cost of Secondary Fuel oil:

216. Regarding the landed price of secondary fuel oil, the petitioner submitted that the weighted average Landed cost of the Secondary fuel [based on actual consumption mix of Heavy Furnace Oil (HFO) and Light Diesel Oil (LDO)] is calculated on the basis of actual values of the average landed cost of secondary fuel for preceding three months i.e. January 2016, February 2016 and March 2016 based on the actual invoices for procurement of oil.

217. The petitioner filed the date-wise details of LDO and HFO procured during the preceding three months. With regard to weighted average landed cost of secondary fuel oil, the petitioner considered actual consumption ratio of 70:30 for the last quarter of FY 2015-16 for HFO and LDO.

218. Vide Commission's letter dated 07th June' 2018, the petitioner was asked to clarify whether the weighted average price claimed pertains to oil consumed or purchased during precedsing three months. By affidavit dated 04th July' 2018, the petitioner informed that the weighted average landed cost of secondary fuel oil for FY 2015-16 based on sample bills for purchase during three preceding months. The petitioner also filed the sample invoices for procurement of HFO and LDO in this regard.

219. Based on the above, the petitioner worked out the weighted average landed cost of

secondary fuel oil including freight charges and entry tax as given below:

| Wt. average cost of HFO (Rs./KL) | Wt. average cost of LDO (Rs./KL) | Wt. average cost of Sec. fuel oil (Rs./KL) |
|---|---|---|
| 23681 | 33620 | 26663 |

220. The Commission has considered same weighted average cost of Sec. fuel oil of Rs. 26663/KL as filed by the petitioner in this order.

221. The petitioner filed GCV of secondary fuel oil 9920 Kcal/Ltr. The Commission has considered same GCV of oil as claimed by the petitioner.

222. Based on the above, the Energy Charges rate ex-bus for Unit No.2 of the petitioner's power plant are determined as given below:

Table 39: Energy Charges Rate determined in this order

| Particular | Unit | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|---|----------------|-------------------|-------------------|-------------------|
| Capacity | MW | 600 | 600 | 600 |
| NAPAF | % | 85 | 85 | 85 |
| Gross Generation at Generator Terminals | MUs | 4467.60 | 4467.60 | 4467.60 |
| Net generation at ex- bus | MUs | 4210.71 | 4210.71 | 4210.71 |
| Gross Station Heat Rate | kCal/kWh | 2361.51 | 2361.51 | 2361.51 |
| Sp. Fuel Oil Consumption | ml/kWh | 0.50 | 0.50 | 0.50 |
| Aux. Energy Consumption | % | 5.75 | 5.75 | 5.75 |
| Transit Loss | % | 0.80 | 0.80 | 0.80 |
| Weighted average GCV of Oil | kCal/ltr. | 9920 | 9920 | 9920 |
| Price of oil(field) | Rs/ltr | 26.663 | 26.663 | 26.663 |
| Weighted average GCV of Coal (on fired basis) | kCal/kg | 3587.09 | 3587.09 | 3587.09 |
| Weighted Average landed price of Coal | Rs./MT | 2707.52 | 2707.52 | 2707.52 |
| Heat Contributed from HFO | kCal/kWh | 4.96 | 4.96 | 4.96 |
| Heat Contributed from Coal | kCal/kWh | 2356.55 | 2356.55 | 2356.55 |
| Specific Coal Consumption | kg/kWh | 0.6570 | 0.6570 | 0.6570 |
| Sp. Coal Consumption including Transit Loss | kg/kWh | 0.6623 | 0.6623 | 0.6623 |
| Energy Charge from Coal | Rs Crore | 1.793 | 1.793 | 1.793 |
| Rate of Energy Charge from Oil | Rs./kWh | 0.013 | 0.013 | 0.013 |
| Total Energy Charges | | 1.806 | 1.806 | 1.806 |
| Rate of Energy Charge at ex bus | Rs./kWh | 1.917 | 1.917 | 1.917 |

223. 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 recovery of energy charges shall be made in accordance with Regulations 36.6 to 36.8 of the Regulations, 2015.

Other Charges

224. 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.”*

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

226. The petitioner is allowed to recover Electricity Duty, cess and water charges from the beneficiary on pro rata basis, if payable to the State Government for generation of electricity from its generating Unit No.2 in term of the provision under aforesaid Regulation 52 of MPERC Tariff Regulations,2015 on submission of documentary evidence.

227. The petitioner is also allowed to recover RLDC/ NLDC charges in term of the provision under aforesaid Regulation 52 (4) of MPERC Tariff Regulations,2015 on submission of documentary evidence.

Implementation of the order

228. The final generation tariff for FY 2016-17 is determined for Unit No. 2 from its COD till 31st March' 2017 under Regulation' 2015 and provisional tariff for the control period FY 2017-18 and FY 2018-19, under Multi Year Tariff, Regulations' 2015.

229. The petitioner must take steps to implement the Order after giving seven (7) days' public notice in accordance with Clause 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 recalculate its bills for the energy supplied to Distribution Companies of the State/ M.P. Power Management Company Ltd. since COD of the Unit.

230. The petitioner is also directed to provide information to the Commission in support of having complied with this Order. The deficit/surplus amount as a result of this order shall be recovered by the petitioner or passed on to the MP Power Management Company Ltd / three Distribution Companies of the state in six equal monthly installments in terms of applicable Regulation in the ratio of energy supplied to them.

231. With the above directions, this Petition No. 10 of 2018 is disposed of.

(Anil Kumar Jha)
Member

(Mukul Dhariwal)
Member

(Dr. Dev Raj Birdi)
Chairman

Date: 29th November' 2018

Place: Bhopal

Annexure I:

Issue wise reply of the petitioner to the information gaps /issues communicated to it by the Commission:

A. COD of Unit 2

Query No. 1: Regarding the scheduled Commercial Operation Date of the Generating Units, Clause 4.1.5 of the PPA dated 5th January. 2011 executed between the parties provides as under:

“The company shall achieve Commercial Operation Date for the first Unit within sixty (60) Months from the date of signing of Implementation Agreement (i.e.01st December 2009) and second Unit of the Power Station within six (6) Months thereafter”.

In view of the above, as per the PPA, the SCOD of Unit No.1 was 30.11.2014 and SCOD of Unit No. 2 was 31st May' 2015. But CoD for both the units were delayed.

Petitioner’s Response to Query No. 1:

It is submitted that the issue of unit-wise Scheduled Commercial Operation Date (“SCOD”) of the Petitioner’s Project and the delay in the Project COD with respect to SCOD and the reasons thereof are comprehensively dealt with by the Petitioner as under:

- a) *As per Article 4.1.5 of the PPA with MPPMCL dated 05.01.2011, the SCOD of Unit-1 was 30.11.2014 and SCOD of Unit-2 was 31.05.2015. However due to external factors/ reasons beyond the control of the Petitioner, the actual COD of Unit-1 was achieved on 20.05.2015 and COD of Unit-2 was achieved on 07.04.2016. Thus, there was a delay of ~ 5.5 month in achieving COD of Unit-1 and ~ 10 months in achieving COD of Unit-2/ Project.*
- b) *It is submitted that In-principle Forest Clearance (Stage-I Forest Clearance) for the Project was granted by Ministry of Environment & Forest (“MoEF”) on 04.06.2010 and thereafter the Final Forest Clearance (Stage-II Forest Clearance) was granted on 17.08.2011 i.e. after 14 months of Stage-I Forest Clearance. As per existing industry practices, Stage-II Forest Clearance is generally granted within 5-6 months of Stage-I Forest Clearance, Therefore there was a delay on around 8 months in grant of Final Forest Clearance.*
- c) *There was a further delay on account of the fact that MoEF vide letter dated 23.09.2011 imposed a stay on Stage-II Forest Clearance in the wake of several PILs filed before the Hon’ble High Court of Madhya Pradesh. These PILs were eventually*

disposed of by the Hon'ble High Court of Madhya Pradesh in favor of the Petitioner. Accordingly, MoEF vide letter dated 19.03.2012 vacated the stay and re-instated Stage-II Forest Clearance. As such there was a further delay of 6 months in re-instatement of Stage-II Forest Clearance. Thereafter, the forest land was transferred to the Petitioner. Copies of the Stage-I & Stage-II Forest Clearance and MoEF letters dated 23.09.2011 and 19.03.2012 are attached herewith and marked as **ANNEXURE-1(Colly)**. Thus there was cumulative delay of 14 months on account of delay in grant of Forest Clearance (8 months delay in accord of Stage-II Forest Clearance + 6 months further delay due to stay on Stage-II Forest Clearance).

d) Besides the above delay, the construction of Unit-1 and Unit-2 was also delayed on account of other external factors/ reasons beyond the control of the Petitioner viz.:

(i) Disturbances/unrest at Project Site by miscreants and motivated elements;

(ii) Unseasonal and unprecedented rains/ Floods;

(iii) Delay in barrage construction.

(iv) Delay due to other external factors like:

1. Strikes, agitations and power shutdowns in Seemandhra region during September-October 2013 on the state bifurcation issue. Due to this, the Government offices and Banks in this region followed BANDH, thereby impairing and delaying the custom clearance for the offshore supplies received at Vizag/ Ganagavaram Port for around fourteen (14) days i.e. a delay of almost one (1) week per month each during the months of September-October 2013.

2. Major fire broke-out in Mumbai Mantaralaya on 21.06.2012, due to which permission for loading/ unloading the material received at Mumbai Port and movement of the same was delayed for around seven (7) days.

e) The above delay on account of external factors/ reasons beyond the control of the Petitioner has been duly acknowledged and endorsed by this Hon'ble Commission in its order dated 01.12.2017 passed in Petition No. 68 of 2017 in the matter of determination of final tariff of Unit-1 of the Petitioner's Project. The relevant extracts of the said order dated are reproduced hereunder:

"68. On perusal of the reasons and documents submitted by the petitioner on record for delay in achieving CoD of Unit No.1, it is observed that the delay is

*primarily on account of obtaining Stage-II Forest Clearance from MoEF and certain portion of forest land falls within the Main Plant Area. As submitted by the petitioner with the copy of correspondence with Ministry of Environment & Forest, Govt. of India regarding Stage I & Stage II forest clearance, there has been further delay in handing over of forest land to the petitioner on account of certain litigations before Hon'ble High Court. **Thus, the commencement of various main construction activities of the power plant was delayed by more than 14 months. It is observed that CoD of Unit No.1 was further delayed on account of various protests/ agitations carried out by residents/ villagers during the construction period.** The chronology of all such events have been placed on record by the petitioner. Besides, the petitioner has submitted some other reasons also for delay in achieving CoD of Unit No. 1.*

69. In view of the above mentioned facts and the reasons enumerated by the petitioner along with the documents placed on record in support of all such reasons, the delay in achieving commercial operation of Unit No.1 is not attributable to the petitioner.”

(emphasis supplied)

Though there was a delay of 14 months in commencement of construction of the Project on account of delay in Stage-II Forest Clearance and other factors, the Petitioner, through efficient and meticulous Project planning, management and execution skills and judicious allocation and utilization of manpower and resources, has been able to achieve COD of Unit-1 with a delay of only ~ 5.5 months and that of Unit-2/ Project with a delay of only ~10 months. Therefore, the Petitioner through its additional efforts was able to mitigate the initial delay of 14 months to only around 10 months in the overall Project execution (31.05.2015 Vs 07.04.2016).

Query No. 2: Further, in para 16 of the petition, the petitioner has mentioned that the scheduled COD of the Unit No. 2 of the project was 19th November, 2015 (within six month from actual CoD of Unit No. 1) whereas, the Unit No. 2 has actually been declared under commercial operation on 7th April, 2016. The petitioner is required to inform/explain the following:

viii. What date has been indicated as SCOD of petitioner's Unit No. 2 and generating station in "Investment Approval" as defined at Regulation 4.1 (zd) of MPERC (Terms and Conditions for determination of Generation Tariff)

- Regulations, 2015. A copy of the Investment Approval be submitted to the Commission.**
- ix. **Detailed reasons for delay in achieving CoD of the generating Unit.**
 - x. **Whether the delay in CoD was attributable to the delay in completion of works by the contractors/agencies?**
 - xi. **If yes, whether any Liquidated Damages/penalty have been recovered/to be recovered? The provisions under the contract for deduction of penalty/LD on account of delay in completion of works be informed.**
 - xii. **The costs overrun due to delay in CoD of Unit No. 1&2 be informed for each component of the capital cost.**
 - xiii. **The petitioner is required to specify the delay in number of days on account of each of the above reasons. Supporting documents be also filed in this regard.**
 - xiv. **Whether the "Start Date" or "Zero Date" is indicated in the aforesaid Investment Approval.**

Petitioner's Response to Query Nos. 2(i) & 2(vii)

*It is submitted that the Board of Directors of the Petitioner ("BoD") vide Board Resolution dated 21.10.2009 had accorded the approval for setting-up of the Project. However, this was an in-principle approval to pursue the Project developmental activities. Further, no specific Project Start Date/Zero Date and/or Project implementation timelines and/or unit-wise SCOD had been indicated in this Board Resolution. A copy of the said Board Resolution dated 21.10.2009 is attached herewith and marked as **ANNEXURE-2**.*

Subsequent to issuance of this Board Resolution, the Petitioner signed definitive agreements with the Government of Madhya Pradesh and its nominated agency (MPPMCL) viz. Implementation Agreement (signed on 01.12.2009), PPA (signed on 05.01.2011) etc. wherein the Project Start Date/ Zero Date, Project Implementation timeline, unit-wise SCOD etc. were firmed-up. It is humbly submitted that the Petitioner has considered these unit-wise SCOD specified in the PPA for implementation of the Project.

It is submitted that MPERC Tariff Regulations 2015, for the first time introduced the concept of linking SCOD to the investment approval. It is submitted that as per Regulation 1.3 of the MPERC Tariff Regulations 2015, the said Tariff Regulations came into force with effect from 01.04.2016 and as such, this may only be prospectively applicable to such projects where the investment approval has been accorded after issuance of MPERC Tariff Regulations 2015. The concept cannot be applied retrospectively to the projects like that of

Petitioner's Project wherein the in-principle approval was accorded way back in 2009 and the SCOD of Unit-1 of the Project has already been decided by this Hon'ble Commission in accordance with the provision of the PPA. The Petitioner submits that in such cases, the PPA would continue to remain as the sole binding force for determination of the SCOD of Unit-2 of the Project.

This Hon'ble Commission by its Order dated 07.09.2012 passed in Petition No. 7 of 2012 and Order dated 04.02.2013 passed in Petition No. 82 of 2012 has accorded its regulatory approval to the aforesaid PPA dated 05.01.2011. Accordingly, the PPA which has been approved by this Hon'ble Commission is the sole document governing the Project implementation timelines. As such, provisions of the said PPA solely and squarely cover the provisions for determination of SCOD of both Unit-1 & Unit-2 of the Project. Accordingly, in terms of the provisions of the PPA, the Project Start Date/ Project Zero Date is 01.12.2009.

Petitioner's Response to Query Nos. 2(ii) & 2(vi)

As stated in reply to Query No. 1 above, certain external reasons/factors beyond the control of the Petitioner delayed the commencement of Project construction by more than 14 months, which has also been duly acknowledged and endorsed by this Hon'ble Commission in its order dated 01.12.2017 passed in Petition No. 68 of 2017. The above delay of more than 14 months in commencement of Project construction on account of the external reasons/factors beyond control of the Petitioner not only delayed the COD of Unit-1 but resulted in consequent and cascading delay in over Project implementation i.e. COD of Unit-2.

Anticipating a delay in COD of Unit-2/ Project, the Petitioner kept MPPMCL duly informed in advance about the delay and the reasons thereof vide various communications from time to time. It is further submitted that by way of these communications, the Petitioner also offered to supply power (corresponding to power from Unit-2) to MPPMCL from alternative generation sources as per the terms of the PPA for the period corresponding to delay in COD of Unit-2. However, MPPMCL did not exercise its option to procure such power.

*The external factors/ reasons beyond the control of the Petitioner affecting overall Project implementation thereby resulting in delay in COD of the Project/ Unit-2 are attached herewith and marked as **ANNEXURE-3(Colly)**.*

It is submitted these external factors/ reasons beyond the control of the Petitioner had a cumulative impact of more than 14 months on the overall Project implementation. As stated above, this Hon'ble Commission has duly recognized these external factors/ reasons and has acknowledged and endorsed that due to these external factors/ reasons beyond the control of the Petitioner, the commencement of Project construction was delayed by more than 14 months.

Despite this uncontrollable initial delay of 14 months, the Petitioner, through efficient and meticulous Project planning, management and execution skills and judicious allocation and utilization of manpower and resources, has been able to achieve COD of Unit-1 with a delay of only ~ 5.5 months and that of Unit-2/ Project with a delay of only ~10 months. Therefore, the Petitioner through its additional efforts was able to mitigate the initial delay of 14 months to only around 10 months in the overall Project execution (31.05.2015 Vs 07.04.2016).

It is submitted that out of this overall delay of ~10 months in the overall Project completion, a delay of ~ 5.5 months was experienced in COD of Unit-1. It may kindly be noted here that in order to expedite COD of Unit-1 for supply of power to MPPMCL at the earliest, the Petitioner was compelled to divert the material, manpower and resources originally deployed for Unit-2 for completion of Unit-1. As such, reasons for delay which affected the COD of Unit-1 had a consequential effect and cascading effect on COD of the Project/ Unit-2.

It may kindly be appreciated that this Hon'ble Commission has duly recognized these external factors/ reasons beyond the control of the Petitioner and has acknowledged and endorsed that due to these uncontrollable factors, commencement of Project construction was delayed by more than 14 months. As such, these uncontrollable factors constitute force majeure events in accordance with the Regulation 18 of the MPERC Tariff Regulation, 2015.

In view of the above submissions, the Petitioner prays that this Hon'ble Commission may be pleased to kindly condone the delay in COD of Unit-2/ Project and accordingly in line with the Regulation 17 of the MPERC Tariff Regulation, 2015, no reduction/ deduction in the overall Project cost/ Unit-2 cost including IDC, IEDC etc may be directed by this Hon'ble Commission while determining final tariff of Unit-2 of the Petitioner's Project in the present Petition.

Petitioner's Response to Query Nos. 2(iii) & 2(iv)

*It is submitted that no liquidated damages have been recovered by the Petitioner from its contractors/vendors till date. There may be certain delays which may be attributable to the Contractors/Vendors. However, the same have not yet been quantified by the Petitioner and have not been included in the present proceedings. In terms of EPC Contract, the final settlement/ contract closure is pending. The Petitioner's EPC Contractor is M/s Lanco Infratech Limited ("LANCO") and it is understood that insolvency proceedings have been initiated against LANCO and its lenders/ creditors have filed proceedings against LANCO before the National Company Law Tribunal ("NCLT", a quasi-judicial body that adjudicates issues relating to Indian Companies). A copy of public announcement to this effect issued by Insolvency and Bankruptcy Board of India ("IBBI") is attached herewith and marked as **ANNEXURE-4**.*

In such a scenario, final settlement/ contract closure with LANCO has become complicated and a time consuming process. Nonetheless, the Petitioner is rigorously pursuing the matter with LANCO and is hopeful of the final settlement/ contract closure in the ongoing financial year. At this juncture the liquidated damages/penalty that may be attributable to the contractors/vendors, if any, for delay in completion of works cannot be quantified. Accordingly, the Petitioner humbly prays that no adjustments in tariff of account of Liquidated Damages recoverable (if any) from Contractors/Vendors be made by this Hon'ble Commission in the current proceedings for determination of final tariff of Unit-2 of the Petitioner's Project for FY 2016-17.

Notwithstanding above, the Petitioner undertakes to quantify such liquidated damages/penalty at the time of final contract settlement. Any such liquidated damages/penalty to be recovered from the contractors/vendors would be discussed and finalized at the time of final contract settlement and shall be accordingly submitted before this Hon'ble Commission.

Petitioner's Response to Query No. 2(v):

It is submitted that there is no cost overrun in the hard-cost of the Project. Further, as stated in the preceding paragraphs, delay in COD of Unit-2/ Project is on account of the external reasons/ factors beyond control of the Petitioner. As such, no cost overrun in the soft-cost of the Project during this delay period is attributable to the Petitioner.

B. Capital Cost

Query No. 3: On preliminary scrutiny of the capital cost claimed in the petition vis-à-vis recorded in CA certificate and also in Annual Audited Accounts, the following

has been observed:

- (i) There is a difference in the figure of total capital cost of Rs. 7835.12 crore as mentioned in CA certificate dated 6th February' 2018 and Rs. 7813.82 crore as recorded in Annual Audited Accounts as on 31st March, 2017.
- (ii) It is further observed that there is a difference in the figures of capital cost mentioned in CA certificate and indicated in TPS 5A as on 31st March, 2017.
- (iii) The opening capital cost for Unit No. 2 as indicated in para 71 of petition is Rs. 3465.70 Crore whereas the CA certificate dated 6th February' 2018 indicated the same as Rs. 2816.24 Crore.

In view of the above, the petitioner is required to explain the reasons for aforesaid discrepancies in the figures of capital cost in different documents/places.

Petitioner's Response to Query No. 3

*In regard to Query No. 3(i), it is submitted that light of Para(s) 47-50 of the present Petition, the value of Gross Fixed Assets ("GFA") of Rs.7813.82 Crore as on 31.03.2017 is as per Indian Accounting Standards ("IND AS") (for which the Petitioner has submitted the Annual Audited Accounts for FY 2016-17 as Annexure 13 of the present Petition) and the corresponding value of GFA as per Generally Accepted Accounting Principles in India ("Indian GAAP"/"IGAAP") is Rs.7927.05 Crore. Copy of the same is attached herewith and marked as **ANNEXURE-5(Colly)**.*

*With respect to GFA (Rs 7927.05 Crore) as per IGAAP accounting standards, the Petitioner has submitted the total cash expenditure of Rs.7835.12 Crore incurred till 31.03.2017 for the Project attached as Annexure 18 of the present Petition. Copy of the same is attached herewith and marked as **ANNEXURE-6**.*

With respect to above, the Petitioner humbly submits that the cash expenditure of Rs.7835.12 Crore as on 31.03.2017 for the project is well within the Gross value of Fixed Assets (as per IGAAP i.e. Rs 7927.05 Cr) capitalized as on 31.03.2017.

In regard to Query No. 3(ii), it is submitted that in light of Para(s) 51-55 of the present Petition, the total estimated capital cost of the Project has been revised from Rs 8702.23 Crore (as estimated earlier on accrual basis) to Rs 8350.47 Crore (the reasons thereof for the variations in the estimated capital cost have been submitted). The same has been indicated in TPS Form 5A whereas the CA certificate dated 06.02.2018 indicates the total cash expenditure of Rs 7835.12 Crore incurred till 31.03.2017.

In regard to Query No. 3(iii), it is submitted that as per auditor certificate dated 06.02.2018, the total cash expenditure as on COD of Unit-2 i.e. 07.04.2016 is Rs.7701.59 Crores. Out of this Rs.4885.35 Crore pertains to Unit-1 and balance Rs.2816.24 Crore pertains to Unit-2. However, as against the Petitioner's claim of capital cost of Rs.4835.35 Crore for Unit-1, in Petition No. 68 of 2016, Hon'ble Commission vide order dated 01.12.2017 has only approved Rs.4235.89 Crore pertaining to Unit-1. The balance amount of Rs.649.46 Crore was not considered by this Hon'ble Commission, to become a part of Capital cost for Unit-1, considering the same as pertaining to common assets/facilities for the Project, though the same were capitalized in the books. Accordingly, the same has now been claimed as part of capital cost of Unit-2 in addition to auditor certified cash capital cost of Rs.2816.24 Crore for Unit-2.

In view of above, the opening capital cost for Unit-2 in terms of cash expenditure claimed as on COD of Unit-2 has been worked out as Rs.3465.70 Crore.

Query No. 4: The petitioner is required to file a detailed comparison of the capital cost of its project with other thermal power project/units in the country those are comparable with the petitioner's project under subject petition. The petitioner is also required to justify how the capital cost of the unit / project is comparable with the capital cost benchmarked by CERC. The reasons for exceeding the capital cost from benchmark norms be filed by the petitioner.

Petitioner's Response to Query No. 4

It is submitted that the detailed comparison of the capital cost (hard cost) of the Petitioner's Project with the other thermal power projects (similar capacity) in the country, to the best of the Petitioner's knowledge, is provided in the table below:

| Name of Power Station | Sector | Installed Capacity | No. of Units | Year of Project COD | Project Hard Cost | | Source |
|---|---------------------------------|--------------------|--------------|---------------------|-------------------|----------|---|
| | | | | | Rs. Cr | Rs Cr/MW | |
| Anuppur TPS of MBPMPL | IPP (MP) | 1200 | 2x600 MW | Apr' 2016 | 5385 | 4.49 | |
| Singareni TPP | State-Central Joint (Telangana) | 1200 | 2x600 MW | Dec' 2016 | 6904 | 5.75 | SCCL's Pet. No. 9/2016 for approval of capital cost |
| Nigrie TPP of Jaiprakash Power Ventures Ltd | IPP (MP) | 1320 | 2x660 MW | Feb' 2015 | 7975.18 | 6.04 | MPERC order dt. 24.05.2017 |

| Name of Power Station | Sector | Installed Capacity | No. of Units | Year of Project COD | Project Hard Cost | | Source |
|--------------------------------|-------------------|--------------------|--------------|---------------------|-------------------|----------|---|
| | | | | | Rs. Cr | Rs Cr/MW | |
| Lalitpur Thermal Power Station | IPP (UP) | 1980 | 3x660MW | Jun' 2016 | 10786 | 5.45 | UPERC order dt. 27.11.2015; Pet Nos. 975/2014 & 1017/2015 |
| Kalisindh TPS | State (Rajasthan) | 1200 | 2x600 MW | Jul' 2015 | 6521 | 5.43 | RERC order dt. 14.05.2015; Pet No. RERC/462/14 |
| Jhabua Power Limited | IPP (MP) | 600 | 1x600 MW | May' 2016 | 3077 | 5.13 | MPERC order dt. 06.09.2016 in Pet. No. 16/2016 |

Accordingly, it is submitted that the Project cost of the Petitioner's Project as claimed by the Petitioner is reasonable and within the industry norms.

CERC Benchmarking

It is submitted that the Order No. L1/103/CERC/2012, dated 04.06.2012 passed by the Hon'ble Central Electricity Regulatory Commission ("**Hon'ble Central Commission**") provides the Benchmark Capital Cost (Hard Cost) for thermal power station. The Bench Mark Capital Cost for 2x600 MW Green Field Coal based Thermal Power Project (taking 2011 indices as Base) is Rs. 4.54 Crore per MW. Further Hon'ble Central Commission has provided a clarification on Benchmark Capital Cost, for thermal power stations with coal as fuel by its aforementioned order, under Issue No. 6, Para No. 11.2, as under:-

"However, to calculate the likely cost of similar package for another Project, the fixed Component needs to be linked to escalation in WPI for the intervening period, which may be provided..."

In view of the above, the indicated capital cost (hard cost) per MW of Rs. 4.54 Crore for 2x600 MW Thermal Power Project based on 2011 Index as base, needs to be escalated on WPI Index to arrive at capital cost to the present date.

The table hereunder shows that the Bench Mark capital cost of Rs. 4.54 Crore/MW translates into a Project cost (hard cost) of Rs. 5,448 Crore as on December 2011, which after applying the escalation factor based on WPI Index of (177.8) for the month of April 2016 (COD of the Project) as published by the Central Government, works out to Rs. 6,158

Crore translating into Rs. 5.13 Crore/MW. The calculations in this regard are provided hereinbelow:

| Parameter | Identifier | Value |
|---|------------------------------|-------------------|
| The WPI index at Dec 2011 | A | 157.3 |
| The WPI index at April 2016 (COD of the Project) | B | 177.8* |
| Inflation factor | $C = (B/A-1)\%$ | 13.03% |
| Benchmark Cost Based on Dec-2011 | D | Rs. 4.54 Crore/MW |
| Benchmark capital cost for 2x600 MW | $E = D * 2 * 600 \text{ MW}$ | Rs. 5,448 Crore |
| Escalation allowed up to April 2016 | $F = E * (100\% + C)$ | Rs. 6,158 Crore |
| CERC Benchmark capital cost as at April 2016 | $G = F/1200$ | Rs. 5.13 Crore/MW |

Source: CERC, Office of the Economic Adviser; www.eaindustry.nic.in.

The Petitioner further submits that with respect to revised filed cost for the Project on accrual basis as per TPS-5B of the present Petition, the estimated revised capital cost (excluding custom and excise duty of Rs 192.72 Crore) as on the date of Project COD of Rs. 8157.75 Crore (Rs. 8350.47 Crore - Rs. 192.72 Crore) translates into hard cost of Rs. 5384.67 Crore which in turns works out to Rs. 4.49 Crore/MW. The per MW capital cost (in terms of hard cost) of the Project is tabulated below:

| Benchmarking for Petitioner's Project as on Project COD (2x600 MW) | Value in Rs. Crore |
|---|---------------------------|
| Capital cost (Less Custom & Excise duty of Rs 192.72 Crore) | 8157.75 |
| Less: | |
| IDC/Finance Charges/Unamortized cost to Borrowings | 1928.22 |
| Railway Siding | 141.81 |
| Barrage | 156.68 |
| Township | 108.38 |
| Pre-operative Expenses (IEDC) | 437.99 |
| Total Capital Cost | 5384.67 |
| Cost per MW | Rs. 4.49 Cr/MW |
| CERC Benchmark capital (hard) cost as at Apr 2016 | Rs. 5.13 Cr/MW |

It is submitted that the estimated completion cost of the Petitioner's Project is well within the Bench Mark capital cost for Green Field coal based power Projects as indicated by Hon'ble Central Commission for a 2x600 MW Thermal Project.

Query No. 5: In format TPS 5B regarding break-up of capital cost, the petitioner was required to compare the actual capital expenditure with the "original estimate as per investment approval" as mentioned in column 3 of the format. Whereas, the petitioner has mentioned the cost as per revised capital expenditure as on Project CoD w.r.t. BOD resolution dated 16.02.2016.

In view of the above, the petitioner is required to file the break-up of project cost as required under Format TPS 5B towards Unit No. 1 and Unit No.2 separately.

In case of cost variation, a detailed note giving reasons of such variations need to be submitted clearly indicating whether such cost over-run was beyond the control of the generating company.

Query No. 6: The petitioner is required to explain in detail, the reasons for increase in initial project cost from of Rs. 6240 crore (as approved in Board's Resolution dated 21st October, 2009) to the actual project cost of Rs. 7701.59 crore incurred upto COD of Unit No. 2 under each component of capital cost as mentioned in CA certificate individually on account of each of the following factors:

- g. Increase in Price/Rate variation in different packages from scheduled COD to actual COD.
- h. Exchange rate variation towards loan taken in foreign currency.
- i. Exchange rate variation towards payment in foreign component towards contract signed in foreign component.
- j. Additional works
- k. Taxes & Duties and others (Pls. Specify and quantify each item separately).
- l. The above items are to be mentioned in two parts:
 - iii. Cost increased upto Schedule COD of Unit-2
 - iv. Between Schedule COD to actual COD of Unit-2.

Reply to Query Nos. 5 & 6

The details of the Project cost (along with break up) as per various investment approvals/Board Approvals along with break-up of Project cost towards Unit-1 & Unit-2 is attached herewith and marked as **ANNEXURE-7**.

The Petitioner further submits that the cost variations in estimated capital cost of the Project under various investment approvals/Board Approvals are attached as hereunder:

| Particulars | Annexure |
|--|-------------------|
| Revision of Capital Cost from Rs 6240 Crore to Rs 8306.03 Crore | ANNEXURE-8 |
| Revision of Capital Cost from Rs 8306.03 Crore to Rs 8702.23 Crore | ANNEXURE-9 |

| Particulars | Annexure |
|--|--------------------|
| Revision of Capital Cost from Rs 8702.23 Crore to Rs 8350.47 Crore | ANNEXURE-10 |

With respect to this Hon'ble Commission's observation regarding project cost being Rs. 7701.59 Crore on the date of COD of Unit-2, it is humbly submitted that the amount of Rs. 7701.59 Crore is not the Project cost, but it is the actual cash expenditure (i.e. net of liabilities) incurred for the Project on the date of COD of Unit-2 against the revised capital cost of Rs 8350.47 Crore on the date of COD of Unit-2 (on accrual basis).

Query No. 7: Details of penalty/LD if any, recovered or recoverable from the contractor for delay in completion of works in light of provisions under the contracts awarded to various vendors be submitted.

Petitioner's Response to Query No. 7

In this regard, the Petitioner reiterates the submissions in response to Query Nos. 2(iii) & 2(iv) above which have not been repeated for the sake of brevity.

Query No. 8: The Annual Audited Accounts filed by the petitioner is common for Unit No. 1 and 2. The petitioner is required to reconcile the figures claimed in petition for Unit No. 2 in light of the Note 4 and 6 of the Annual Audited Accounts. The petitioner is also required to explain the reasons for difference in figure if any, recorded in Annual Audited Accounts and those filed in the petition.

Petitioner's Response to Query No. 8

In regard to Query No. 8, the Petitioner submits that the Auditor Certificate dated 06.02.2018 for Unit as well as Project Cash Expenditure that the total incurred during FY 2016-17 amounts to Rs. 133.52 Crore out of which net expenditure in terms of cash expenditure claimed by the Petitioner for FY 2016-17 for both Unit-1 & Unit-2 is Rs 111.79 Crore. The Unit-wise break-up cash expenditure during FY 2016-17 is as follows:

(Rs. Crore)

| S.No. | Particulars | Project | Unit-1 | Unit-2 |
|--|--|---------------|--------------|--------------|
| 1 | <i>Cost of Land & Site Development</i> | 2.41 | 2.41 | - |
| 2 | <i>Plant & Machinery</i> | 72.29 | 43.78 | 28.51 |
| 3 | <i>Building & Civil Works</i> | 46.82 | 21.31 | 25.51 |
| 4 | <i>Pre-operative & IDC/FC</i> | 12.00 | - | 12.00 |
| Total Cash Expenditure during FY 2016-17 | | 133.52 | 67.51 | 66.01 |
| 5 | <i>Assets Not Capitalized as on 31.03.2017</i> | 21.74 | - | 21.74 |
| Net Cash Expenditure claimed as Unit-wise ACE | | 111.79 | 67.51 | 44.28 |

*It is submitted that the reconciliation of total additional capitalization (Unit-1 as well as Unit-2) with respect to Note 4 and Note 6 of the Annual Audited Accounts for FY 2016-17 is attached herewith and marked as **ANNEXURE-11**.*

Query No. 9: The petitioner has stated that there is difference in Gross Fixed Assets as per Ind. AS and Indian GAAP and same is indicated in para 49 of the petition. The difference in figures is observed in Freehold Land, Leasehold Land, Plant and Machinery and Building and Civil works. The petitioner is required to file a detailed note explaining all such difference in figures in each item of the capital cost along with consequential impact of such changes on the tariff if any.

Petitioner's Response to Query No. 9

*It is submitted that as stated in Para(s) 47-50 of the present Petition, the Petitioner has adopted for the first time Indian Accounting Standards ("**IND AS**") notified under the Companies (Indian Accounting Standards) Rules, 2015 under Section 133 of the Companies Act, 2013, while preparing the Annual Audited Accounts for FY 2016-17. This was done to comply with the Gazette Notification dated 16.02.2015 issued by Ministry of Corporate Affairs.*

*The Petitioner further submits that unlike Indian GAAP ("**IGAAP**") which relies on historical/original cost of asset for accounting and reporting, IND AS relies on fair/revalued cost of assets, revaluation being done on certain set of parameters for accounting and reporting purpose. As the Tariff Regulations notified by Hon'ble Commission for the purpose of tariff determination relies on historical/original cost of asset values, accounts prepared under Indian GAAP becomes relevant for the purpose of tariff.*

*The Petitioner further submits with respect to its case that the transition from **IGAAP** to **IND AS** on account of provisions of Companies Act, 2013 has resulted in reflection of a gap of (-) Rs.113.24 Crores in the value of Gross Fixed Assets as on 31.03.2017. The auditor certified reconciliation between Gross Fixed Asset as per Indian GAAP and IND AS is already placed at Annexure 15 of the present Petition. Copy of the same is attached herewith and marked as **ANNEXURE-5(Colly)**.*

The detailed note explaining all such difference difference/gap is tabulated as under:

(Rs. Crore)

| S. No | Particulars | Fixed Assets as per IGAAP | Fixed Assets as per IND AS | Variance | Reasons for variance |
|--------------|-------------------------|----------------------------------|-----------------------------------|-----------------|---|
| 1 | Freehold Land | 150.53 | 102.08 | -48.45 | Under IND AS provisions for future R&R payments are discounted at effective interest rate of long term debt through the expected life of the liability to bring to the fair value on the date of recognition. Further, the provision of annual diversion payments to GoMP for change of land use (from agriculture to industrial) are also discounted at effective interest rate of long term debt throughout the expected life of the financial liability. The above practices are in variation with the treatment under Indian GAAP where the liabilities were recognized on gross basis. |
| 2 | Leasehold Land | 21.58 | 0.00 | -21.58 | As per Indian GAAP , the lease amount of Rs 21.58 Crore was treated as Fixed asset and was to be amortized over the life of the Project. However, being considered as an Operating Lease in IND AS , the same amount has been classified as Prepaid Expenses (under Current Assets) instead of classifying it as Fixed Assets. |
| 3 | Plant & Machinery | 6364.64 | 6329.76 | -34.88 | Due to difference in treatment of finance cost to borrowings under Indian GAAP and IND AS . Under Indian GAAP the costs incurred in raising funds are amortized equally over the period for which the funds are acquired or within five years, whichever is less. However, under IND AS , such costs are amortized equally over the period for which the funds are acquired. As a result the value as per Indian GAAP is on lower side. |
| 4 | Buildings & Civil Works | 1270.11 | 1261.79 | -8.32 | |

As already stated above, it is reiterated that capital cost based on historical cost is generally considered and allowed by Regulatory Commissions for determination of tariff and not on fair value basis (as in the case of IND AS) as introduced by Companies Act, 2013. As such, the Petitioner has claimed tariff in the present Petition considering capital cost based on Indian GAAP after due reconciliation in this regard clearly depicting the changes in presentation of capital cost in books of accounts due to transition from Indian

GAAP to IND AS. Accordingly, it is submitted that there will be no consequential impact on tariff being claimed in the Petition on historical cost in continuation as per provisions of the Tariff Regulations because of changes in books of accounts mandated by change in accounting standards applicable to the Petitioner.

INFIRM POWER

Query No. 10: With regard to infirm power, the petitioner is required to file the following details:

- a) **Month-wise details of infirm power generated from Unit No.2 and revenue earned from sale of infirm power along with the statement from concerned Load Despatch Centre duly reconciled with Annual Audited Accounts.**
- b) **Detailed break-up of fuel expenses incurred for generation of infirm power duly certified by the CA. The break-up of quantity and landed cost of FSA and Non-FSA coal he provided.**
- c) **Whether the revenue earned from sale of infirm power has been accounted for in the capital cost of the project claimed in the petition. Supporting documents be filed in this regard.**
- d) **The petitioner is required to file the copy of bill invoice for purchase of coal and oil for generation of infirm power.**
- e) **The petitioner is required to inform the detailed break-up of quantity, rate and cost of coal and oil consumed during pre-commissioning activities and generation of infirm power from different sources.**

Petitioner's Response to Query No. 10

*In regard to Query 10(a), the details of monthly statements issued by Western Regional Power Committee ("WRPC") containing details of infirm power injected in the grid and revenue earned from sale of infirm power during the commissioning activities of Unit-2 as is attached herewith and marked as **ANNEXURE-12(Colly)**. According to these statements, the total revenue accrued from sale of infirm power during pre-commissioning activities of Unit-2 till 06.04.2016 (COD of Unit-2 being 07.04.2016) amounts to Rs 13.68 Crore (i.e. Receivables: Rs 14.02 Crore; Payable: Rs 0.34 Crore).*

*In regard to Query No. 10(b), the Petitioner hereby submits, in light of Annual Audited Accounts for FY 2016-17 (no impact in terms of accounting standards being IGAAP or Ind AS), the auditor certificate regarding fuel expenditure & revenue realized from sale of infirm power during pre-commissioning activities for Unit-2 as on its COD (07.04.2016) is attached herewith and marked as **ANNEXURE-13**.*

In regard to Query No. 10(c), the Petitioner submits that the revenue earned from the sale of infirm power amounting to Rs. 13.46 Crore has been accounted for in the capital cost which can be inferred from the Note No. 5 of the Annual Audited Accounts for FY 2016-17.

In regard to Query No. 10(d), the copies of bill/invoices for purchase of coal and oil during the pre-commissioning activities of Unit-2, being in bulk numbers, the sample bills/invoices for purchase of coal and oil during the pre-commissioning period of Unit-2 are attached herewith and marked as **ANNEXURE-14**.

In regard to Query No. 10(e), the detailed break up of coal and oil consumed during the pre-commissioning activities of Unit-2 in terms of quantity, rate and cost and generation of infirm power during the period is as hereunder:

| S.No. | Period | Fuel | Unit | Consumed Quantity | Amount in Rs. Crore |
|--|--------------------------|-------------|-------------|--------------------------|----------------------------|
| 1 | Upto 31.03.2016 | HFO | KL | 3229.41 | 8.54 |
| | | LDO | KL | 1927.32 | 7.23 |
| | | Coal* | MT | 61280.5 | 16.77 |
| 2 | 01.04.2016 to 06.04.2016 | HFO | KL | 168.6 | 0.45 |
| | | LDO | KL | 101.02 | 0.4 |
| | | Coal* | MT | 53874.9 | 14.95 |
| <i>Total Cost of Start-up Fuel/Pre-commissioning expenses till COD of Unit-2</i> | | | | | 48.34 |
| <i>Less: Revenue realized in cash from sale of Infirm Power till COD of Unit-2</i> | | | | | 1.03 |
| <i>Net Cost of Start-up Fuel/Pre-commissioning Expenses (Net off Infirm Power)</i> | | | | | 47.31 |

**Only FSA coal has been used in pre-commissioning activities.*

IDC AND IEDC

Query No. 11: Detailed reasons with full justification of claiming IDC and IEDC beyond SCOD be submitted with reference to each provision under Regulation 17.1 to 17.5 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015.

Petitioner's Response to Query No. 11

In this regard, the Petitioner reiterates the submissions in response to Query Nos. 2(ii) & 2(vi) above which have not been repeated for the sake of brevity.

Query No. 12: Regulation 17.3 of the Regulations provides that the Incidental expenditure during construction shall be computed from the zero date and after

taking into account pre-operative expenses upto SCOD. The petitioner is required to inform the zero date of the project in accordance to Regulation 4.1 (zv) of the Regulations, 2015.

Petitioner's Response to Query No. 12

As already brought out in reply to Query Nos. 2(i) & 2(vii) above, it is submitted that Project Start Date/ Project Zero Date is 01.12.2009 in terms of the PPA dated 05.01.2011. This PPA bears the due regulatory approval of this Hon'ble Commission vide its Order dated 07.09.2012 passed in Petition No. 7 of 2012 and Order dated 04.02.2013 passed in Petition No. 82 of 2012. As such, this PPA is binding for determination of Project Start Date/ Project Zero Date and also the Project implementation timelines.

Query No. 13: On perusal of the correspondence/documents regarding revision of SCOD, it is observed that the Respondent had considered request of the petitioner for revision of SCOD of Unit No. 2 from scheduled date to April-2016, subject to the petitioner agreeing to certain conditions. One of the conditions that "not to claim IDC for delayed COD". This condition was duly agreed by the petitioner vide its Letter No. 7972 dated 13-06-2016.

In view of the above, the petitioner is required to file the unit-wise break-up of IDC and IEDC as on SCOD and as on actual CoD separately duly reconciled with the Annual Audited Accounts and certified by the statutory auditor. Soft copy of computation in excel sheet he also submitted.

Petitioner's Response to Query No. 13

It is submitted that as per the provisions of the PPA, the SCOD of Unit-2 was 19.11.2015 (i.e. six months after Unit-1 COD of 20.05.2015), which has been duly acknowledged, accepted and approved by both MPPMCL and this Hon'ble Commission as evident from the following:

- (i) MPPMCL vide its letter dated 22.04.2016 to the Petitioner has duly acknowledged that SCOD of Unit-2 as November 2015.*
- (ii) This Hon'ble Commission in its Order dated 28.10.2017 in the Petition No. 18 of 2017 (i.e. determination of provisional tariff for Unit-2 of the Project) has duly approved SCOD of Unit-2 as November 2015. At Page No. 65 of this Order, the Hon'ble Commission has noted the following:*

"it is observed that the scheduled CoD of the Unit No. 2 was 29th November' 2015 in terms of PPA executed between the parties whereas, the actual CoD of the unit is

7th April. 2016”

Accordingly, The cash expenditure towards IDC, IEDC and Finance Charges for Unit-2 as on its SCOD (19.11.2015), Actual COD (07.04.2016) & 31.03.2017 duly certified by auditor is attached herewith and marked as **ANNEXURE-15**.

Query No. 14: Reasons for increase in IDC and IEDC from initial cost estimate to actual expenditure as on COD of the Unit No. 2 be explained.

Petitioner’s Response to Query No. 14

In this regard, the Petitioner reiterates the submissions in response to Query Nos. 2(ii) & 2(vi) above which have not been repeated for the sake of brevity.

Query No. 15: The petitioner is also required to file the following details:

- a. Finance Charges:
 - i. Bank Charges
 - ii. Processing Fees
 - iii. Other items to be specified
- b. Hedging Cost
- c. Interest during Construction on Domestic Loans
- d. Interest during Construction on Foreign Loans
- e. Additional interest over interest overdue and principle overdue & Penalty, if any and other items to be specified.

Petitioner’s Response to Query No. 15

*The detailed breakup of the required Finance charges for the Project as on its SCOD (19.11.2015), 31.03.2016, actual COD (07.04.2016) & 31.03.2017 is attached herewith and marked as **ANNEXURE-16**.*

Query No. 16: Detailed break-up of pre-operating expenditure duly certified by the statutory auditor for Unit No. 1 and 2 separately be filed as on the following dates:

- a. Upto schedule COD of Unit-2
- b. 7th April, 2016 and
- c. 31st March, 2017

The basis of allocation of IDC and IEDC for common facilities be also explained in this regard.

Petitioner's Response to Query No. 16

*The total Pre-operative expenditure (IEDC) for the Unit-2 as on its SCOD (19.11.2015), actual COD (07.04.2016) & 31.03.2017 duly certified by auditor & the break-up of Pre-operative expenditure is attached herewith and marked as **ANNEXURE-17**.*

It is further submitted that the expenditure towards IDC and IEDC for the common facilities have been allocated to Unit-1 and Unit-2 on fairly 50:50 basis.

Query No. 17: Unit No. 2 of project was under major forced outage on account of an accident occurred in Boiler on 16th May'2016. The petitioner is required to confirm on affidavit that cost incurred on rectification/repairing for revival of Unit No. 2 from the aforesaid outage is not included in the capital cost as on CoD of the unit claimed in the petition.

Petitioner's Response to Query No. 17

The Petitioner hereby confirms that the cost incurred on rectification/repairing works for revival of Unit-2 (from the forced outage on account of accident occurred on 16.05.2016) has not been included in the capital cost as on COD of Unit-2 as claimed in the present Petition.

Query No. 18: The petitioner is required to file a statement of contract package of all the components of capital cost at which contract were awarded vis-à-vis actual cost of each contract package. Increase in cost in contract packages be adequately explained.

Petitioner's Response to Query No. 18

*The details of various contract packages of all the components of capital cost at which contracts were awarded vis-à-vis actual cost are attached herewith and marked as **ANNEXURE-18**.*

INITIAL SPARES

Query No. 19: Details of initial spares if any, capitalized as on COD of Unit No. 2 and also as on 31.03.2017 in light of Regulation 17.1(b) of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012 be filed.

Petitioner's Response to Query No. 19

It is hereby respectfully submitted that the values of mandatory spares covered in Offshore Contract & Onshore Supply Contract are to the tune of \$10 Million & Rs. 20

Crore respectively, thereby totaling to Rs. 87 Crore (considering the exchange rate at Rs. 67/\$).

Further, Regulation 19 of MPERC Tariff Regulations 2015 prescribes the ceiling norms for capitalization of initial spares. For Coal-based thermal generating stations ceiling norms have been capped at 4% of the Plant & Machinery cost upto cut-off date. The total capital cost filed by the Petitioner for Plant & Machinery within the original scope of the Project up to the Cut-off date is Rs. 3945.30 Crore (As detailed in Format 5B- Cost of Plant & Machinery excluding Railway Siding, Barrage, Raw water Reservoir & other site enabling facilities). Thus the percentage value of initial spares to the Plant & Machinery Cost works out at 2.21%, which is well within the ceiling limits prescribed in Regulations 19 of MPERC Regulations 2015.

*The details of initial spares capitalized as on COD of Unit-2 (07.04.2016) and also as on 31.03.2017 in light of Regulation 19 of MPERC Regulations 2015 is attached herewith and marked as **ANNEXURE-19**. The total amount of Capital Spares capitalized under Unit-2 as on the date of COD of Unit 2 is Rs 53.83 Crore (Refer Note 4 of Annual Audited accounts for FY 2016-17).*

CARRYING COST

Query No. 20: The petitioner has claimed carrying cost of Rs. 14.87 Crore in respect of interest on loan of common facilities related to Unit No. 2. The petitioner is required to explain the reasons with justification of claiming carrying cost in light of the Annual Audited Accounts.

Petitioner's Response to Query No. 20

It is respectfully submitted that the issue of carrying cost has been comprehensively dealt with by the Petitioner under Para(s) 98-102 of the present Petition. In this regard, the Petitioner reiterates its submissions as under.

As per the Annual Audited Accounts of the Petitioner for FY 2015-16, the Petitioner had capitalized Rs 4,885.35 Crore as actual cash expenditure for Unit-1. However, this Hon'ble Commission while determining the tariff of Unit-1 allowed the capital cost for Unit-1 as Rs.4,235.89 Crore against the actual cash expenditure of Rs.4,885.35 Crore made by the Petitioner.

The break-up of the cash expenditure incurred for Unit-1 (i.e. capitalized in the Annual Audited Accounts of the Petitioner) vis-à-vis allowed by this Hon'ble Commission is as hereunder:

(Rs. Crore)

| Particulars | Cash Expenditure by the Petitioner | Expenditure considered by this Hon'ble Commission | Expenditure deferred by this Hon'ble Commission |
|--|---|--|--|
| Cash Expenditure as on Unit-1 COD (20.05.2015) | 4570.29 | 4047.95 | 522.34 |
| Additional Capital Expenditure during FY 2015-16 | 315.06 | 187.94 | 127.12 |
| Cash Expenditure as on 31.03.2016 | 4885.35 | 4235.89 | 649.45 |

The Petitioner further submits that the tariff on the above amount of Rs.649.45 Crore incurred by the Petitioner has been deferred by this Hon'ble Commission till Unit-2 COD. Such deferment resulted in under recovery of Annual Fixed Charges (corresponding to the contracted capacity of 30% under PPA with MPPMCL) for the period between COD of Unit-1 and COD of Unit-2.

It is submitted that it is a settled position of law that whenever a payment/ recovery against the expenditure already incurred is deferred or delayed, then carrying cost is payable along with the deferred payment. The principle of carrying cost has been well established in the various judgments of the Hon'ble Supreme Court and the Hon'ble Appellate Tribunal for Electricity ("**Hon'ble APTEL**"). The carrying cost is the compensation for time value of money or the monies denied at the appropriate time and paid after a lapse of time. In this context reliance is placed on:-

- e) *Satinder Singh v. Umrao Singh: AIR 1961 SC 908 (Paras 10, 19 to 21).*
- f) *South Eastern Coalfields Ltd. v. State of M.P.: (2003) 8 SCC 648 (Paras 21 – 24)*
- g) *North Delhi Power Limited v. Delhi Electricity Regulatory Commission: 2007 ELR (APTEL) 193. (Para 40)*
- h) *North Delhi Power Limited v. Delhi Electricity Regulatory Commission: 2010 ELR (APTEL) 891. (Para 45, 46 &58)*

It is noteworthy that the Hon'ble APTEL in its judgment passed on 27.04.2011 in Appeal No. 72 of 2010 (Maharashtra State Power Generation Co. Ltd. v. Maharashtra Electricity Regulatory Commission) has also acknowledged, endorsed and upheld the entitlement of

the generating company for carrying cost/ IDC on deferred capital cost of the common facilities till the commissioning of the subsequent unit. The relevant extracts of the said judgment is provided hereinbelow:-

*“11.2 Provision of common facilities is done mainly for optimum utilization of resources including land, benefit of which is ultimately passed on to the consumers. There could be two approaches for capitalization of cost of common facilities. In the first approach, the common facilities essential for operation of the first unit could be loaded to this unit. This will ensure timely servicing of capital cost incurred and eventually reduce the capital cost of the subsequent unit including the IDC on deferred capital cost of common facilities till the commissioning of the subsequent unit. The second approach is to apportion the total cost to each unit. **In this case the generating company will be entitled to IDC on the deferred capital cost of common facilities till the commissioning of the subsequent unit.** There is, however, no specific Regulation on apportioning of cost of common facilities. In our opinion, where the gap between two generating units is more, it would be prudent to allow cost of common facilities essential for commissioning of the first unit alongwith the capital cost of the first unit.”*

(emphasis supplied)

Further, Hon’ble APTEL in another recent judgment passed on 13.04.2018 in Appeal No. 210 of 2017 (Adani Power Ltd. v. CERC & Ors.), has allowed the carrying cost to the Appellants. The relevant extract of the said judgment is provided hereinbelow:-

“In the present case we observe that from the effective date of Change in Law the Appellant is subjected to incur additional expenses in the form of arranging for working capital to cater the requirement of impact of Change in Law event in addition to the expenses made due to Change in Law. As per the provisions of the PPA the Appellant is required to make application before the Central Commission for approval of the Change in Law and its consequences. There is always time lag between the happening of Change in Law event till its approval by the Central Commission and this time lag may be substantial. As pointed out by the Central Commission that the Appellant is only eligible for surcharge if the payment is not made in time by the Respondent Nos. 2 to 4 after raising of the supplementary bill arising out of approved Change in Law event and in PPA there is no compensation mechanism for payment of interest or carrying cost for the period from when Change in Law becomes operational till the date of its approval by the Central

Commission. We also observe that this Tribunal in SLS case after considering time value of the money has held that in case of re-determination of tariff the interest by a way of compensation is payable for the period for which tariff is re-determined till the date of such re-determination of the tariff. In the present case after perusal of the PPAs we find that the impact of Change in Law event is to be passed on to the Respondent Nos. 2 to 4 by way of tariff adjustment payment as per Article 13.4 of the PPA...

From the above it can be seen that the impact of Change in Law is to be done in the form of adjustment to the tariff. To our mind such adjustment in the tariff is nothing less then re-determination of the existing tariff.

Further, the provisions of Article 13.2 i.e. restoring the Appellant to the same economic position as if Change in Law has not occurred is in consonance with the principle of 'restitution' i.e. restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgement of the Hon'ble Supreme Court in case of Indian Council for Enviro-Legal Action vs. Union of India &Ors., we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority..."

Keeping in view, the prudent utility concept of time value of money and servicing of the actual interest on the debt corresponding to the above mentioned cash expenditure deferred by this Hon'ble Commission, an amount of Rs 14.87 Crore has been claimed by the Petitioner as a one-time recovery of carrying cost towards the portion of expenditure (i.e. Rs. 649.45 Crore) already incurred by the Petitioner on the common facilities of the Project at the time of COD of Unit-1. The tariff on this expenditure has been deferred by this Hon'ble Commission till COD of Unit-2, due to which corresponding recovery could not be made by the Petitioner for the period between COD of Unit-1 and COD of Unit-2.

The methodology adopted by the Petitioner to compute the said carrying cost of Rs 14.87 Crore is as under:

(Rs. Crore)

| Item No. | Particulars | Amount |
|-----------------|---|---------------|
| 1 | <i>Expenditure as on Unit-1 COD (i.e.20.05.2015) not considered by this Hon'ble Commission for determination of final tariff of Unit-1.</i> | 522.33 |
| 2 | <i>Debt Component of Item No.1 as per the approved Debt-Equity Ratio of 72.25%:27.75% (i.e. 72.25% x Item No.1)</i> | 377.39 |
| 3 | <i>Additional Expenditure during the period between COD of Unit-1 (20.05.2015) and Unit-2 (07.04.2016), not considered by this Hon'ble Commission for determination of final tariff of Unit-1 of the Project.</i> | 127.12 |
| 4 | <i>Debt Component of Item No.3 as per the approved Debt-Equity Ratio of 72.25%:27.75% (i.e. 72.25% x Item No.3)</i> | 91.84 |
| 5 | <i>Total Debt Component of Expenditure not considered by this Hon'ble Commission till COD of Unit-2 (07.04.2016) (i.e. Item No. 2 + Item No. 4)</i> | 469.23 |
| 6 | <i>Average Debt Component of Expenditure not considered by this Hon'ble Commission till COD of Unit-2 (07.04.2016) [i.e. (Item No. 2 + Item No. 5)/2]</i> | 423.31 |
| 7 | <i>Weighted Average rate of Interest (WAROI) on Debt for FY 2015-16.</i> | 13.27% |
| 8 | <i>Number of days between COD of Unit-1 (20.05.2015) and Unit-2 (07.04.2016)</i> | 323 |
| 9 | <i>Total Interest on Expenditure not considered by Hon'ble Commission for determination of final tariff of Unit-1. (Avg. Debt Component * WAROI * No. of Days between COD of Unit-1 & Unit-1/366). [i.e. (Item No. 5 * Item No. 7 * Item No. 8) / 366]</i> | 49.57 |
| 10 | <i>Carrying Cost in terms of Interest incurred by the Petitioner on the debt portion of the Expenditure not considered by Hon'ble Commission for final tariff of Unit-1 proportionate to the Contracted Capacity (30%) under PPA with MPPMCL. (i.e. 30% * Item No. 9)</i> | 14.87 |

FOREIGN EXCHANGE RATE VARIATION

Query No. 21: The petitioner is required to explain the detailed reasons for FERV loss and gain along with all relevant supporting documents and prevailing exchange rate variation towards its claim in light of Regulation 50 of MPERC (Terms and

Conditions for Determination of Generation Tariff) Regulations, 2015. The petitioner is also required to furnish the following.

F. Break-up of FERV:

| S.No. | Nature of Transaction | Value of Transaction in foreign Currency | Exchange Rate along with dates on the basis of which loss or gain has been computed | FERC Gain or Loss amount | Hedging amount, if any |
|-------|-----------------------|--|---|--------------------------|------------------------|
| 1 | | | | | |
| 2 | | | | | |

G. The above information is required to be furnished as on the following dates:

(iv) Schedule COD of Unit-2

(v) 07th April, 2016 and

(vi) 31st March, 2017

H. Under which head of the capital cost, the hedging amount if any, has been recorded.

I. In case the petitioner has not hedged foreign exchange exposure in respect of the Interest on foreign currency loan and repayment thereof, the reasons for not securing the foreign exchange exposure be submitted.

J. The petitioner is required to clearly indicate the amount of FERV loss or again, in the profit and loss account of FY 2016-17.

Petitioner's Response to Query No. 21

It is submitted that under the MPERC Tariff Regulations 2015, it is at the discretion of Generating Company to hedge the foreign exchange exposure in respect of the interest on foreign currency loan and repayment of foreign loan acquired for the generating station. Any extra rupee liability towards interest payment and loan repayment corresponding to the normative foreign currency loan in the relevant Year shall be permissible under these Regulations. The only test in this regard is to check that the extra rupee liability towards interest payment and loan repayment corresponding to the normative foreign currency loan in the relevant Year is not attributable to the Generating Company or its suppliers or contractors. The relevant extracts of these are reproduced hereunder:

"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.

...

50.4 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.”

The explanation given in the Para(s) below clearly establishes that the extra rupee liability towards interest payment and loan repayment cannot be attributed to either Petitioner or its suppliers or contractors.

It is submitted that the Petitioner has claimed a total Forex Loss of Rs. 158.49 Crore till 31.03.2016 as part of the capital cost of the Project in Petition No. 68 of 2016 & Petition No. 18 of 2017 and has allocated Rs. 46.69 Crore towards capital cost of Unit-1 up-to the date of COD of Unit-1 & Rs 111.80 Crore towards capital cost of Unit-2. The total aggregate Foreign Exchange Rate Variation (loss) of Rs 158.49 Crore charged to P&L on the basis of actual loss/gain incurred in relation to the short term monetary items (including Buyer’s Credit & current payables) as on the date of COD of Unit-2. The Petitioner has also submitted the reasons for Foreign Exchange Rate Variation (FERV) Losses considered as a part of capital cost in the above mentioned petitions the details of which are attached herewith and marked as **ANNEXURE-9**.

In view of the above, the specific response of the Petitioner to this Hon’ble Commission’s Queries in light of Annual Audited Accounts for FY 2016-17 are as under:

Break up of FERV losses/gain for the Project as on various specified dates is as follows:

| Nature of Transaction | Realized FERV Loss in Rs. Crore on | | |
|---|---|-------------------|-------------------|
| | 19.11.2015 | 07.04.2016 | 31.03.2017 |
| Loss on Offshore Supply Contract payments | (27.49) | (34.73) | (40.57) |
| Loss on Buyers Credit/Loss on conversion of Buyer's Credit into ECB | (92.33) | (113.31) | (113.31) |
| FERV Loss for the Project | (119.82) | (148.04) | (153.88) |
| FERV losses realized and allowed by this Hon’ble Commission for Unit-1 as on its | (46.69) | (46.69) | (46.69) |

| | | | |
|--|----------------|-----------------|-----------------|
| COD | | | |
| FERV losses realized for Unit-2 | (73.13) | (101.35) | (107.19) |

The relevant supporting document in form of spreadsheet for the calculation of FERV losses/gains is attached herewith and marked as **ANNEXURE-20**. As per the attached spreadsheet for the calculation of FERV losses/gains, the Petitioner submits that the total FERV loss amounts to Rs. 199.08 Crore as on 31.03.2017, however, till dated realized FERV losses for the Project amounts to Rs. 153.88 Crore. The balance unrealized FERV loss is on account of reinstatement of Forex liabilities against the retention payments of under the Off-shore supply contract as on 31.03.2017 and is expected to be realized within the cut off date and become the part of capital cost of the Project.

The Petitioner submits that no hedging amount/charge has been recorded in the Project cost as substantial savings in the Project cost were achieved by using unhedged Buyer's Credit. Further, it is submitted that the Petitioner was intending to refinance the Buyer's Credit with External Commercial Borrowings (ECB) which was subsequently obtained from IIFCL UK, which has now been fully hedged.

The Petitioner submits that the entire Project cost was initially funded by Rupee Term Loans (RTL) and there was no foreign currency loan/ ECB envisaged. However, the amounts to be paid against the offshore supply portion of the Project cost (included in the EPC Contract) were converted into Buyer's Credit in USD to ensure that the over-all cost related to the funding of such expenditure is minimized. By use of Buyer's Credit as compared to Rupee Term Loans as envisaged earlier, the Petitioner has been able to achieve a saving of Rs 78.85 Crore in the Project cost as per the details tabulated hereunder:

| Particulars as on 31.03.2016 | Amount in Rs. | Remarks |
|--|----------------------|--|
| Buyer's Credit availed | 8,399,648,448 | INR value of buyers credit as per transaction date rate |
| Cost incurred for Buyers Credit | | |
| Interest Cost | 175,204,040 | Actual interest paid on buyers Credit availed |
| Buyers Credit Charges | 640,141,037 | Actual cost paid to the lenders for availing of Buyer's Credit |
| FERV Losses | 1,152,692,721 | This is the amount of FERV losses charged to P&L considering Buyer's Credit as short term monetary item, till the date of hedge. |
| Total | 1,968,037,798 | |
| Equivalent RTL | 8,399,648,448 | |

| | | |
|----------------------|--------------------|---|
| Interest Cost | 2,756,496,592 | <i>Interest on equivalent RTL calculated on the basis of weighted average of interest @13.27%</i> |
| Net Savings | 788,458,794 | |

In order to protect the Foreign Exchange Rate Variation against the offshore supplies and to reduce the overall cost of borrowing by reducing the exposure of Rupee Term Loans facility, the Petitioner has also got sanction of US \$150 Million of foreign loan/External Commercial Borrowings (ECB) from India Infrastructure Finance Company (UK) Limited (IIFCL) for the Project on 28.03.2014. Till date, the Petitioner has drawn the ECB facility of US \$127.68 Million which is fully hedged (currency as well as interest) for the period of 10 years through State Bank of India and has utilized the same to repay the Buyer's Credit facility.

The amount of FERV gain or loss in the Profit and Loss account of FY 2016-17 is unrealized gain of Rs 4.73 Crore.

ADDITIONAL CAPITALIZATION DURING FY 2016-17

Query No. 22: The petitioner has claimed Additional Capitalization of Rs. 44.28 Crore in Unit No. 2 during FY 2016-17. As the Annual Audited Accounts fled by the petitioner is common for Unit No. 1 and 2, the petitioner is required to reconcile the figures claimed in petition for Unit No. 2 in light of the Note 4 and 6 of the Annual Audited Accounts. The petitioner is also required to explain the reasons for difference in figure if any, recorded in Annual Audited Accounts and those filed in the petition.

Petitioner's Response to Query No. 22

As submitted in the Para 61 of the present Petition, it is submitted that the Petitioner has claimed the capital cost of Unit-2 on accrual basis, as on its COD date (07.04.2016) as Rs 3212.90 Crore including provision of 163.97 Crore against Customs & Excise duty, FERV losses pertain to Unit-2 & unamortized cost of borrowings allocated to Unit-2 with the following break up:

| S. No | Particulars | Amount in Rs Crore | Remarks |
|--------------|---|---------------------------|---|
| 1 | Gross Fixed Assets as capitalized on 31.03.2017 | 7927.05 | As per Annual Audited Accounts for FY 2016-17 on IGAAP reconciled with IND AS Accounts for FY 2016-17 |

| S. No | Particulars | Amount in Rs Crore | Remarks |
|--------------|--|---------------------------|--|
| 2 | Gross Fixed Assets as capitalized on the date of COD of Unit-1 pertaining to Unit-1 | 5063.36 | As per FAR submitted for FY 2015-16 (Annexure 9 of the Petitioner's Reply dated 15.06.2017 in Petition No. 68 of 2016) |
| 3 | Short term FERV Losses allocated to Unit-1 as on the date of COD of Unit-1 (charged to P&L) | 46.69 | |
| 4 | Unamortized Finance Cost allocated to Unit-1 as on the date of COD of Unit-1 | 27.52 | |
| 5 | Total Capital Cost of Unit-1 on accrual basis including item No. 3 & 4 (2+3+4) | 5137.58 | |
| 6 | Gross Fixed Assets as capitalized in the books of accounts for FY 2016-17 pertaining to Unit-2 (1 – 2) | 2863.68 | |
| 7 | Short term FERV Losses allocated to Unit-2 as on 31.03.2016 (charged to P&L) | 111.80 | |
| 8 | Unamortized Finance Cost allocated to Unit-1 as on 31.03.2016 | 7.41 | |
| 9 | Capital Work in Progress as on 31.03.2017 | 21.21 | Note No. 5 of Annual Audited Accounts for FY 2016-17 |
| 10. | Total Cash Expenditure during FY 2016-17 | 133.52 | Cash Expenditure dated 06.02.2018 |
| 11 | Cash Expenditure on account of discharging of liabilities pertaining to Unit-1 during the FY 2016-17 | 67.51 | |
| 12 | Cash expenditure related to assets not capitalized for Unit-2 | 21.74 | |
| 13 | Net Cash Expenditure for Unit-2 as claimed in the present Petition | 44.28 | |

Query No. 23: With regard to additional capitalization. the petitioner is required to file a comprehensive reply to the following issues with all relevant supporting documents:

- vi. Whether the addition of assets is on account of the reasons (i) to (v) in Regulation 20.1 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.

- vii. Whether the assets capitalized during the year are under original scope of work. Supporting documents need to be filed by the petitioner in this regard.
- viii. The assets addition of Rs. 44.28 Crore claimed in the petition need to be reconciled with the figures recorded in the Assets cum Depreciation Register.
- ix. The petitioner is required to reconcile the figure of total additional capitalization (project- towards Units No.1&2) as indicated in the Annual Audited Accounts with the figures shown in CA certificate enclosed with the Petition.
- x. If there is any delay in completion of works from contractor side, the details of penalty if any, imposed on the contractor be informed. The petitioner is required to file the status of Liquidated Damages if any, recovered/to be recovered from the different vendors as on 31st March' 20 17.

Petitioner's Response to Query No. 23

In regard to Query No. 23(i), it is submitted that the additional capitalization with respect to Unit-2 is in accordance with the following Regulations of the MPERC Tariff Regulations, 2015:

- c. *Regulation 20.1(i)(a) - Undischarged liabilities.*
- d. *Regulation 20.1(i)(b) - Works deferred for execution.*

In regard to Query No. 23(ii), it is submitted that the additional capitalization with respect to Unit-2 is within the original scope of works.

In regard to Query No. 23(iii), it is submitted that the Asset cum Depreciation Register is prepared based on accrual system of accounting and as such, the values depicted in this register includes liabilities also. In light of this, the additional capital expenditure (“ACE”) amounting to Rs. 44.28 Crore (on Cash basis) for Unit-2 during FY 2016-17 has been claimed against the liabilities/Provision of Rs. 396.67 Crore as on 07.04.2016 as per submitted capital cost stated in Para 59 of the present Petition. The break-up of ACE claimed for FY 2016-17 pertaining to Unit-2 is as follows:

- c. *Discharges of outstanding liabilities corresponding to allowed assets/works as on 07.04.2016 under original scope of work: Rs 36.46 Crore.*
- d. *Physical addition of following assets under Unit-2 during the FY 2016-17 under original scope of works: Rs 7.81 Crore, with the further break-up as under:*

| S. No. | Works/Assets | Amount in Rs Crore |
|---------------|---------------------|---------------------------|
| 1 | Plant and Machinery | 5.77 |

| S. No. | Works/Assets | Amount in Rs Crore |
|---------------|---|---------------------------|
| 2 | <i>Others (including Furniture and fixtures, Vehicles, Office Equipments, EDP/Computer Software</i> | 2.04 |
| 3 | <i>Total Assets capitalized during FY 2016-17 (on Cash basis)</i> | 7.81 |

*In regard to Query No. 23(iv), the reconciliation of total additional capitalization (Project-towards Unit-1 & Unit-2) is attached herewith and marked as **ANNEXURE-11**.*

In regard to Query No. 23(v), the Petitioner reiterates the submissions in response to Query Nos.2(iii) & 2(iv) above which have not been repeated for the sake of brevity.

DEBT AND EQUITY

Query No. 24: In Annexure 18 of the petition, the petitioner has enclosed a CA certificate for capital expenditure of Rs. 7701.59 crore incurred upto 07th April, 2016. In view of the above, the petitioner is required to furnish the funding agency wise actual debt and equity utilized for the aforesaid capital expenditure upto 07th April, 2016.

Petitioner's Response to Query No. 24

*In this regard, the Petitioner submits that the agency wise funding of actual debt and equity utilized for the capital expenditure of Rs. 7701.59 Crore as on 07.04.2016 is attached herewith and marked as **ANNEXURE-21**.*

Query No. 25: It is observed that the equity amount submitted under Format 6 of the petition is less than the 30% of the project cost. In view of the aforesaid equity claimed, the petitioner is required to explain the reasons for claiming normative debt of Rs 134.90 crore. Further, the petitioner is also required to clarify the basis for considering figure of normative equity of Rs 57.82 crore and Working Capital Margin.

Petitioner's Response to Query No. 25

The Petitioner hereby refer to its submission in Para(s) 53-56 of the present Petition and submits that an amount of Rs. 576.03 Crore towards Customs Duty & Excise Duty has been included as a part of the Project capital cost of Rs 8702.23 Crore (pending the grant of Mega Status to the Project) which is now reduced to Rs 8350.47 Crore. The item wise detail of the revised estimated capital cost of the project has been submitted in Para 54 of the present Petition.

The major factor for reduction of capital cost of the Project is reduction in provision for Customs duty/Excise duty (decrease of Rs 383.31 Crore). This is on account of Ministry of Power (“**MoP**”), Government of India letter dated 29.12.2017 regarding proportionate release (67.175%) of the total Bank Guarantees/FDRs in terms of the Guidelines/mechanism for provisional mega power project issued vide MoP Letter No.A-3/2015-IPC dated 21.09.2017.

In terms of the above referred MoP letter, the Petitioner further submits that the Bank Guarantees (“**BGs**”) amounting to Rs 335.56 Crore (67.175% of the total BGs against Customs and Excise Duty) is due for release and the balance BG amount of Rs 163.97 Crore is kept as provision in capital cost.

Apart from the payment of Customs duty/Excise duty in the form of BG/FDR, the Petitioner reiterates that an amount of Rs 28.75 Crore has been paid by the Petitioner in cash towards Customs and Excise duty for equipment procured for the Project in the initial period i.e. from 06.06.2011 to 08.02.2012.

Out of this amount of Rs.28.75 Crore, an amount of Rs. 14.79 Crore was paid in cash by the Petitioner towards Custom Duty prior to the issuance of the provisional Mega Power Certificate dated 18.01.2012 by the Ministry of Power. This amount was paid for import of foundation bolts on merit rate to enable start of construction as per the schedule. The balance amount of Rs.13.96 Crore comprises of two components i.e. Rs.9.48 Crore towards Custom Duty and Rs.4.48 Crore towards Excise Duty, which was paid post issuance of provisional Mega Power Certificate pending registration of the Project with the appropriate authorities.

The Petitioner further submits that there is no process/ provision for refund of this amount of Rs.28.75 Crore paid in cash by the Petitioner towards Custom and Excise Duty as the material has already been assessed on merit rate. As such the Petitioner humbly requests this Hon’ble Commission to kindly consider Rs.28.75 Crore as a part of the Project capital cost. Nonetheless, in the event of receiving any refund against this amount, the Petitioner would duly approach this Hon’ble Commission for suitable adjustment in the Project capital cost.

Henceforth, the total against this head of Rs.192.72 Crore (Rs 163.97 Crore, being provision + Rs.28.75 Crore, being already paid in cash) has been kept in the revised capital cost of the Project.

The supporting documents in terms of the copy of the Provisional Mega Power Status Certificate dated 18.01.2012 issued by the MoP to the Petitioner & MoP letter dated 29.12.2017 are attached herewith and marked as **ANNEXURE-22(Colly)**.

Accordingly to consider the funding of Rs. 192.72 Crore, the Petitioner, in this present Petition, has bifurcated in the same in normative Debt: Equity ratio of 70:30 and therefore has considered Rs. 134.90 Crore towards normative debt and Rs. 57.82 Crore as normative equity.

In respect of Working Capital Margin (“WCM”), the Petitioner submits that the provision of Rs 270 Crore towards WCM has been deducted from the total Project cost and the Petitioner has claimed no tariff on the same.

Query No. 26: In the balance sheet, the share capital and reserve & surplus of company is Rs 1532.72 crore as on 31st March, 2017 whereas, the equity of Rs 2098.75 crore is shown in Format 6. Therefore, the aforementioned discrepancy be clarified by the petitioner.

Petitioner’s Response to Query No. 26

It is submitted that Rs. 1532.72 Crore shown as shareholder’s fund in the Annual Audited Accounts for FY 2016-17 is after considering the brought forward and current year losses, hedging reserve account and foreign Currency reserve account, which ought to be excluded for the purpose of working out the actual equity investment. Accordingly the actual equity contribution by the shareholders as per the audited accounts of FY 2016-17 is as under:

| Particulars | Amount in Rs. Crore |
|--|----------------------------|
| <i>Equities (including Reserves and Surplus) as per Annual Audited Accounts for FY 2016-17</i> | 1532.72 |
| <i>Add: Share Issue expenses</i> | 10.19 |
| <i>Add: Accumulated Losses up to 31.03.2017 (including Forex losses charged to P&L in earlier years) – refer Note No. 19 of Annual Audited Accounts for FY 2016-17</i> | 524.54 |
| <i>Add: Hedging Reserve (related to hedging of foreign currency loan) (As per Note 19 of the Annual Audited Accounts for FY 2016-17)</i> | 28.29 |
| <i>Add: Unsecured loan from holding company</i> | 3.00 |
| TOTAL EQUITY CONTRIBUTION | 2098.75 |

Query No. 27: The figures indicated in Form 14 and Form 14A are only upto FY 2015-16, therefore the petitioner is required to furnish the debt and equity information upto 07.04.2016 and 31.03.2017 also.

Petitioner’s Response to Query No. 27

*The Petitioner submits that the Unit-2 was declared under commercial operation on 07.04.2016 and the cash expenditure of only Rs 0.13 Crore incurred during the period from 01.04.2016 till COD of Unit-2 (07.04.2016). Form 14 as on COD of Unit-2 shall remain the same. Further, the revised TPS Form 14 A upto 07.04.2016 and upto 31.03.2017 are attached herewith as marked as **ANNEXURE-23**.*

Query No. 28: The petitioner is required to submit complete details regarding sources of equity of Rs. 2496.47 crore duly supported with the documents in this regard.

Petitioner’s Response to Query No. 28

The Petitioner submits in line with Para 52-54 of the present Petition and Annual Audited Accounts for FY 2016-17 that the capital cost of the Project (excluding Working Capital Margin) has been re-estimated and reconciled as Rs 8350.47 Crore vis-à-vis the earlier submitted capital cost of Rs 8702.23 Crore in Petition No. 18 of 2017. This Project capital cost of Rs 8350.47 Crore has been estimated on the basis of capitalized assets/expenditure as on COD of Unit-2 (07.04.2016), Capital work in progress and balance commitments/provision of expenditures as reflected in the Annual Audited Accounts of FY 2016-17.

Accordingly, the break-up of the proposed equity infusion as per the revised capital cost including working capital margin is as hereunder:

| S. No | Particulars | Amount in Rs. |
|--------------|--|----------------------|
| 1 | <i>Capital Cost Claimed as on COD of Unit-2 (to be expensed within cut off date)</i> | 8350.47 |
| 2 | <i>Add: Working Capital Margin (“WCM”)</i> | 270.00 |
| 3 | <i>Project Cost (including WCM) – (3 = 1 + 2)</i> | 8620.47 |
| 4 | <i>Debt Exposure as on COD of Unit-2</i> | 5989.10 |
| 5 | <i>Normative Debt @70% of amount towards Customs & Excise Duty</i> | 134.90 |
| 6 | <i>Total Debt to be deployed (including Normative debt) – (6 = 4 + 5)</i> | 6124.00 |
| 7 | <i>Total Equity to be infused (including Normative Equity) – (7 = 8 +9 +10)</i> | 2496.47 |

| S. No | Particulars | Amount in Rs. |
|--------------|---|----------------------|
| 8 | <i>Equity infused as on COD of Unit-2</i> | <i>2098.75</i> |
| 9 | <i>Add: Normative Equity@30% of amount towards Customs & Excise Duty</i> | <i>57.82</i> |
| 10 | <i>Add: Additional equity for capital cost on account of FERV Losses through reserves & contribution towards Working Capital Margin</i> | <i>339.90</i> |

As may be seen from the above table, the Project Equity [i.e Item 8 of the table above] infused till COD of Unit-2 is Rs. 2098.75 Crore, the sources of which are as hereunder:

| Source of Equity Funding | Amount (Rs. Crore) |
|---|---------------------------|
| <i>Macquarie SBI Infrastructure Investments PTE Limited infused directly to the Project SPV i.e. MB Power (Madhya Pradesh) Limited</i> | <i>880.00</i> |
| <i>Blackstone GPV Capital Partners (Mauritius) V-C Limited infused through the Holding Company i.e. Hindustan Thermalprojects Limited (previously known as Moser Baer Projects Private Limited)</i> | <i>725.00</i> |
| <i>Promoters Contribution infused through the Holding Company i.e. Hindustan Thermalprojects Limited (previously known as Moser Baer Projects Private Limited)</i> | <i>490.75</i> |
| <i>Unsecured Loan from the Holding Company i.e. Hindustan Thermalprojects Limited (previously known as Moser Baer Projects Private Limited), treated as Equity</i> | <i>3.00</i> |
| Total | 2098.75 |

In support of the above, following documents are attached herewith and marked as **ANNEXURE-24(Colly)**:

- a. *Relevant extracts of the Share Subscription and Shareholders Agreement with Macquarie SBI Infrastructure Investments PTE Limited (Clause # 2.1 may be referred)*
- b. *Relevant extracts of the amendment to the Share Subscription and Shareholders Agreement with Macquarie SBI Infrastructure Investments PTE Limited (Clause # 3.1.34 may be referred)*
- c. *Relevant extracts of the Share Subscription and Shareholders Agreement with Blackstone GPV Capital Partners (Mauritius) V-C Limited (Clause # 2.5(b) & Schedule S may be referred)*

- d. *Summary of year-wise equity infusion from the period from FY 2008-09 to FY 2015-16 (i.e. till 31.03.2016) aggregating to Rs 2098.75 Crore (including unsecured loan of Rs. 3 Crore treated as Equity)*
- e. *Summary of return of allotment filed by the Petitioner till 31.03.2016 with Registrar of Companies, Ministry of Corporate Affairs along with the supporting documents*
- f. *Copy of the Statutory Certificate dated 23.09.2016 issued to REC Limited certifying that equity infused in the Petitioner's Project has not been raised in form of any debt*

RETURN ON EQUITY

Query No. 29: Regulation 30 (2) (c) of MPFRC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 stated as follows:

d "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 and of the Restricted Governor Mode Operation (RGMO)/Free Governor Mode Operation (FGMO)

e. as and when any of the above requirements are found lacking in a generating 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".

In light of the aforesaid provision under Regulations, the petitioner is required to inform about the compliance of the above Regulation. The petitioner is also required to file a copy of the report of the concerned Load Dispatch Centre in this regard.

Petitioner's Response to Query No. 29

*It is submitted that that the Regulation 30 of the MPERC Tariff Regulations, 2015 provided for return on equity, inter alia, for thermal generating stations. However, the provisos 30(2)(c) and 30(2)(d) of the aforesaid Regulation 30 are not applicable to the Petitioner's Project since Restricted Governor Mode Operation ("RGMO")/ Free Governor Mode Operation ("FGMO") was duly installed at the time of COD of the Petitioner's Project and the Petitioner's Project has been duly operating under RGMO/ FGMO. This has been duly recorded by Western Region Power Committee ("WRPC"), Central Electricity Authority ("CEA") in the Minutes of Meeting ("MoM") for the 485th Meeting of the Operation & Coordination Committee of WRPC held on 15.07.2016. The relevant extracts of the referred MoM are attached herewith and marked as **ANNEXURE-25**.*

INTEREST AND FINANCE CHARGES

Query No. 30: The Petitioner is required to file supporting documents in respect of actual weighted average rate of interest for FY 2016-17 claimed in the petition.

Petitioner's Response to Query No. 30

The Petitioner reiterates that it has already submitted the supporting documents in respect of actual weighted average rate of interest for FY 2016-17 in the form of Original Bankers Certificates for year-wise outstanding loan and actual interest paid updated till 31.03.2017 as Annexure 19 of the present Petition. The same certificates are attached herewith and marked as ANNEXURE-26.

INTEREST ON WORKING CAPITAL

Query No. 31: While Computing the Working Capital, the petitioner has claimed the cost of secondary fuel oil for two months, as per Regulation 34.1 of MPERC Tariff Regulations 2015. whereas, the aforesaid Regulations further provide as under:

"Provided that in case of use of more than one secondary fuel oil, cost of fuel oil stock shall be provided for the main secondary fuel oil."

In light of the above provision under MPERC Tariff Regulations, the petitioner is required to confirm that the cost of only main fuel is considered while determining the working capital for FY 2016-17.

Petitioner's Response to Query No. 31

*It is submitted that while estimating the per unit energy charges for Unit-2, the Petitioner has considered the normative specific fuel oil consumption of 0.5 ml/kwh corresponding to the normative plant availability factor in line with Regulation 39.3(D) of MPERC Tariff Regulations 2015. Further, it is clarified that while calculating the cost of two months of oil stock for working capital purpose, it has considered the weighted average rate of Heavy Furnace Oil ("**HFO**") and Light Diesel Oil ("**LDO**"), both being used in the operation of plant; HFO for flame stabilization and LDO as start-up fuel (but capped the total consumption less than or equal to normative consumption).*

The Petitioner further submits that detailed calculation for the landed cost of HFO and LDO along with necessary supporting documents and weighted average landed cost of secondary fuel has been duly mentioned at Para(s) 92-93 of the present Petition.

Query No. 32: The petitioner is required to explain the basis with supporting document for computing the rate of interest on working capital.

Petitioner’s Response to Query No. 32

*It is submitted that in line with Para 84 of the present Petition & Regulation 34 of the MPERC Tariff Regulations 2015, the rate of interest on working capital has been taken on normative basis and considered as the bank rate as on 01.04.2016 (SBI base rate:9.30% +350 bps) for the tariff period 2016-19. The supporting document for the SBI base rate as on 01.04.2016 is attached herewith and marked as **ANNEXURE-27**.*

NON-TARIFF INCOME

Query No. 33: The petitioner has not filed projected non-tariff income during FY 2016-17, the petitioner is required to furnish the information/break-up of non-tariff income as per Annual Audited Accounts for FY 2016-17.

Petitioner’s Response to Query No. 33

It is submitted that under Note 25 and 26 of the Annual Audited Accounts for 2016-17, the total other income for the Project was Rs 122.15 Crores as per the following break-up:

| S. No. | Head of Other Income | Amount on accrual basis (Rs Crore) | Description |
|---------------------------------|---|---|---|
| 1 | Insurance compensation against machinery loss | 86.97 | Accrued receivables towards material damage on account of accident occurred in the boiler of Unit-2 of the Project on 16.05.2016; the corresponding expenses are recorded under repair and maintenance of Unit-2 as per Note No. 31 of Annual Audited Accounts for FY 2016-17; hence impact on P&L for FY 2016-17 is nil. |
| 2 | Liabilities written back | 19.40 | Provisions made in earlier years towards possible liabilities for entry tax for the Project are now reversed in books of accounts for FY 2016-17. |
| 3 | Foreign exchange fluctuation (net) | 4.73 | Accounting adjustment for unrealized gain on Foreign Exchange (Forex) post COD of Unit-2 (07.04.2016) |
| 4 | Gain on sale of investment | 0.93 | Gain on sale of Investment realized from short term surplus funds in operation |
| 5 | Interest on Bank Deposit | 8.55 | Interest Income realized on the margin money kept in term deposits with banks for issue of Bank Guarantees for Custom/Excise duty, PPA etc. |
| 6 | Scrap Sales | 0.29 | Income from sale of scrap (Realized) |
| 7 | Others | 0.04 | Other Incomes (Realized) |
| Sub Total - Other Income | | 120.95 | As per Note No. 26 of Books of Accounts as on 31 st March 2017 |
| 8 | Sale of Fly Ash | 1.20 | Income from sale of Fly Ash (realized) as per Note No. 25 of Books of Accounts as on 31 st March 2017 |
| Total – Other Income | | 122.15 | |

With respect to above, a copy of the auditor certificate for total other income for the Project during for FY 2016-17 is attached herewith and marked as **ANNEXURE-28**.

The Petitioner further submits that in line with above table, the other income based on actual cash realization under the Project for FY 2016-17 is as follows:

| S No | Head of Other Income | Amount on accrual basis (Rs Crore) | Description |
|---------------------------------|-----------------------------|---|--|
| 1 | Gain on sale of investment | 0.93 | Gain on sale of Investment realized from short term surplus funds in operation |
| 2 | Interest on Bank Deposit | 8.55 | Interest Income realized on the margin money kept in term deposits with banks for issue of Bank Guarantees for Custom/Excise duty, PPA etc. |
| 3 | Scrap Sales | 0.29 | Income from sale of scrap (Realized) |
| 4 | Others | 0.04 | Other Incomes (Realized) |
| Sub Total - Other Income | | 9.82 | As per Note. 26 of Annual Audited Accounts for FY 2016-17 |
| 5 | Sale of Fly Ash | 1.20 | Income from sale of Fly Ash (realized) as per Note. 25 of Annual Audited Accounts for FY 2016-17 |
| Total – Other Income | | 11.02 | |

Accordingly, the Petitioner submits that the “non-tariff income” for FY 2016-17 to be considered for the purpose of tariff determination is Rs 11.02 Crore. Further, this “non-tariff income” of Rs 11.02 Crore is with respect to the entire Project capacity of 1200 MW.

In light of the above, it is submitted that above “non-tariff income” of Rs 11.02 Crore during FY 2016-17 may be accordingly be apportioned between Unit-1 and Unit-2 on 50:50 basis by this Hon’ble Commission for determination of final tariff of Unit-2 and true-up of tariff of Unit-1 for FY 2016-17.

ENERGY CHARGES

Query No. 34: While computing the weighted average rate of Secondary fuel oil, the petitioner has claimed the weighted average price of LDO/HFO. It is required to be clarified whether the weighted average price claimed pertains to oil consumed or purchased during three preceding months. As per Regulation 36.6(a) of the MPERC Tariff Regulations, 2015, the wt. average landed price of secondary fuel oil is required. Supporting documents (Bills/invoices) in respect of price of oil purchased be filed by the petitioner in this regard.

Petitioner's Response to Query No. 34

In accordance with Regulation 36.6(a) of MPERC Tariff Regulations 2015, the Petitioner in Para 93 of the present Petition, has estimated the weighted average landed cost of Secondary Fuel Oil(s) for FY 2015-16 based on sample bills for purchase, during three preceding months as follows:

HFO: Rs 23,681/KL

LDO: Rs. 33,620/KL

Further, to work out the weighted average price of both the fuels, the actual consumption ratio of 70:30 has been considered on the basis of actual consumption of HFO & LDO for the three months – Jan' 2016, Feb' 2016 & Mar' 2016 preceding the COD of Unit-2 (07.04.2016), which comes out to be Rs. 26,663/KL as under:

$$\text{WALC of Secondary Fuel} = 0.70 \times 23,681 + 0.30 \times 33,620 = \text{Rs. } 26,663/\text{KL}$$

*The Petitioner has already submitted the sample invoices for procurement of HFO and LDO during the month of Jan 2016, Feb 2016 & March 2016 as Annexure(s) 23 & 24 of the present Petition, however for the sake of clarity, the same are attached herewith and marked as **ANNEXURE-29**.*

Query No. 35: Detailed calculation sheet for arriving at the weighted average landed cost of coal claimed while determining the energy charges in the petition along with supporting documents like copy of the bills/invoices be filed. The petitioner is required to submit the Month-wise details of quantity and landed cost of coal purchased from all sources.

Query No. 36: Detail calculation sheet for arriving at the weighted average GCV of coal claimed in the petition along with supporting documents be filed. The petitioner is also required to submit the laboratory report in support of GCV of coal.

Petitioner's Response to Query Nos. 35 & 36:

The detailed calculations for arriving at the weighted average landed cost and GCV of coal has been submitted by the Petitioner in Para 92 of the present Petition. Further, the supporting documents towards the same i.e. invoices raised on the Respondent (MPPMCL) and Certified Lab reports of Proximity Analysis of coal on "as fired basis" & "as received basis" for the three months - Jan' 2016, Feb' 2016 & Mar' 2016 preceding the

COD of Unit-2 (07.04.2016) has also been submitted as Annexure 22 of the present Petition.

However, for the sake of reference, the invoices raised to the Respondents as well as the Certified Lab Reports for the said three months (Jan' 2016, Feb' 2016 & Mar' 2016) and related TPS Form 15 (Detailed information to be submitted in respect of "Coal" for computation of Energy Charges) are attached herewith and marked as **ANNEXURE-30**.

Query No. 37: Regulation 8.7 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 provides that the generating company shall carry out the truing up of tariff of generating station based on the performance of following controllable parameters:

- Station Heat Rate;
- Secondary fuel oil consumption;
- Auxiliary Energy consumption

In view of the above, the petitioner is required to file the monthly details of aforesaid performance parameters actually achieved vis-à-vis normative parameters under MPERC Tariff Regulations, 2015. The petitioner is also required to file the details of financial gain if any, during FY 2016-17 on account of controllable parameters and shared with the beneficiaries in light of the Regulation 8.9 of Regulations, 2015.

Petitioner's Response to Query No. 37:

*It is submitted that the month wise details of Secondary Heat Rate, Auxiliary Energy Consumption and Secondary fuel oil consumption actually achieved by Unit-2 of the Petitioner's Project during FY 2016-17 vis-à-vis their respective normative values under the MPERC Tariff Regulations 2015 is attached herewith and marked as **ANNEXURE-31**.*

Query No. 38: The petitioner is required to file the certificate/statement of concerned Load Dispatch Centre certifying the Actual Plant Availability Factor achieved during FY 2016-17.

Petitioner's Response to Query No. 38:

*The month-wise and annual Plant Availability Factor achieved by the Unit-2 of the Petitioner's Project during FY 2016-17 is attached herewith and marked as **ANNEXURE-32**. With respect to certification of the above Plant Availability Factor, it is humbly submitted that since the Petitioner's Project is directly connected to the Inter State Transmission System ("**ISTS**") of Central Transmission Utility ("**CTU**"), it falls under the*

control area of Western Regional Load Despatch Centre (“**WRLDC**”) for the purpose of scheduling etc.

*It is submitted that till May 2017, there was no provision/direction on WRLDC to certify the monthly/annual Plant Availability Factor for power generation project of IPPs. However, the Hon’ble Central Commission vide its Record of Proceedings (“**ROP**”) for the hearing dated 18.05.2017 in Petition No. 192/MP/2016 directed WRLDC to certify the DC for computation of Plant Availability Factor with effect from 01.06.2017. A copy of the said ROP passed by the Hon’ble Central Commission is attached herewith and marked as **ANNEXURE-33** and the Paragraph-4 of the same may be specifically referred to.*

*Accordingly, the Petitioner humbly submits that in absence of any approved direction/provisions regarding certification Plant Availability Factor by WRLDC till May 2017, no such certification of Plant Availability Factor of the Petitioner’s Project by WRLDC for FY 2016-17 is available with the Petitioner. However, WRLDC started publishing the monthly unit-wise DC of the Petitioner’s Project as a part of Regional Energy Accounts (“**REA**”) from June 2017 onwards and the relevant extracts of the same for the month of June 2017 is attached herewith and marked as **ANNEXURE-34** for the kind reference of this Hon’ble Commission.*

Reply on direction to submit Draft Public Notice inviting comments / suggestions from stakeholders

This Hon’ble Commission had directed that the draft public notice on gist of the Petition in Hindi and English version inviting comments/suggestions from stakeholders be submitted by 20.06.2018 for approval of this Hon’ble Commission. In compliance with the aforesaid directions, the Petitioner has submitted the copy of the Draft Public Notice to this Hon’ble Commission vide Letter No. MBPMPL/ANP-I/MPERC/18-19/333 dated 11.06.2018. Copy of the same is attached herewith and marked as **ANNEXURE-35**.

Annexure II:

Responses of the comments offered by the Respondent No .1 (MPPMCL)

Comment:

1. That, the Petitioner has filed the present Petition for determination of Final Tariff for Unit-2 (600 MW) of 2x600 MW Coal based Anuppur Thermal Power Project (Phase-I) comprising of Unit-1 and Unit-2 (of 600 MW each) at District Anuppur, Madhya Pradesh for the period from the COD of Unit 2, i.e., 07th April 2016 to 31st March 2019 (Multi Year Tariff for the control period FY 2016-17 to 2018-19) under Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) Regulation, 2015 (*Tariff Regulation, 2015 for short*).
2. In Para 1 to 4 of the Petition the Petitioner has made general averments relating to background of the Project, Power purchase Agreements, their approval by the Hon'ble Commission and the Commercial Operation Dates of Unit-1 (20.05.2015) and Unit-2 (07.04.2016), hence require no comments.
3. In Para 5, the Petitioner has referred to Regulation 8.2 of Tariff Regulation, 2015 as basis for filing separate tariffs for Unit-1 and Unit-2 of the Project, therefore require no comments.
4. In Para 6 of the Petition, the Petitioner has given summary of various Petitions filed and Orders passed in respect of the Project, hence require no comments.
5. Para 7 being averment of general nature does not require comments.

Petitioner's Response:

The contents of Para Nos. 1 to 5 are a matter of record and merit no response.

Comment:

6. In Para 8 to 12 of the Petition, being averment of facts do not require comments. However, it is most humbly submitted that after thorough analysis, an amount of Rs. 649.45 Crore was disallowed by the Hon'ble Commission out of Capital Cost claimed by the Petitioner in the Petition No. 68 of 2016, as the same could not be justified by the Petitioner.

Petitioner's Response:

The contents of Para No. 6 except those which are a matter of record are wrong and denied. During determination of Final Tariff of Unit-1 of the Project for the FY 2015-16 under Petition No. 68 of 2016, as per Annual Audited Accounts of the Petitioner for FY 2015-16, the Petitioner had incurred a cash expenditure of Rs 4,885.35 Crore for Unit-1. However, this Hon'ble Commission while determining the tariff of Unit-1 allowed the capital cost for Unit-1 as Rs. 4,235.89 Crore against this actual cash expenditure of Rs. 4,885.35 Crore made by the Petitioner, there by deferring the tariff on the balance incurred cash amount of Rs.649.45 Crore(i.e. Rs. 4,885.35 Crore -Rs. 4,235.89 Crore) till Unit-2 COD. It is noteworthy that, despite this balance amount of Rs 649.45 Crore been already incurred in cash on the Project and capitalized in the Annual Audited Accounts of the Petitioner for FY 2015-16, the same was deferred for consideration as a part of Project cost/ actual expenditure pertaining to common assets/facilities associated with Unit-2 thereby deferring the tariff on this expenditure till COD of Unit-2. Accordingly, this balance amount of Rs 649.45 Crore has now been claimed as part of capital cost of Unit-2.

As clearly evident from above, the cash expenditure of Rs 649.45 Crore has not been disallowed by this Hon'ble Commission but was only deferred for consideration as a part of the capital cost till COD of Unit-2. As such, the allegations made by the Respondent No. 1 are completely baseless, misleading and devoid of any merits and ought not to be considered by this Hon'ble Commission.

Comment:

- 7. In Para 13 to 15 the Petitioner has given the background of change of Scheduled Commercial Operating Date (SCOD) and the Revised SCOD of Unit 1. In Para 16 of the Petition, the Petitioner has quoted the provision of PPA with respect to Scheduled Commercial Operating Date (SCOD) of Unit 2 being six months after COD of Unit-1.**
- 8. It is humbly submitted that the Respondent had given reasons for not accepting above contention made by the Petitioner in Petition No. 18 of 2017 also. It is most humbly prayed to refer the same (not being reproduced here for the sake of brevity).**

Petitioner's Response:

The contents of Para Nos. 7 to 8, except those which are matter of record are wrong and denied. It is submitted that Article 4.1.5 and Article 4.1.6 of the Power Purchase Agreement ("PPA") dated 05.01.2011 executed between the Petitioner and the Respondent No. 1 provides as under:-

“4.1.5 Scheduled Commercial Operation Date

*The Company shall achieve Commercial Operation Date for the first Unit within Sixty (60) Months from the date of signing of Implementation Agreement (i.e. 01st December 2009) and **second Unit of the Power Station within six (6) Months thereafter.***

4.1.6 Revised Scheduled Commercial Operation Date

*The Parties may mutually agree to revise the Scheduled CoD for Commissioning of any Unit or the Power Station (hereinafter referred to as Revised Scheduled Commercial Operation Date or Revised Scheduled COD) **and such Revised Scheduled COD shall thereafter be the Scheduled COD.***

(Emphasis Supplied)

It is submitted that on a conjoint reading of Article 4.1.5 with Article 4.1.6, it is evident that Unit-2 of the Project was to be commissioned after 6 months of the Commercial Operation Date (“COD”) of Unit-1. Further, once the parties have mutually agreed to revise the Scheduled Commercial Operation Date (“SCOD”) of a Unit, the Revised SCOD would be considered the SCOD of that Unit. Further, this Hon’ble Commission, at para 67(e) of the Order dated 01.12.2017 passed in Petition No. 68 of 2016 (for determination of final tariff of Unit-1 of the Project) has noted that the parties have concurrently revised the SCOD in terms of the provisions of the PPA.

It is submitted that when the SCOD of Unit-1 was revised to 20.05.2015, the SCOD of Unit-2 stood revised to 19.11.2015 i.e. 6 months after COD of Unit-1 of 20.05.2015, as per the provisions of the PPA dated 05.01.2011. Respondent No.1 by its letter dated 22.04.2016 has itself acknowledged that the original SCOD of Unit-2 was November 2015 and further agreed to revise the SCOD of Unit-2 from November 2015 to April 2016. Further, this Hon’ble Commission has also duly approved SCOD of Unit-2 as Nov’ 2015 in its Order dated 28.10.2017 in the Petition 18 of 2017. (i.e. determination of provisional tariff for Unit-2 of the Project). On the Page No. 65 of this Order, the Hon’ble Commission has noted the following:

“it is observed that the *scheduled CoD of the Unit No. 2 was 29th November 2015 in terms of PPA* executed between the parties whereas, the actual CoD of the unit is 7th April. 2016”

(Emphasis Supplied)

In view of the above, it is submitted that the Respondent No. 1's present submissions with respect to SCOD of Unit-2 are baseless and ought not to be considered by this Hon'ble Commission.

Comment:

- 9. In Para 17 of the Petition, the Petitioner has made reference to a letter of Respondent No. 1 and the Order Dated 28.10.2017 passed by the Hon'ble Commission in P. No. 18 of 2017 as regards acknowledgement of the revised SCOD to November 2015. In Para 18 and 19 of the Petition, the Petitioner has stated that the COD of Unit 2 was further delayed and ultimately achieved on 07.04.2016, which was duly accepted and approved by the Respondent No. 1 vide letter Dated 22.04.2016 (attached as Annexure 2 of Petition).**
- 10. In above context, it is most humbly submitted that bare perusal of the Annexure 2 (Letter Dated 22.04.2016 written by the Respondent), filed by the Petitioner, reveals that the request for extension of the Scheduled COD of Unit 2 was accepted by the Respondent subject to certain conditions, which are not repeated here for the sake of brevity.**
- 11. The Petitioner, vide its Letter No. 7972 dated 13.06.2016, had accepted all above conditions. It is, therefore, most humbly prayed that the Hon'ble Commission may graciously be pleased to exercise due prudence while determining the tariff and give effect to conditions accepted by the Petitioner in this regard for the benefit of consumers.**

Petitioner's Response:

The contents of Para Nos. 9 to 11 are wrong and denied. It is submitted that Respondent No. 1 by its letter dated 22.04.2016 had extended the SCOD of Unit-2 to 07.04.2016. It is submitted that anticipating certain delay in COD of Unit-2 on account of reasons beyond its control, the Petitioner by letters dated 17.11.2015, 04.12.2015, 17.12.2015, 27.01.2016 and 25.02.2016 [enclosed as Annexure-3(Colly) to the present Petition] had repeatedly offered to supply power to Respondent No. 1 from an alternate source corresponding to the power from Unit-2. Such offers were made in terms of the provisions of PPA dated 05.01.2011 executed between the Petitioner and the Respondent No. 1. However, Respondent No. 1 decided not to avail such power from alternate sources.

In accordance with the provisions of the PPA dated 05.01.2011, by its letter dated 22.04.2016, Respondent No. 1 approved revision of SCOD of Unit-2 to 07.04.2016 with

*certain conditions. With respect to one of these conditions related to IDC, the Petitioner, by letter dated 13.05.2016 and 13.06.2016 requested Respondent No. 1 to not apply this condition since the delay in COD of Unit-2 was on account of reasons beyond control of the Petitioner. Respondent No. 1, by its letter dated 09.06.2016, has refused to accept the Petitioner's request. A copy of the above referred letters dated 22.04.2016, 13.05.2016, 09.06.2016 and 13.06.2016 are enclosed herewith and marked as **ANNEXURE-1(Colly)**. In this context, Respondent No. 1's contentions have to be understood in this context.*

It is further submitted that while issuing the above referred letter dated 22.04.2016, approving revision of SCOD of Unit-2 to 07.04.2016, the Respondent No. 1 did not take into account the fact that the overall Project implementation was delayed by a period of more than 14 months on account of reasons beyond control of the Petitioner. This has been duly acknowledged and endorsed by this Hon'ble Commission in its order dated 01.12.2017 passed in Petition No. 68 of 2016. As such, the condition with respect to IDC imposed by Respondent No.1 in its said letter dated 22.04.2016 cannot be viewed in isolation and the same warrants due consideration of this Hon'ble Commission in light of the overall Project implementation delay of more than 14 months on account of reasons beyond the control of the Petitioner.

Comment:

12. In Paras 20 to 44 of the Petition, the Petitioner has given alleged reasons for the delay in achieving COD of Unit 2, which are denied and disputed. These reasons for delay were also cited in P. No. 18 of 2017, which were contested by the Respondent in its reply dated 19.08.2017. The Petitioner seeks to rely on the same and are not being repeated here for the sake of brevity. The contention of the Petitioner regarding requirement of 72 hours trial run, raised in Para 40, has been replied by this Respondent in the reply for Petition no. 67 of 2016 filed on 23 September 2017, which are again not being repeated here for the sake of brevity. The Petitioner could have followed modern Project Management techniques by carrying out parallel activities for both Units. It is humbly prayed once again that all the reasons point to bad planning and none of the reasons mentioned by the Petitioner is attributable to this Respondent and hence, may not be accepted.

Petitioner's Response:

The contents of Para No. 12 are wrong and denied. It is submitted that the delay in achieving COD of Unit-2 was due to external factors/ reasons beyond the control of the Petitioner. These external factors/ reasons have been comprehensively mentioned in the

present Petition and are not being reproduced in the present Rejoinder for the sake of brevity. These external reasons/factors beyond the control of the Petitioner delayed the commencement of Project construction by more than 14 months, which has also been duly acknowledged and endorsed by this Hon'ble Commission in its order dated 01.12.2017 passed in Petition No. 68 of 2016. As such, these uncontrollable factors constitute force majeure events in accordance with the Regulation 18 of the MPERC Tariff Regulations, 2015. The relevant extracts of the said order of this Hon'ble Commission dated 01.12.2017 are reproduced hereunder:

“68. On perusal of the reasons and documents submitted by the petitioner on record for delay in achieving CoD of Unit No.1, **it is observed that the delay is primarily on account of obtaining Stage-II Forest Clearance from MoEF and certain portion of forest land falls within the Main Plant Area. As submitted by the petitioner with the copy of correspondence with Ministry of Environment & Forest, Govt. of India regarding Stage I & Stage II forest clearance, there has been further delay in handing over of forest land to the petitioner on account of certain litigations before Hon'ble High Court. Thus, the commencement of various main construction activities of the power plant was delayed by more than 14 months.It is observed that CoD of Unit No.1 was further delayed on account of various protests/ agitations carried out by residents/ villagers during the construction period.** The chronology of all such events have been placed on record by the petitioner. Besides, the petitioner has submitted some other reasons also for delay in achieving CoD of Unit No. 1.

69. In view of the above mentioned facts and the reasons enumerated by the petitioner along with the documents placed on record in support of all such reasons, **the delay in achieving commercial operation of Unit No.1 is not attributable to the petitioner.”**

(Emphasis Supplied)

The above delay of more than 14 months in commencement of Project construction on account of delay in Stage-II Forest Clearance and other external reasons/factors beyond control of the Petitioner, not only delayed the COD of Unit-1 but resulted in consequent and cascading delay in overall Project implementation i.e. COD of Unit-2.

Though there was a delay of more than 14 months in commencement of construction of the Project on account of external reasons/factors beyond control of the Petitioner, the Petitioner, by its planning, management and efficient allocation and utilization of manpower and resources, has been able to achieve COD of the Project/ Unit-2 with a

delay of only ~10 months. Therefore, the Petitioner was able to mitigate the initial delay of more than 14 months to only around 10 months in the overall Project execution.

It is submitted that out of this delay of ~10 months in the overall Project completion, a delay of ~ 5.5 months was experienced in COD of Unit-1. It may kindly be noted here that in order to expedite COD of Unit-1 for supply of power to MPPMCL at the earliest, the Petitioner was compelled to divert the material, manpower and resources originally deployed for Unit-2 for completion of Unit-1. As such, reasons for delay which affected the COD of Unit-1 had a consequential and cascading effect on COD of the Project/ Unit-2.

In view of the above submissions, the Petitioner prays that this Hon'ble Commission may be pleased to kindly condone the delay in COD of Unit-2/ Project. Further, as per Regulation 17 of the MPERC Tariff Regulations, 2015, no directions for reduction/ deduction in the overall Project cost/ Unit-2 cost including IDC, IEDC etc. may be issued by this Hon'ble Commission while determining final tariff of Unit-2 of the Petitioner's Project in the present Petition.

Comment:

- 13. In Para 45 of the Petition, the Petitioner has quoted Para 195 of the Order Dated 28.10.2017 passed in P. No. 18 of 2017, which contains the direction of the Hon'ble Commission to file petition for determination of Final Tariff for Unit 2. The same does not need comments.**
- 14. In Para 46 of the Petition being statement of general facts, does not need comments.**
- 15. In Para 47 of the Petition, the Petitioner has informed that Annual Audited Accounts for FY 2009-10 to FY 2015-16, filed along with P. No. 68 of 2016, were prepared in accordance with Generally Accepted Accounting Principles in India (Indian GAAP). In Para 48, it has been stated that the Petitioner has, for the first time, adopted the Indian Accounting Standards (Indian AS), while preparing Annual Audited Accounts for FY 2016-17. This has been done to comply with Gazette Notification Dated 16.02.2015 issued by Ministry of Corporate Affairs (MOC).**

Petitioner's Response:

The contents of Para Nos. 13 to 15 are a matter of record and merit no response.

Comment:

16. In Para 49 of the Petition, the Petitioner has given a summary of the reconciliation of the details of fixed assets as on 31.03.2016 based on transition from Indian GAAP to Indian AS. The Table (at Page 16) containing the “reconciliation” has Column No. 3 titled as “Fixed Assets as per Indian AS” and Column No. 4 titled as “Fixed Assets as per Indian GAAP”.
17. However, it appears that the Petitioner has erroneously swapped the figures in two columns. This is apparent by referring to Page No. 202 of the Petition, wherein Note 4 of Explanatory Information in Annual Audited Accounts (prepared under Indian AS) for FY 2016-17 containing details of “Property, plant and equipment” have been given. In Para 49 of the Petition, these figures mistakenly appear in Column 4 under heading “Fixed Assets as per Indian GAAP”. This is also apparent from Annexure-15 (Auditor’s Certificate) at Page No. 236 of the Petition.

Petitioner’s Response:

The contents of Para Nos. 16 to 17 except those which are matter of record are denied. It is submitted that in the table under Para No. 49 of the present Petition, the contents of column titled “Fixed as per Ind AS” have been inadvertently interchanged with the contents of the column titled “Fixed Assets as per Indian GAAP” and the same may be read accordingly.

Comment:

18. It is most humbly submitted that upon revaluation of the Assets under new accounting system (Indian AS), the value of the Gross Fixed Assets (GFA) as on 31.03.2017 has decreased by Rs. 113.24 Crore when compared with the valuation under old accounting system, i.e., Indian GAAP. Revaluation of GFA for years ending 31.03.2015 and 31.03.2016 are also made available which also show a decrease in values of GFA.
19. In Para 50 of the Petition, the Petitioner has stated that it has been the practice of the Hon’ble Commission of allowing tariff based on historical cost of the assets rather than the revalued cost and as such, for the sake of consistency, the Petitioner has considered the capital cost reconciled on the basis of Indian GAAP as against Indian AS.

20. In above context, it is most humbly prayed that if revalued cost of assets is likely to result in reduced tariff, then it is most humbly prayed that the Hon'ble Commission may graciously be pleased to consider revalued Gross Fixed Asset under Indian AS.
21. It is also most humbly submitted that as stated by the Petitioner, the Annual Audited Accounts for FY 2016-17 for the Petitioner Company have been prepared by a Statutory Auditor on the basis of Indian AS, in compliance with Gazette Notification Dated 16.02.2015 issued by MOC as required to be filed with MOC. In view of above, these Annual Audited Accounts are now the only legal basis for determination of the Final Tariff of Unit 2 as per the Tariff Regulations 2015.
22. It is therefore prayed that the Hon'ble Commission may consider only the Annual Audited Accounts for FY 2016-17 (prepared on the basis of Indian AS) submitted as Annexure 13 (at Page 187 to 232) of the present Petition for determination of the Final Tariff of Unit 2.
23. This would obviate the need for reconciliation of accounts each year to Indian GAAP during the entire duration of PPA. This is necessary to avoid unnecessary complication/ confusion and to bring in clarity/ transparency.
24. However, the Hon'ble Commission may like to examine both scenarios, i.e., Tariff on the basis of Annual Audited Accounts as per Indian AS versus tariff on the basis of accounts reconciled on the basis of Indian GAAP, and whichever is likely to result in lower tariff and be beneficial to the end consumer may be given effect.
25. It is, therefore, most humbly submitted that the Hon'ble Commission may graciously be pleased to direct the Petitioner to re-file the Petition (along with all the Tariff Forms) on the basis of Annual Audited Accounts prepared in compliance to Indian AS also.

Petitioner's Response:

The contents of Para Nos. 18 to 25 are wrong and denied. It is submitted that the Petitioner has adopted Indian Accounting Standards ("IND AS") notified under the Companies (Indian Accounting Standards) Rules, 2015 under Section 133 of the Companies Act, 2013, while preparing the Annual Audited Accounts for FY 2016-17 for the

first time. This was done to comply with the Gazette Notification dated 16.02.2015 issued by the Ministry of Corporate Affairs.

*It is submitted that unlike the Generally Accepted Accounting Principles in India (“**Indian GAAP**”) which relies on historical/original cost of asset for accounting and reporting, IND AS relies on fair/revalued cost of assets, such revaluation being done on certain set of parameters for accounting and reporting purposes. Since the Tariff Regulations notified by this Hon'ble Commission for the purpose of tariff determination relies on historical/original cost of asset values as well as on the cash expenditure incurred, accounts prepared under Indian GAAP become relevant for the purpose of tariff determination.*

*It is submitted that the transition from **Indian GAAP** to **IND AS** is on account of compliance to the provisions of Companies Act, 2013 and not at the wish of the Petitioner. This has resulted in reflection of a gap of (-) Rs.113.24 Crore in the value of Gross Fixed Assets as on 31.03.2017, the reasons for which have been comprehensively provided by the Petitioner under Para No. 49 of the present Petition. It may kindly be noted that this gap is a mere reflection due to transition of Accounting Standards from Indian GAAP to IND AS and is neither a decrease in GFA nor a decrease in the actual expenditure incurred, as alleged by the Respondent No. 1. As such, this has no bearing on the computation/ determination of tariff.*

It is submitted that it has been the consistent practice of various Regulatory Commissions (including Central Commission) of allowing tariff considering historical/original cost of the asset rather than on fair/ revalued cost of assets (as in the case of IND AS basis as introduced by Companies Act, 2013). As such, the Petitioner has claimed tariff in the present Petition, considering capital cost based on Indian GAAP after due reconciliation in this regard clearly depicting the changes in presentation of capital cost in books of accounts due to transition from Indian GAAP to IND AS.

It is further submitted that change in Accounting Standards in no way impact the actual cost of the assets. The very objective of the cost plus tariff model is that such changes should in no way impact the tariff. As such, there will be no consequential impact on tariff being claimed in the Petition on historical cost in continuation as per provisions of the Tariff Regulations because of changes in books of accounts mandated by change in accounting standards applicable to the Petitioner.

It is submitted that the contention of Respondent No.1 that the Petitioner be directed to re-file the Petition on the basis of IND AS is baseless and merits no consideration by this Hon'ble Commission.

Comment:

26. In view of above, Para-wise comments are not being offered in respect of Para 51 to Para 95 at this stage. However, certain general observations/ comments are being respectfully made in the subsequent paragraphs of the present reply for kind consideration of the Hon'ble Commission.

Petitioner's Response:

The contents of Para No. 26, except those which are a matter of record are wrong and denied. It is submitted that this Hon'ble Commission by its Order dated 16.05.2018 had directed the Respondent No.1 to file its Reply by 15.06.2018. Despite belatedly filing its Reply on 24.07.2018, Respondent No. 1 has still chosen not to respond to Para Nos. 51 to 95 of the present Petition at this stage. It is submitted that no further opportunity ought to be granted to Respondent No. 1 to file any further replies/ submissions in the present Petition.

Comment:

27. The Hon'ble Commission had occasion to examine the issue of Customs and Excise Duty in detail during the determination of Provisional Tariff for Unit 2 in P. No. 18 of 2017, wherein after going through various documents submitted by the Petitioner the Hon'ble Commission had observed the following :

“90. From the above, it is observed that the Petitioner's project is already granted provisional Mega Power Status from Ministry of Power with the condition to tie-up 100% power through long term power purchase agreements. Presently, the petitioner has tied up about 67% of its Project Capacity through Long Term PPAs with the State of Madhya Pradesh and Uttar Pradesh.

91. Subsequently, the Ministry of Power 12.04.2017 issued an Amendment to Mega Power Policy on for Provisional Mega Power Projects, and provided a further extension of 60 months granted to the Provisional Mega Power Projects including the petitioner's Project for tying-up of Project capacity through Long Term PPAs. Accordingly, the petitioner has now been provided a timeline up-to March 2022 for achieving power tie-up of the entire Project capacity through Long

Term PPAs required for issuance of final mega power status of the project.

92. In view of the above, the cash expenditure of Rs 1.34 Cr. claimed towards actual expenses on Custom Duty/ Excise Duty allocated to Unit No. 2 is not considered in this order. The Commission may review the aforesaid cash expenditure as and when all issues related to mega power status of the petitioner's project are addressed and the status of petitioner's power plant regarding Mega power project is finalised."

Comment:

28. It is most humbly submitted that the status regarding grant of Mega Power Status is still unchanged. Therefore, it is most humbly prayed that the Hon'ble Commission be graciously be pleased to reject the claim of the Petitioner made again in the present Petition in respect of provision/ expenditure for Customs/ Excise Duty.

Petitioner's Response:

The contents of Para Nos. 27 to 28 are wrong and denied. Under the "Mega Power Policy" notified by the Ministry of Power ("MoP"), Govt. of India ("Gol"), the Petitioner had initially submitted Bank Guarantees ("BGs") for Rs 499.53 Crore towards the custom and excise duty. Subsequently, vide letter dated 29.12.2017, MoP, Gol provided for propionate release of 67.175% of the total BGs/FDRs in terms of the Guidelines/mechanism for provisional mega power project issued vide MoP Letter No. A-3/2015-IPC dated 21.09.2017. However, the BGs for the balance 32.875% (100% - 67.175%) amounting to Rs 163.97 Crore still remains submitted by the Petitioner.

In addition to the above BGs, an amount of Rs.28.75 Crore has been paid by the Petitioner in cash towards Custom and Excise Duty for equipment procured for the Project in the initial period i.e. from 06.06.2011 to 08.02.2012. It is further submitted that there is no process/provision for refund of this amount of Rs.28.75 Crore paid in cash by the Petitioner towards Custom and Excise Duty as the material has already been assessed on merit rate. Further even the above referred MoP letter dated 29.12.2017 only provides for release of BGs to the extent of 67.175% of the total BG Value and does not provide for proportionate refund of the cash amount of Rs.28.75 Crore. As such the Petitioner humbly requests the Hon'ble Commission to kindly consider Rs.28.75 Crore as a part of the Project cash expenditure for the purpose of tariff determination. Nonetheless, in the event

of receiving any refund against this amount, the Petitioner would duly approach the Hon'ble Commission for suitable adjustment in the Project capital cost.

In view of the above, the allegations of the Respondent No.1 are baseless and merit no consideration by this Hon'ble Commission.

Comment:

- 29.** In Para 60 of the Petition, the Petitioner has stated that Hon'ble Commission had considered Rs. 4,235.89 Crore as Capital Cost of Unit 1 as against its claim of Rs. 4,885.35 Crore. Therefore, the Hon'ble Commission has not considered Rs. 649.45 Crore associated with common assets/ facilities of the Project. Accordingly, this amount is now being included as part of Capital Cost of Unit 2.
- 30.** Above contention of the Petitioner is misconceived and is strongly opposed. In fact, after thorough analysis of the Capital Cost claimed by the Petitioner in Petition No. 68 of 2016 for determination of Final Tariff of Unit 1, the said amount has been disallowed by the Hon'ble Commission. Therefore, it is humbly submitted that this amount should not be allowed as part of Capital Cost of Unit 2 without any justification.

Petitioner's Response:

The contents of Para Nos. 29 to 30 are wrong and denied and merit no consideration by this Hon'ble Commission. In this context, the Petitioner craves leave to refer to its submissions under Para Nos. 8 to 9 of the present Rejoinder which have not been repeated herein for the sake of brevity.

Comment:

- 31.** The Respondent wishes to draw kind attention of this Hon'ble Commission to Page No. 197 of the Petition (which is part of Annual Audited Accounts (Annexure-13), wherein under main heading "Summary of significant accounting policies and other explanatory information for the year ended 31st March 2017", following is mentioned :

" 2. Basis of Preparation and significant accounting policies

(a)

(b)

.....

(i) Property, plant and equipment ('PPE')

.....

Subsequent measurement (depreciation and useful lives)

Depreciation is provided using straight line method, following the rates notified by Central Electricity Regulatory Commission (CERC) and specified in Appendix-II of Central Electricity Regulatory Commission (Terms and Conditions of Tariff), 2014 (CERC Tariff Regulation) for the first 12 years from the date of commercial operation and thereafter remaining depreciable value (maximum of 90% of capital cost) is depreciated over the balance useful life of the asset, **except in case of following assets for which the depreciation rates have been arrived at, based on the useful lives of as estimated by the management based on internal technical assessment, which is lower than the corresponding useful life prescribed by CERC Tariff Regulations** :

| Sub Asset Class | Depreciation of Asset Class | Rates as per Management Estimates | Rates as per CERC Regulations, 2014 |
|---|-------------------------------------|--|--|
| a) Personal Computers and Laptops including peripherals | EDP equipment (Including computers) | 31.66% | 15.00% |
| b) Photocopiers and Fax machines | Office equipment | 19.00% | 6.33% |
| c) Air Conditioners, Water coolers and Refrigerators | Office equipment | 19.00% | 6.33% |
| d) Mobile phones | Office equipment | 31.66% | 6.33% |

[Emphasis Added]

32. In above context it is most humbly submitted that for the purpose of Generation Tariff determination, the provisions of MPERC (T & C of Tariff Determination) Regulations, 2015 are applicable and are binding. There can be no deviation in applicable the Statutory rates of Depreciation. It is, therefore, most humbly prayed that this Hon'ble Commission be pleased to consider rates of depreciation as provided in Appendix-II of MPERC (T & C of Tariff Determination) Regulations, 2015 only.

Petitioner's Response:

The contents of Para Nos. 31 to 32 are wrong and denied. It is submitted that in the present Petition (Form-TPS-11 at Page 309 & Para 78-81 of the present Petition), the weighted average rate of depreciation has been derived by applying the depreciation rates on the various category of assets in accordance with the Regulation 33 along with Appendix-II (Depreciation Schedule) of MPERC Tariff Regulations 2015.

Comment:

33. Regulation 32.7 of Tariff Regulations 2015 provides that the Generating Company shall make every effort to re-finance the loan as long as it results in net savings on interest, the same is quoted below :

“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.”

34. It is humbly prayed that the Petitioner may be directed to disclose efforts, if any, made by it to refinance the loan, to reduce the interest burden on loan in terms of Regulation 32.7.

Petitioner's Response:

The Petitioner has been continuously making efforts to ensure minimum interest burden on the loan for the Project. Based on its persistent efforts, the Petitioner has been able to avail low interest buyer's credit facility from existing lenders (i.e. State Bank of India and Axis Bank) for the purpose of part financing the cost of importing capital equipment for the Project. However, as per External Commercial Borrowing (ECB) guidelines, the buyer's credit facility can be availed up-to 3 years and is subsequently required to be paid from existing term loans having a much higher interest cost. Accordingly, the Petitioner made rigorous efforts and was successful in part refinancing the rupee term loans and received a disbursement to the extent of ~USD 128Mn (~ Rs 833 Crore) in FY 2015-16 from India Infrastructure Finance Company (“IIFCL, UK”) Limited, being foreign currency lender.

This fully hedged loan was utilised instead of drawing down the existing high cost rupee term loans. Further, the Petitioner would like to submit that the interest rate on IIFCL, UK facility is considerably lower than the weighted average interest rate of existing rupee term loans. The above foreign currency facility from IIFCL, UK has resulted in effective reduction of the overall interest cost of borrowings for the Project, the benefit of which has

not been claimed by the Petitioner so far and the Hon'ble Commission may kindly be pleased to consider the same in line with the Regulation 32.7 of the MPERC Tariff Regulations, 2015.

Further, based on the persistent efforts of the Petitioner, its Project has recently been rated as "BBB (stable)" by two reputed rating agencies namely CRISIL & CARE. As a result, the consortium of existing lenders led by State Bank of India has already initiated the process of re-financing the debt at the lower interest rate in line with the agreed provisions of the Common Loan Agreement. The impact of such saving shall be reflected in the subsequent periods and the same shall be submitted by the Petitioner to this Hon'ble Commission.

Further, the Petitioner has also been approaching various lenders for part refinancing the existing rupee long term loan and the benefits accruing therefrom, upon such refinancing, shall be submitted to this Hon'ble Commission.

As may be seen from above, the Petitioner has been making relentless and continuous efforts to minimize the burden of interest rates on the loan for the Project.

Comment:

35. In the present Petition, the Petitioner has not filed the details of recovery of LD as per the order of P. No. 18 of 2017. It is, therefore, humbly requested that the Hon'ble Commission may again be pleased to direct the Petitioner to file the necessary details. It is further submitted that the effect of same may be given after due prudence check by the Hon'ble Commission for the benefit of consumers of the State.

Petitioner's Response:

The contents of Para No. 35 are wrong and denied. It is submitted that no liquidated damages towards delay have been recovered by the Petitioner from its contractors/vendors till date. In terms of Engineering Procurement and Construction ("EPC") Contract, the final settlement/ contract closure is pending. As certain insolvency proceedings have been initiated against the Petitioner's EPC Contractor is M/s Lanco Infratech Limited ("LANCO") by its lenders/ creditors, hence in such a scenario, final settlement/ contract closure with LANCO has become complicated and a time consuming process. Nonetheless, the Petitioner is rigorously pursuing the matter with LANCO and is hopeful of the final settlement/ contract closure in the ongoing financial year. Accordingly, at this juncture the liquidated damages/penalty that may be attributable to the

contractors/vendors, if any, for delay in completion of works cannot be quantified.

Notwithstanding above, the Petitioner undertakes to quantify such liquidated damages/ penalty at the time of final contract settlement. Any such liquidated damages/ penalty to be recovered from the contractors/vendors would be discussed and finalized at the time of final contract settlement and shall be accordingly submitted before this Hon'ble Commission.

Comment:

36. In Para 128 of the Order Dated 28.10.2017 passed in P. No. 18 of 2017, the Hon'ble Commission had directed the Petitioner to file Asset-cum-Depreciation Register with Petition for determination of final tariff. The said direction is quoted below :

*“128. The Commission has provisionally determined depreciation on fixed assets at weighted average rate of depreciation worked out by the petitioner. **The petitioner is directed to file asset-cum-depreciation register for both the unit with the petition for determination of final tariff of the project “***

37. In view of above, it is most humbly prayed that this Hon'ble Commission may be pleased to direct the Petitioner to file Asset-cum-Depreciation Register for the Project.

Petitioner's Response:

*A soft copy of the Asset-cum-Depreciation Register (in form of a CD) for the Project for FY 2016-17 is enclosed herewith and marked as **ANNEXURE-2.***

Comment:

38. In Para 96 and 97 of the Petition, the Petitioner has prayed for allowance of Statutory Charges. It is most humbly prayed that only those Statutory Charges, which are allowable under Tariff Regulations 2015, may be allowed. The decisions of other State Electricity Commissions may not be treated as precedents.

Petitioner's Response:

The contents of Para No. 38 are wrong and denied. It is submitted that Regulation 52(5) of the MPERC Tariff Regulations, 2015 allows the recovery of electricity duty, cess and water charges. However, there are certain other statutory charges, duties and taxes which are

directly linked with generation of power which are not provided for in the MPERC Tariff Regulations, 2015. Therefore, the Petitioner has not been able to recover the same. Such charges are variable in nature and are directly attributable to generation of electricity from the Project.

It is submitted that similar to the case of other fuel related/variable charges, there are express provisions in several tariff orders and regulations framed by other State Commissions, which allow the recovery of statutory charges, taxes and duties on pass through basis based on actuals. Relevant regulations/orders passed by other State Commissions are provided hereinbelow:-

(a) Chhattisgarh State Electricity Regulatory Commission

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

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

(b) Uttar Pradesh Electricity Regulatory Commission

Ld. Uttar Pradesh Electricity Regulatory Commission in the Multi Year Tariff Order for FY 2009-10 to 2013-14 in respect of the state thermal generating company namely Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited had allowed the recovery of the following cess, charges, taxes etc.:-

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

(Emphasis Supplied)

It is submitted that as recognized by other State Regulatory Commissions, this Hon'ble Commission may be pleased to allow the recovery of these statutory charges to the Petitioner on actual incurred basis.

Comment:

- 39. In Para 98 to 100 the Petitioner has attempted to justify the allowance of Carrying Cost on the basis that the Hon'ble Commission has not considered an amount of Rs. 649.45 Crores in Tariff Petition No. 68 of 2016. In Para 101, the Petitioner has claimed Carrying Cost of Rs. 14.87 Cr.. It is most humbly submitted that the Tariff Regulations 2015 does not provide for allowance of Carrying Cost. The Petitioner's claim is based on the plea that the Hon'ble Commission has not considered its claim of Rs. 649.45 Cr in Final Tariff of Unit 1. This is strongly opposed as the Hon'ble Commission has rightly disallowed the said claim of the Petitioner as it had failed to justify the same. Therefore, it is most humbly prayed that this Hon'ble Commission may reject any claim of Carrying Cost.**
- 40. Without prejudice to above, it is also humbly submitted that the Petitioner has also claimed Carrying Cost of Rs. 14.87 Cr. in its Petition for True-up of Tariff (for period from 01.04.14 to 31.04.2019) for Unit -1 in Para 49 (at Page 16) of P. No. 11 of 2018 on exactly the same basis. It is most humbly prayed that this Hon'ble Commission may be pleased to reject the claim of Carrying Cost in both the Petitions.**

Petitioner's Response:

The contents of Para Nos. 39 to 40 are wrong and denied. During determination of Final Tariff of Unit-1 of the Project for FY 2015-16 under Petition No. 68 of 2016, as per Annual Audited Accounts of the Petitioner for FY 2015-16, the Petitioner had incurred a cash expenditure of Rs 4,885.35 Crore for Unit-1. However, this Hon'ble Commission while determining the tariff of Unit-1 allowed the capital cost for Unit-1 as Rs. 4,235.89 Crore against this actual cash expenditure of Rs. 4,885.35 Crore made by the Petitioner, there by deferring the tariff on the balance cash amount of Rs.649.45 Crore (i.e. Rs. 4,885.35 Crore - Rs. 4,235.89 Crore) incurred by the Petitioner till Unit-2 COD. While determining the final tariff of Unit-1 for the FY 2015-16, this Hon'ble Commission had considered this cash amount of Rs 649.45 Crore pertaining to common assets/facilities for the Unit-2 (though the same were capitalized in the Annual Audited Accounts of the Petitioner for FY 2015-16), thereby deferring the tariff on this cash amount till COD of Unit-2.

Such deferment resulted in under recovery of Annual Fixed Charges (corresponding to the contracted capacity of 30% under PPA with MPPMCL) for the period between COD of Unit-1 and COD of Unit-2.

It is submitted that it is a settled position of law that whenever a payment/ recovery against the expenditure already incurred is deferred or delayed, then carrying cost is payable along with the deferred payment. The principle of carrying cost has been well established in the various judgments of the Hon'ble Supreme Court and the Hon'ble Appellate Tribunal for Electricity ("Hon'ble Tribunal"). The carrying cost is the compensation for time value of money or the monies denied at the appropriate time and paid after a lapse of time. In this context reliance is placed on:-

- (a) *Satinder Singh v. Umrao Singh: AIR 1961 SC 908 (Paras 10, 19 to 21).*
- (b) *South Eastern Coalfields Ltd. v. State of M.P.: (2003) 8 SCC 648 (Paras 21 – 24)*
- (c) *North Delhi Power Limited v. Delhi Electricity Regulatory Commission: 2007 ELR (APTEL) 193. (Para 40).*
- (d) *North Delhi Power Limited v. Delhi Electricity Regulatory Commission: 2010 ELR (APTEL) 891. (Para 45, 46 &58)*

1. *It is noteworthy that the Hon'ble Tribunal in its various judgments has upheld the principle of carrying cost of expenditure, which has been deferred for recovery as under:*

(a) *In Maharashtra State Power Generation Co. Ltd. v. Maharashtra Electricity Regulatory Commission [2011 ELR(APTEL) 0594]the Hon'ble Tribunal upheld the entitlement of the generating company for carrying cost/ IDC on deferred capital cost of the common facilities till the commissioning of the subsequent unit. The relevant extracts of the said judgment is provided here in below:-*

*"11.2 Provision of common facilities is done mainly for optimum utilization of resources including land, benefit of which is ultimately passed on to the consumers. There could be two approaches for capitalization of cost of common facilities. In the first approach, the common facilities essential for operation of the first unit could be loaded to this unit. This will ensure timely servicing of capital cost incurred and eventually reduce the capital cost of the subsequent unit including the IDC on deferred capital cost of common facilities till the commissioning of the subsequent unit. The second approach is to apportion the total cost to each unit. **In this case the generating company will be entitled to IDC on the deferred capital cost of common facilities till the commissioning of the subsequent unit.** There is, however, no specific Regulation on apportioning of cost of common facilities. In our*

opinion, where the gap between two generating units is more, it would be prudent to allow cost of common facilities essential for commissioning of the first unit along with the capital cost of the first unit.”

(Emphasis Supplied)

(b) In judgment dated 02.01.2013 passed in Review Petition No. 13 of 2012 in Appeal No. 203 of 2010 (Reliance Infrastructure Ltd. v. MERC & Ors.), the Hon’ble Tribunal directed the State Commission to decide the claims of the appellant based on certain principles. One of such situations being deferment of recovery on actual expenditure. The relevant extracts of the said judgment is provided here in below:-

“15. Accordingly, paragraphs 11.5 & 11.6 of the judgment dated 13.9.2012 may be amended to read as under:

“11.5. The utility is entitled to carrying cost on its claim of legitimate expenditure if the expenditure is:

- i) **accepted but recovery is deferred** e.g. interest on regulatory assets,*
- ii) claim not approved within a reasonable time, and*
- iii) disallowed by the State Commission but subsequently allowed by the Superior authority.*
- iv) Revenue gap as a result of allowance of legitimate expenditure in the true up.*

11.6 The State Commission shall decide the claim of the appellant on the above principles”

(Emphasis Supplied)

(c) In Adani Power Ltd. v. CERC & Ors. [2018 ELR(APTEL) 0556], the Hon’ble Tribunal has allowed the carrying cost to the Appellants. The relevant extract of the said judgment is provided hereinbelow:-

“In the present case we observe that from the effective date of Change in Law the Appellant is subjected to incur additional expenses in the form of arranging for working capital to cater the requirement of impact of Change in Law event in addition to the expenses made due to Change in Law. As per the provisions of the PPA the Appellant is required to make application before the Central Commission for approval of the Change in Law and its consequences. There is always time lag between the happening of Change in

Law event till its approval by the Central Commission and this time lag may be substantial. As pointed out by the Central Commission that the Appellant is only eligible for surcharge if the payment is not made in time by the Respondent Nos. 2 to 4 after raising of the supplementary bill arising out of approved Change in Law event and in PPA there is no compensation mechanism for payment of interest or carrying cost for the period from when Change in Law becomes operational till the date of its approval by the Central Commission. We also observe that this Tribunal in SLS case after considering time value of the money has held that in case of re-determination of tariff the interest by a way of compensation is payable for the period for which tariff is re-determined till the date of such re-determination of the tariff. In the present case after perusal of the PPAs we find that the impact of Change in Law event is to be passed on to the Respondent Nos. 2 to 4 by way of tariff adjustment payment as per Article 13.4 of the PPA...

From the above it can be seen that the impact of Change in Law is to be done in the form of adjustment to the tariff. To our mind such adjustment in the tariff is nothing less then re-determination of the existing tariff.

Further, the provisions of Article 13.2 i.e. restoring the Appellant to the same economic position as if Change in Law has not occurred is in consonance with the principle of 'restitution' i.e. restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgement of the Hon'ble Supreme Court in case of Indian Council for Enviro-Legal Action vs. Union of India &Ors., we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority..."

Keeping in view, the prudent utility concept of time value of money and servicing of the actual interest on the debt corresponding to the abovementioned cash expenditure deferred by this Hon'ble Commission, an amount of Rs 14.87 Crore has been claimed by the Petitioner as a one-time recovery of carrying cost towards the portion of expenditure (i.e. Rs. 649.45 Crore) already incurred by the Petitioner on the common facilities of the Project at the time of COD of Unit-1. The tariff on this expenditure has been deferred by this Hon'ble Commission till COD of Unit-2, due to which corresponding recovery could not be made by the Petitioner for the period between COD of Unit-1 and COD of Unit-2.

Comment:

41. That, it is humbly prayed that the prudence check, carried out by the Hon'ble MPERC, be shared with this respondent and any reasoning/ rationale advanced

in support for inclusion of above indicated Costs with the Capital Cost of the Project deserves to be summarily rejected/ ignored. The Respondent also seeks liberty to deal with/ respond to the Case Laws referred/ quoted at appropriate stage.

Petitioner’s Response:

The contents of Para No. 41 are wrong and denied. It is submitted that conducting prudence check is the function of this Hon’ble Commission, and Respondent No. 1 has no role to play in the prudence check. Therefore, the request of Respondent No. 1 for sharing this Hon’ble Commission’s prudence check with Respondent No. 1 is without any basis in law and ought to be rejected by this Hon’ble Commission.

Comment:

42. That, it is further prayed that per MW cost of similar plants in India, which have been commissioned in recent past, may be kept in mind at the time of decision in this instant Petition.

Petitioner’s Response:

It is submitted that the detailed comparison of the capital cost (hard cost) of the Petitioner’s Project with the other thermal power projects (similar capacity) in the country, to the best of the Petitioner’ knowledge, is provided in the table below:

| Name of Power Station | Sector | Installed Capacity | No. of Units | Year of Project COD | Project Hard Cost | | Source |
|---------------------------------|---------------------------------|--------------------|--------------|---------------------|-------------------|----------|---|
| | | | | | Rs. Cr | Rs Cr/MW | |
| Anuppur TPP of MBPMPL | IPP (MP) | 1200 | 2x600 MW | Apr’ 2016 | 5385 | 4.49 | |
| Singareni TPP | State-Central Joint (Telangana) | 1200 | 2x600 MW | Dec’ 2016 | 6904 | 5.75 | SCCL's Pet. No. 9/2016 for approval of capital cost |
| Nigrie TPP of JP Ventures | IPP (MP) | 1320 | 2x660 MW | Feb’ 2015 | 7975.18 | 6.04 | MPERC order dt. 24.05.2017 |
| Lalitpur TPP of Bajaj Hindustan | IPP (UP) | 1980 | 3x660 MW | Jun’ 2016 | 10786 | 5.45 | UPERC order dt. 27.11.2015; Pet Nos. 975/2014 & 1017/2015 |
| Kalisindh TPS | State (Rajasthan) | 1200 | 2x600 MW | Jul’ 2015 | 6521 | 5.43 | RERC order dt. 14.05.2015; Pet No. |

| Name of Power Station | Sector | Installed Capacity | No. of Units | Year of Project COD | Project Hard Cost | | Source |
|-----------------------|----------|--------------------|--------------|---------------------|-------------------|----------|--|
| | | | | | Rs. Cr | Rs Cr/MW | |
| | | | | | | | RERC/462/14 |
| Jhabua Power | IPP (MP) | 600 | 1x600 MW | May' 2016 | 3077 | 5.13 | MPERC order dt. 06.09.2016 in Pet. No. 16/2016 |

As clearly evident, the Project cost of the Petitioner's Project as claimed by the Petitioner is reasonable and within the industry norms.

CERC Benchmarking

It is submitted that the Order No. L1/103/CERC/2012, dated 04.06.2012 passed by the Hon'ble Central Electricity Regulatory Commission ("**Hon'ble Central Commission**") provides the Benchmark Capital Cost (Hard Cost) for thermal power station. The Bench Mark Capital Cost for 2x600 MW Green Field Coal based Thermal Power Project (taking 2011 indices as Base) is Rs. 4.54 Crore per MW. Further Hon'ble Central Commission has provided a clarification on Benchmark Capital Cost, for thermal power stations with coal as fuel by its aforementioned order, under Issue No. 6, Para No. 11.2, as under:-

"However, to calculate the likely cost of similar package for another Project, the fixed Component needs to be linked to escalation in WPI for the intervening period, which may be provided..."

In view of the above, the indicated capital cost (hard cost) per MW of Rs. 4.54 Crore for 2x600 MW Thermal Power Project based on 2011 Index as base, needs to be escalated on WPI Index to arrive at capital cost to the present date.

The table hereunder shows that the Bench Mark capital cost of Rs. 4.54 Crore/MW translates into a Project cost (hard cost) of Rs. 5,448 Crore as on December 2011, which after applying the escalation factor based on WPI Index of (177.8) for the month

of April 2016 (COD of the Project) as published by the Central Government, works out to Rs. 6,158 Crore translating into Rs. 5.13 Crore/MW. The calculations in this regard are provided here in below:

| Parameter | Identifier | Value |
|--|------------|--------|
| The WPI index at Dec 2011 | A | 157.3 |
| The WPI index at April 2016 (COD of the Project) | B | 177.8* |

| Parameter | Identifier | Value |
|---|------------------------------|-------------------|
| Inflation factor | $C = (B/A-1)\%$ | 13.03% |
| Benchmark Cost Based on Dec-2011 | D | Rs. 4.54 Crore/MW |
| Benchmark capital cost for 2x600 MW | $E = D * 2 * 600 \text{ MW}$ | Rs. 5,448 Crore |
| Escalation allowed up to April 2016 | $F = E * (100\% + C)$ | Rs. 6,158 Crore |
| CERC Benchmark capital cost as in April 2016 (COD of the Project) | $G = F/1200$ | Rs. 5.13 Crore/MW |

Source: CERC, Office of the Economic Adviser; www.eaindustry.nic.in.

It may kindly be noted that the above CERC's bench marked hard-cost of Rs 5.13 Crore/MW does not include the cost of other associated facilities like Barrage, Railway Siding, Township etc.

The Petitioner further submits that with respect to revised filed cost for the Project on accrual basis as per TPS-5B of the present Petition, the estimated revised capital cost (excluding custom and excise duty of Rs 192.72 Crore) as on the date of Project COD of Rs. 8157.75 Crore (Rs. 8350.47 Crore - Rs. 192.72 Crore) translates into hard cost of Rs. 5384.67 Crore which in-turn works out to be Rs. 4.49 Crore/MW. Theper MW capital cost (in terms of hard cost) of the Petitioner's Project is tabulated below:

| Benchmarking for Petitioner's Project as on Project COD | Value in Rs. Crore |
|--|---------------------------|
| Capital cost (Less Custom & Excise duty of Rs 192.72 Crore) | 8157.75 |
| Less: | |
| IDC/Finance Charges/Unamortized cost to Borrowings | 1928.22 |
| Railway Siding | 141.81 |
| Barrage | 156.68 |
| Township | 108.38 |
| Pre-operative Expenses (IEDC) | 437.99 |
| Total Capital Cost | 5384.67 |
| Cost per MW | Rs. 4.49 Cr/MW |
| CERC Benchmark capital (hard) cost as on Project COD (Apr 2016) | Rs. 5.13 Cr/MW |

It is submitted that the estimated completion cost of the Petitioner's Project is well within the Bench Mark capital cost for Green Field coal based power Projects as indicated by Hon'ble Central Commission for a 2 x 600 MW Thermal Project.

Comment:

43. That, at this stage this Respondent has made above observations on the basis of documents/ information made available by the Petitioner. The Respondent craves for liberty to amend, alter and add to the points or make further submissions as may be required at a later stage. The Respondent also seeks liberty to cite Case Laws or respond to the Case Laws referred/ quoted by the Petitioner at appropriate stage.

Petitioner's Response:

The contents of Para No. 43 are wrong and denied. It is submitted that this Hon'ble Commission by its daily order dated 16.05.2018 passed in the present Petition had directed Respondent No. 1 to file its Reply by 15.06.2018. However, Respondent No. 1 filed its Reply belatedly on 24.07.2018 (served to the Petitioner vide E-mail dated 25.07.2018). Therefore, this Hon'ble Commission may disregard Respondent No. 1's submissions in this regard.

Concluding Para:

In light of the submissions made hereinabove and the submissions in the present Petition, it is prayed that this Hon'ble Commission may be pleased to allow the claims of the Petitioner.

The Petitioner craves leave to file further submissions as and when necessary and as may be directed by this Hon'ble Commission.

Annexure III:

Response of the petitioner on the comments offered by Stakeholders

Comment:

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.

Petitioner's Response:

It is submitted that the contents of Para Nos. 1 to 5 are wrong and denied. It is absurd for the Objector to state that the facts being placed before this Hon'ble Commission are applicable to all earlier orders passed by this Hon'ble Commission in such type of cases. It is submitted that the Objector has made unsubstantiated allegations about the Petitioner as well as against the Government of Madhya Pradesh ("GoMP"), which are neither based

on law or on facts. It is further submitted that the Objector has made grave allegations against the GoMP with respect to the allocation of land, water, coal blocks etc. to the generators in State of Madhya Pradesh (“MP”). It is further submitted that the objections of the Objector are vague and do not concern the Project set up by the Petitioner, which has been set up in accordance with the law. Therefore, this Hon’ble Commission ought to reject the Objections of the Objector.

Comment:

6. The petitioner also signed MOU on dated 4/6/2008 to set up the industry to generate 2000 MW power at the cost of Rs. 9298.00 Crore, which works out to be Rs. 4.6 Crore per MW. The capacity of plant was changed after MOU, without any liability on either side. Petitioner also applied to coal ministry regarding coal linkage for this industry on dated 16/06/2008, based on 2000 MW capacity.
7. Govt. of M.P. signed MOU for 41775 MW with various companies including petitioner, as per Govt. of M.P. industrial policy passed on dated 5/12/2006. These companies were interested to put these power plants as industry and were never covered under electricity Act 2003, Govt. of M.P. was never aimed to take power from them under electricity Act 2003 and these industries were like export unit to export the power generated in M.P.
8. As per MOU, the role of Hon’ble Commission was advisory to derive the rates on which this power from the companies was to be taken by Govt. of M.P. Hon’ble MPERC was not allowed to use the powers under Electricity Act 2003, while deciding tariff for the power generated based on these MOUs. Hence the petitioner is not the generating company as defined under section 2(28) of Electricity Act 2003.

Petitioner’s Response:

1. *It is submitted that the contents of Para Nos. 6 to 8 are wrong and denied. It is the contention of the Objector that the Petitioner has set up its power Project intending to use it as an industry and the same is not covered under the Electricity Act, 2003 (“Electricity Act”). In this context, Sections 2(28), 2(29) and 2(30) of the Electricity Act are extracted hereunder:-*

*“Section 2 **Definitions.** --- In this Act, unless the context otherwise requires,--*

...

- (28) "generating company" means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, **which owns or operates or maintains a generating station;**
- (29) "generate" means to produce electricity from a generating station for the **purpose of giving supply to any premises or enabling a supply to be so given;**
- (30) "generating station" or "station" means **any station for generating electricity**, including any building and plant with step-up transformer, switchgear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station;”
2. A conjoint reading of the above makes it abundantly clear that the Project set up by the Petitioner is covered under the definition of generating station as provided in the Electricity Act. Any objections in this regard deserve to be rejected.
3. It is submitted that the Objector’s contentions that under the Memorandum of Understanding (“**MoU**”) this Hon’ble Commission was not authorized to use its power to determine the tariff of the power generated at the Petitioner’s Project is erroneous and contrary to the facts on record. It is submitted that MoU dated 04.06.2008 executed between GoMP and the Petitioner under Clause 10 provides that the Appropriate Commission (i.e. this Hon’ble Commission) shall determine the Energy Charges for the 5% of net power to be procured by the GoMP. It is further submitted that under Clause 12 of the same MoU, it provided that the GoMP shall have the first right to purchase power up to 30% of the aggregated capacity of the Project at the rate to be approved by the Appropriate Commission. All contentions of the Objector to the contrary deserve to be rejected by this Hon’ble Commission.

Comment:

9. The petitioner has gotten orders from Hon’ble Commission on dated 7/9/2012 against petition No. 7 of 2012 and on dated 4/2/2013 against petition No. 82 of 2013 regarding Non-Concessional PPA. These order have been obtained by not

disclosing the facts and hence fraud was carried out with Hon'ble Commission and hence may be reviewed under section 151 of CPC.

Petitioner's Response:

It is submitted that the contents of Para No. 9 are wrong and denied. It is submitted that the Objector is making baseless allegations with the ulterior motive of delaying the proceedings in the present Petition. The Objector had earlier sought extension of time to file its Objections which also arbitrary. It appears that the present Objections have been filed only for the sake of filing Objections and deserve to be dismissed. Without prejudice to the above, it is submitted that the Orders dated 07.09.2012 and 04.02.2013 passed by this Hon'ble Commission have never been challenged by the Objector and any submissions in this regard at this juncture merit no consideration by this Hon'ble Commission.

Comment:

10. These MOUs were never binding and there are several companies, which signed the MOUs, later abonded the projects like Reliance Power Ltd. towards Chitrangi, Adani Power etc.

Petitioner's Response:

It is submitted that the Contents of Para No. 10 are wrong and denied. It is submitted that the contents of this Para do not concern the Petitioner and has no bearing in the present Petition

Comment:

11. 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.

12. 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.

13. These industries were to export power, while the environmental hazards were to be borne by public of M.P.

- 14. 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 CO2 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 CO2 in atmosphere.**
- 15. 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.**

Petitioner's Response:

It is submitted that the contents of Para Nos. 11 to 15 are wrong and denied. It is submitted that the Objector has raised unfounded Objections with respect to the alleged adverse impact of operating the Project on the environment in the state of MP. In this context it is submitted the same have no bearing on the present Petition which has been filed for determination of true-up tariff for Unit-1 of the Petitioner's Project. It is submitted that the Petitioner's Project has been set up after obtaining all necessary environment clearances from the concerned agencies like Ministry of Environment and Forest ("MoEF"), Gol, Madhya Pradesh Pollution Control Board ("MPPCB"), GoMP etc. and any Objections to the contrary are devoid of merits.

Comment:

- 16. 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 Electricity 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 APTEL as shown in para 60 of order dated 06th May' 2010 against OA No. 44 of 2010.**

- 17. Hon'ble APTEL in its order Dated 06th May' 2010 against OA NO. 44 OF 2010 has ruled as follows vide para no. 61 of order, regarding MOU:-**

“The State Government has retained the option to take the power under the MOU if the rated to be worked out as proposal rate in MOU is cheaper than Rs. 2.45 per 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.”

- 18. Hence, this para 61, of the order of APTEL, was the binding condition, applicable on all the MOUs signed and further PPA signed by all the companies. This order of APTEL doesn't allow the petitioner to file the petition before Hon'ble MPERC, Bhopal under section 62 and 86(1) (a) of electricity Act 2003 read with Madhya Pradesh Electricity Regulatory Commission (Terms and Condition for determination of Generation Tariff) Regulation , 2015.**

- 19. 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.**

- 20. The companies including petitioner carried out the fraud with officers of govt. of M.P. and converted these industrial projects based on MOU to illegal PPAs under Electricity Act 2003, while there was no requirement of long term power**

in M.P. These PPAs were also in violation of para 61 of APTEL order dated 06th May' 2010.

Petitioner's Response:

It is submitted that the contents of Para Nos. 16 to 20 are wrong and denied. It is submitted that the MoU dated 04.06.2008 no-where provides that the cost of power to be generated by the petitioner shall be comparable to Rs. 2.45 per unit. On the contrary the MoU provided that the cost of power shall be approved by this Hon'ble Commission. It is submitted that this Hon'ble Commission ought not to be misled by baseless allegations of the Objector.

Comment:

21. The long term PPAs were signed in the year 2011 with several companies including this Petitioner which were against MoP directives also. These PPAs were illegal and against public interest on various grounds as follows:-

- a) There is no document to show that there was long term power purchase requirement which necessitates the signing of these PPAs.**
- b) Hon'ble APTEL order dated 06th May' 2010, para 61 was violated.**
- c) 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.**
- d) 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.**
- e) The solar RPO will increase in coming years. This will create further surplus thermal power.**
- f) 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.**

22. The MOUs were signed with these companies to put up these thermal power plants as industry only and hence, MOUs cannot be used to sign PPAs, under Electricity Act 2003.

Petitioner's Response:

- 1. The contents of Para Nos. 21 to 22 are wrong and denied. It is submitted that the Objections raised by the Petitioner has no connection whatsoever with the present Petition which has been filed for determination of true-up tariff of power from Unit-1 of the Petitioner's Project. The Objector is raising Objections which are baseless.*
- 2. The Petitioner has set up its independent power project in accordance with the extant laws and power from the same is being supplied with the express approval of this Hon'ble Commission. It is submitted that the Objector is trying to derail the present proceedings before this Hon'ble Commission by making such unfounded and irrelevant claims and baseless accusations on both the Petitioner and GoMP. These baseless allegations have no bearing on the present Petition, and the same ought to be rejected by this Hon'ble Commission.*

Comment:

- 23. The cost of project was much lesser per MW as per MOU of this petitioner. However, this has increase too 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.**
- 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.**

Petitioner's response:

It is submitted that the contents of Para Nos. 23 to 25 are wrong and denied. It is submitted that this Hon'ble Commission is empowered to conduct prudence check while determining the true-up tariff for Unit No.-1 of the Petitioner's Project. All allegations of the Objector in this regard are baseless and deserve to be rejected

Comment:

- 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 spent 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.**
- 28. MPPMCL, Jabalpur as Petitioner and others against Petition No. 3/2018 before Hon'ble Commission, has 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 16th 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's Response:

It is submitted that the contents of Para Nos. 26 to 28 are wrong and denied. It is submitted that these paras refers to the actions of Indian Railways, MP Gencos. and Madhya Pradesh Power Management Company Limited ("MPPMCL"). It is submitted that the Petitioner cannot be expected to respond to the allegations of Objector with respect to the above entities. The present Petition is limited to determination of true-up tariff for Unit-1 of the Petitioner's Project and the Objections of the Objector have no relevance to the present proceedings. It is submitted that the Objector may be directed by this Hon'ble Commission to refrain from raising such unrelated issues in the present proceedings.

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.**

We shall conclude our submission before Hon'ble Commission as follows:

- i) **The petitioner power plant was installed as industry and doesn't fall under the category of generation company as defined under section 2 (28) of Electricity Act 2003.**

- ii) PPA under electricity Act 2003 can't be signed on the basis of MOUs signed for putting up industries. This petition under 62 and section 86(1) (a) of the Electricity act 2003 read with Madhya Pradesh Electricity Regulatory Commission (Terms & Conditions for determination of Generation Tariff), Regulation, 2015, cannot be fulfilled.
- iii) The benefit of power offered in MOUs was the return to Govt. of M.P. in return of various concessions provide by Govt. of M.P. to these companies including petitioner, as industry Govt. of M.P. is bound by APTEL order para 61, for not availing power, if it works out to be more than Rs. 2.45/unit. This order of APTEL also decides that this petition can't be filled under section 62 and section 86(1) (a) of the Electricity Act 2003 read with Madhya Pradesh Electricity regulatory Commission (Terms & Conditions for determination of Generation Tariff), Regulation, 2015.
- iv) PPAs are signed without requirement of power .Petitioner plant causing surplus power in M.P. and surplus power is being sold at very cheap rates. This will cause further increase in tariff and hence against public interest.
- v) This plant will create environmental hazards without supplying any power to people of M.P.
- vi) PPAs signed are illegal, in violation of APTEL order, in violation of MoP New Delhi notification in which debars signing of PPAs under section 62 of Electricity Act 2003, in the year 2006 itself.
- vii)The arrangement of surplus power by signing illegal PPAs and then paying back down charges and selling power at throw away prices is criminally against public of M.P.
- viii)We believe that the orders passed by Hon'ble Commission were based on misleading information provide by petitioner and hence all the past orders regarding this petitioner may kindly be reviewed as laid down under section 151 of CPC.

Petitioner's response:

1. *It is submitted that the contents of Para Nos. 29 to 32 are wrong and denied. It is submitted that the Petitioner has achieved Commercial Operation Date ("COD") of its Project in accordance with the prevailing Regulations and the relevant documents relating to COD have already been submitted before this Hon'ble Commission in previous Petitions filed by the Petitioner.*

2. *It is submitted that the reasons for delay in achieving COD of the Project on account of external factors/ reasons beyond control of the Petitioner was explained in detail before this Hon'ble Commission in Petition No. 68 of 2016. After carefully examining the reasons provided by the Petitioner, this Hon'ble Commission in its Order dated 01.12.2017 was pleased to hold that this delay was not attributable to the Petitioner. The relevant findings of this Hon'ble Commission is extracted here in below:-*

“69. In view of the above mentioned facts and the reasons enumerated by the petitioner along with the documents placed on record in support of all such reasons, the delay in achieving commercial operation of Unit No.1 is not attributable to the petitioner.”

Therefore, the Objections of the Objector are irrelevant and deserve to be rejected by this 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 No.-1 of the Petitioner's Project.

Comment:

33. We, the stakeholders who purchase electricity of M.B. POWER are filing our valuable comments/responses. It is a humble request from the Commission that before taking any decision on tariff related matters, Kindly review our following objections.

- **During final tariff determination of Unit No. 1, it was mentioned in para 39 of the petition that subsequent to the technical validation meeting held on 7th September in the Commission's office, the petitioner, by affidavit dated 29th September' 2017 revised the capital cash expenditure towards Unit No.1&2 from Rs. 7048.69 Crore to Rs. 6932.83 Crore in which total cash expenditure for Unit No. 1 has been estimated as Rs 4570.29 Crore. This represents that**

out of this total cash expenditure, only Rs. 2362. 54 Crore is left for Unit No. 2.

- It is to be seen that against of this amount, the capital cost which was approved by the Commission till the date of CoD amounted to Rs. 4047.95 Crore under Regulations' 2015 on 01st December' 2017. Additional Capitalisation from 20th May' 2015 to 31st May' 2016 was considered Rs. 187.94 crore and final capital cost as on 31st March' 2016 amounted to Rs. 4235.89 Crore and hence MYT tariff for year 2016-17 to 2018-19 as well as True up Order Under petition No 11 of 2018 was also carried out.

Petitioner's Response to Opening Para:

The contents of Opening Paras, except those which are a matter of record, are wrong and denied. It is submitted that the Petitioner has filed the present Petition in compliance with the directions of this Hon'ble Commission and in terms of the applicable Tariff Regulations.

Comment:

34. Technical validation meeting held on 07th September' 2017, the total capital cost amount left for Unit No. 2 was Rs. 2362.54 but the petitioner filed the capital cost of Rs. 2816.24 Crore which was almost completely approved by the commission amounting to Rs. 2814.66 in the provisional tariff order for Unit No. 2 dated 28th October' 2017. The petitioner was directed to file the final tariff petition at the earliest along with the Annual Audited Accounts and all other required details / documents. The Unit-wise break-up of the figures in the audited accounts be also submitted by the petitioner with the final tariff petition in favor of its claims. All discrepancies and information gaps observed by the Commission in this order would be eliminated while filing the final tariff petition.

- It is to noted that the petitioner has not been able to successfully explain claimed capital cost in petition no 10 of 2018. Capital cost which was determined for Unit No 1 under tariff regulations' 2015 based on Regulation 8.3 and cost of few item line were divided in legal rations between Unit No. 1&2. Hence it was the duty of the Petitioner to present the petition for determination of Final tariff order for Unit No 2 strictly on these conditions but it is seen that all these points has been neglected in the petition.
- The petitioner has added the cost component amounting to Rs.649.45 Crore associated with common assets/ facilities of the Project which was not been considered by the Hon'ble Commission as a part of capital cost of Unit-1.

Accordingly, this component of Rs.649.45 Crore is now being included by the Petitioner's part of Capital Cost of Unit-2 as on its COD and after addition of Rs 2816.24 Rs, the petitioner has filed total capital cost of Rs. 3465.70 which is based on baseless and purely wrong contention. It is not mentioned under any regulation that any amount which has not been considered in any of the previous petition can be included while filing for another petition. Hence, Capital cost of Rs 3465.70 mentioned in para 70 of the petition should be denied.

It is a humble request from the Commission that final tariff order for Unit No 2 should be only determined on the basis of final tariff approved for Unit No.1 which was based on technical validation meeting.

Petitioner's Response:

The contents of Para Nos. 34 are wrong and denied. It is submitted that the Petitioner has submitted all necessary details regarding the claimed capital cost of Unit-2 at Para Nos. 45 to 61 of the present Petition, and the Objections of the Objectors to the contrary are liable to be ignored by this Hon'ble Commission. It appears that the Objectors have filed the Objections without actually perusing the Petition only to derail the present proceedings. Therefore, the submissions of the Objectors are false and deserve to be rejected by this Hon'ble Commission.

During determination of Final Tariff of Unit-1 of the Project for the FY 2015-16 under Petition No. 68 of 2016, as per Annual Audited Accounts of the Petitioner for FY 2015-16, the Petitioner had incurred a cash expenditure of Rs 4,885.35 Crore for Unit-1. However, this Hon'ble Commission while determining the tariff of Unit-1 allowed the capital cost for Unit-1 as Rs. 4,235.89 Crore against this actual cash expenditure of Rs. 4,885.35 Crore made by the Petitioner, there by deferring the tariff on the balance incurred cash amount of Rs.649.45 Crore (i.e. Rs. 4,885.35 Crore -Rs. 4,235.89 Crore) till Unit-2 COD. It is noteworthy that, despite this balance amount of Rs 649.45 Crore been already incurred in cash on the Project and capitalized in the Annual Audited Accounts of the Petitioner for FY 2015-16, the same was deferred for consideration as a part of Project cost/ actual expenditure pertaining to common assets/facilities associated with Unit-2 thereby deferring the tariff on this expenditure till COD of Unit-2. Accordingly, this balance amount of Rs 649.45 Crore has now been claimed as part of capital cost of Unit-2 under the present Petition.

As clearly evident from above, the cash expenditure of Rs 649.45 Crore has not been

disallowed by this Hon'ble Commission but was only deferred for consideration as a part of the capital cost till COD of Unit-2. As such, the allegations made by the Objectors are completely baseless, misleading and devoid of any merits and ought not to be considered by this Hon'ble Commission.

Further, in this regard, it is pertinent to note that this Hon'ble Commission by its Order dated 28.10.2017 passed in Petition No. 18 of 2017 issued the provisional tariff for Unit-2 of the Project for the period commencing from Commercial Operation Date (“COD”) of Unit-2 (i.e. 07.04.2016) to 31.03.2019. This was subject to adjustment as per Regulation 8.15 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 (“MPERC Tariff Regulations, 2015”) on determination of final tariff by this Hon'ble Commission after submission of the Annual Audited Accounts and all other relevant details/documents and clarifications to the satisfaction of this Hon'ble Commission. Accordingly, the present Petition has been filed by the Petitioner.

Comment:

35. It is to be noted that as per PPA dated 05.01.2011_executed between the Petitioner and Respondent No. 1, the Scheduled Commercial Operation Date (“SCOD”) of Unit-2 of the Petitioner’s was November 2014. The petitioner has shown that since the CoD of Unit No 1 was delayed, hence there was a automatic delay in achieving SCOD of Unit No. 2 which is a baseless fact. Hence, it is a humble request from the Commission that IDC should be calculated only on the approved total capital cost till the date of SCOD.

Petitioner’s Response:

The contents of Para No. 35 are wrong and denied. The Objectors have alleged that as per the Power Purchase Agreement (“PPA”) dated 05.01.2011 executed between the Petitioner and Respondent No. 1, the Scheduled Commercial Operation Date (“SCOD”) of Unit-2 of the Petitioner’s was November 2014. This allegation is completely baseless and factually incorrect and devoid of any merits. It is further submitted that Article 4.1.5 and Article 4.1.6 of this PPA provides as under:-

“4.1.5 Scheduled Commercial Operation Date

*The Company shall achieve Commercial Operation Date for the first Unit within Sixty (60) Months from the date of signing of Implementation Agreement (i.e. 01st December 2009) and **second Unit of the Power Station within six (6) Months thereafter.***

4.1.6 Revised Scheduled Commercial Operation Date

*The Parties may mutually agree to revise the Scheduled CoD for Commissioning of any Unit or the Power Station (hereinafter referred to as Revised Scheduled Commercial Operation Date or Revised Scheduled COD) **and such Revised Scheduled COD shall thereafter be the Scheduled COD.***

(Emphasis Supplied)

It is submitted that on a conjoint reading of Article 4.1.5 with Article 4.1.6 of the PPA, it is evident that Unit-2 of the Project was to be commissioned after 6 months of the COD of Unit-1. Further, once the parties have mutually agreed to revise the SCOD of a Unit, the Revised SCOD would be considered the SCOD of that Unit. This Hon'ble Commission, at para 67(e) of the Order dated 01.12.2017 passed in Petition No. 68 of 2016 (for determination of final tariff of Unit 1 of the Project) has noted that the parties have concurrently revised the SCOD in terms of the provisions of the PPA.

It is submitted that when the SCOD of Unit-1 was revised to 20.05.2015, the SCOD of Unit 2 stood revised to a date 6 months after 20.05.2015 i.e. 19.11.2015. Thereafter, Respondent No.1 by its letter dated 22.04.2016 has itself acknowledged that the original SCOD of Unit-2 was November 2015 and further agreed to revise the SCOD of Unit-2 from November 2015 to April 2016. Therefore, the Objections of the Objectors in this regard ought not to be considered by this Hon'ble Commission.

It is submitted that the delay in the Project execution has been on account of the external factors/ reasons beyond the control of the Petitioner, which delayed the commencement of the Project construction activities by more than 14 months. This has also been duly endorsed and acknowledged by this Hon'ble Commission in its order dated 01.12.2017 passed in Petition No. 68 of 2016. It is further submitted that the Petitioner has already provided the external factors/ reasons beyond the control of the Petitioner leading to delay in COD of the Project/ Unit-2 at Para No. 20 to 44 of the present Petition, and the Petitioner craves leave to refer to the same. In light of the same, the Objections of the Objectors ought to be rejected by this Hon'ble Commission.

Comment:

Adjustment of sum insured as a result of the accident

36. It is to be noted that the Petitioner has not submitted any relevant details about the accident/forced outage in Unit No 2 of the Petitioner' s Project and its

subsequent restoration and commencement of operations. The commissions should direct the petitioner to file all the details with respect to the insurance claimed so that it can help in lowering the tariff determined for Unit No 2.

Petitioner' Response to Para No. 6:

The contents of Para No. 36 are wrong and denied. The Petitioner had already submitted before this Hon'ble Commission, the relevant details about the accident/ forced outage in Unit-2 of the Petitioner's Project and its subsequent restoration and commencement of operations. Further, the details with respect to the insurance have also been submitted by the Petitioner before this Hon'ble Commission. It is further submitted that the cost incurred on rectification/repairing works for revival of Unit-2 is being settled by the Petitioner with its insurance Company and accordingly such cost has not been included in the capital cost as of Unit-2 as claimed in the present Petition. In light of the same, the Objections of the Objectors ought to be rejected by this Hon'ble Commission.

Comment:

37. Petitioner submitted that under para 62 of the petition, it has claimed additional capitalization of Rs 44.28 Crore which has not been clearly explained under Provisions in Tariff Regulations' 2015, Regulation 20. Hence, the amount of additional capitalization should not be accepted by the Hon'ble Commission.

Petitioner's Response:

*The contents of Para No. 37 are wrong and denied. It is submitted that the Petitioner at Para No. 62 of the present Petition has provided the details of additional capital expenditure ("**ACE**") amounting to Rs. 44.28 Crore. It is further submitted that the ACE amounting to Rs. 44.28 Crore (on Cash basis) for Unit-2 during FY 2016-17 has been claimed against the liabilities/Provision of Rs. 396.67 Crore as on 07.04.2016 as per submitted capital cost stated in Para 59 of the present Petition. The break-up of ACE claimed for FY 2016-17 pertaining to Unit-2 is as follows:*

- (a) Discharges of outstanding liabilities corresponding to allowed assets/works as on 07.04.2016 under original scope of work: Rs 36.46 Crore.*
- (b) Physical addition of following assets under Unit-2 during the FY 2016-17 under original scope of works: Rs 7.81 Crore.*

Therefore, the submissions of the Objectors are baseless and deserve to be rejected by this Hon'ble Commission.

Comment:

Tax on Return on Equity

38. Under para 74 of the petition, the petitioner demanded tax on return on equity. It is a humble request from the Hon'ble Commission that no MAT should be provided on Return on equity for the FY 2017-18 and FY 2018-19 since it has already been considered in the Provisional Tariff Order dated 28th October' 2017 and petitioner clearly stated that it has not given any profits to the company during the year 2016-17 and that is why there is no demand of MAT in this petition for the year 2016-17.

In Regulation 30.2 (c) of the MPERC Tariff Regulations, 2015 provides that 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. But there is no explanation of this in the petition.

Petitioner's Response:

The contents of Para No. 38 are wrong and denied. It is submitted that the Petitioner has provided the details of calculation of Return on Equity (including MAT) for FY 2017-18 to FY 2018-19 at Para No. 74 and 75 of the present Petition. It is submitted that this Hon'ble Commission may be pleased to allow the Return on Equity based on the same.

It is further submitted that the Regulation 30 of the MPERC Tariff Regulations, 2015 provides for return on equity, inter alia, for thermal generating stations. However, the provisos 30(2)(c) and 30(2)(d) of the aforesaid Regulation 30 are not applicable to the Petitioner's Project since Restricted Governor Mode Operation ("RGMO")/ Free Governor Mode Operation ("FGMO") was duly installed at the time of COD of the Petitioner's Project and the Petitioner's Project has been duly operating under RGMO/ FGMO. The details of the same have already been submitted by the Petitioner before this Hon'ble Commission. Therefore, the submissionsof the Objectors are baseless and deserve to be rejected by this Hon'ble Commission.

Comment:

Non Tariff Income:

39. It is to be noted that there are no details of Non-Tariff income been filed in the

petition which is important to be filed under Regulation 53 of 2015.

Petitioner's Response:

The contents of Para No. 39 are wrong and denied. It is submitted that the details of the non-tariff income for the Project during FY 2016-17 has already been submitted before this Hon'ble Commission by the Petitioner. It is accordingly submitted that any Objections to the contrary made by the Objectors merit no consideration by this Hon'ble Commission and deserve to be rejected by this Hon'ble Commission.

Comment:

40. It has been noted that only 41.23 MU electricity has been scheduled by MPPMCL during the date of CoD till 16th May' 2016 which is relatively very less than the allocated fraction. Further under PPA dated 05.01.2011 under regulation 4.3.3. and 4.3.4, electricity which is not scheduled by electricity distribution companies and if sold in open markets , the income other than fuel costs would be divided equally which has no explanation in the subject petition.

Petitioner's Response:

The contents of Para No. 40 are wrong and denied. It is submitted that no unscheduled Available Capacity from the Capacity contracted to the Procurers (Respondent Nos. 1 to 4) under the PPA dated 05.01.2011 from the Project has been sold by the Petitioner to any third party. Therefore, the alleged contention of sharing of such sale realization with the Procurers (Respondent Nos. 1 to 4) in excess of Energy Charges has no basis and ought to be rejected by this Hon'ble Commission.

Comment:

41. The petitioner has also not filed any details about PAF/PUF and other technical parameters details which is important for determining the final tariff order for 2016-17. Also, there is no detailed explanation of controllable and uncontrollable parameters according to Regulation 2015 under section 8.7 and 8.8 which represents that the petition is incomplete and hence, tariff determination would be difficult.

Petitioner's Response:

The contents of Para No. 41 are wrong and denied. It is submitted that there have been no financial gains to the Petitioner in terms of actual performance of the operational parameters like Station Heat Rate, Secondary Fuel Oil Consumption, Auxiliary Energy

Consumption and Annual Plant Availability Factor etc. of the Unit-2 of the Petitioner's Project during FY 2016-17 vis-à-vis their respective normative value(s) prescribed under MPERC Regulations. Further, the actual values of these operational parameters of Unit-2 for FY 2016-17 have also been submitted by the Petitioner to this Hon'ble Commission. Therefore, the submissions of the Objectors are devoid of merit and ought to be rejected by this Hon'ble Commission.

Comment:

42. It is to be noted from leading newspapers that Govt. has extended date to avail certification for mega power project, till March 2022. Under Mega Power Policy, a project developer is required to tie-up a minimum of 70% of the project Installed Capacity through PPAs under Competitive Bidding Process_ and the remaining electricity be sold in regulated markets.

Since, petitioner's 35% power is tied up with under the PPA with M.P, hence it is impossible to tie-up a minimum of 70% of the project Installed Capacity through PPAs under Competitive Bidding Process.

It is a humble request from the Hon'ble Commission that the rates of tariff for supply of power outside Madhya Pradesh should also to be considered by this Hon'ble Commission for tariff determination process since, only 60% of the capacity charge is scheduled in M.P. which is rising the cost of fixed charges.

It is also a humble request from the Hon'ble Commission to compare the bidding invited by Power Finance Corporation ("PFC") in June 2018 for 2500 MW with the power being supplied by the Petitioner to Madhya Pradesh under the long term PPA dated 05.01.2011 which implies profit/loss to M.P under PPA under regulation 10.1.1

Petitioner's Response:

The contents of Para No. 42 are wrong and denied. The Objectors have alleged that to avail the benefits under "Mega Power Policy", a project developer is required to tie-up a minimum of 70% of the project Installed Capacity through PPAs under Competitive Bidding Process. This is a baseless and factually incorrect allegation, since as per the "Mega Power Policy "notified by the Ministry of Power ("MoP"), power requirement tie-up through PPAs under Competitive Bidding Process is 65% of the project Installed Capacity and the balance 35% power may be tied-up with under PPA with the Host State under regulated tariff to be approved by the respective State Electricity Regulatory Commission

(SERC). It is submitted that the objections of the Objectors in this regard are baseless and therefore, this Hon'ble Commission ought not to consider the same

It is further submitted that the contention of the Objectors that the rates of tariff for supply of power outside Madhya Pradesh have also to be considered by this Hon'ble Commission is wrong and without any basis. It is submitted that the Petitioner is supplying power to the State of Uttar Pradesh through PTC India Ltd. on the tariff discovered and adopted through competitive bidding process and as such no separate tariff determination by any Electricity Regulatory Commission is involved. However, present proceedings involved determination of tariff by this Hon'ble Commission based on the capital cost of the Project after conducting due prudence check. It is respectfully submitted that the principles of tariff determination under the present proceedings are entirely different from tariff discovered/ adopted under competitive bidding process and as such the tariff under both these processes are different and non-comparable. Further, the present proceedings are restricted to determination of final tariff for supply of power to the State of Madhya Pradesh from the Unit-2 of the Petitioner's Project. The interpretation of the Objectors in this regard merits no consideration by this Hon'ble Commission.

Further, the Objectors have tried to compare the bidding invited by Power Finance Corporation ("PFC") in June 2018 for 2500 MW with the power being supplied by the Petitioner to Madhya Pradesh under the long term PPA dated 05.01.2011. Such a comparison is completely absurd as the referred bid has been invited by PFC on "Medium Term" basis with supply period being only 3 Years as against the long term PPA dated 05.01.2011 having a term of 20 Years. Hence this contention of the Objectors is completely baseless and such absurd comparisons are liable for rejection by this Hon'ble Commission.

Comment

43. It is seen that the petitioner has not filed the present Petition after complying with all the directions of this Hon'ble Commission in the Provisional Tariff Order dated 28.10.2017 passed in Petition No. 18 of 2017. Hence, it is a request from the Hon'ble Commission that petitioner be directed to present the petition complying with all the directions of this Hon'ble Commission.

Petitioner's Response:

The contents of Para No. 43 are wrong and denied. It is submitted that the Petitioner has filed the present Petition after complying with all the directions of this Hon'ble Commission in the Provisional Tariff Order dated 28.10.2017 passed in Petition No. 18 of 2017. It

appears that the Objectors have filed its Objections without actually perusing the present Petition and has filed these Objections with the sole intention of derailing and delaying the adjudication of the present Petition. It is submitted that the Objections of the Objectors be rejected on this ground itself.

In view of the above, it is prayed before this Hon'ble Commission to reject the arbitrary submissions made by the Objectors and proceed with the tariff determination for Unit-2 of the Petitioner's Project.

Comment:

44. It is to be noted that there was no public hearing fixed when provisional tariff for Unit No 2 dated 28.10.2017 was filed. Hence, when information for determination of final tariff order for Unit No. 2 through public notice is released, we are raising following issues/comments.

Petitioner's Response:

The contents of Para No. 1, except those which are a matter of record, are wrong and denied. It is submitted that the Petitioner has filed the present Petition in compliance with the directions of this Hon'ble Commission and in terms of the applicable Tariff Regulations.

Comment:

45. It is to be kindly noted that MOU dated 04th June' 2018 signed by M.P. Govt where it was promised that 30% of installed capacity per unit charges purchased from any private electricity company would be approved by MPERC. The long term PPAs were signed in the year 2011 with several companies including this Petitioner which were against MoP directives also. These PPAs were illegal and against public interest on various grounds. The Petitioner has also violated the MPERC (Power Purchase and Procurement Process) Regulations, 2004 which provided for future power procurement by the Distribution Licensees only through the Competitive Bidding process and accordingly the PPA is illegal. Also, the provisions of the MoU have been disregarded in the PPA. The PPA executed by the Petitioner is also seen to be disregarding the provisions of the Memorandum of Understanding ("MoU") dated 04.06.2008 executed between the Government of Madhya Pradesh ("Govt. of MP") and the Petitioner . It is submitted that:-

- (a) **As per Clause 12 of the MoU, the rate at which the electricity would be purchased by the Govt. of MP will be 'approved' by this Hon'ble Commission.**
- (b) **However, the Petitioner has disregarded Clause 12 of the MoU and has incorporated the term 'determined' instead of 'approved' in the PPA for fixing the rate at which electricity would be purchased by the Procurer.**

Hence, the PPA has been entered into by the Petitioner not in compliance of the provisions of the Electricity Act.

Also, In PPA there is a signature of one respondent i.e., Shri Gajra Mehta, Main Engineer(Commercial)of M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd., Indore who has been appointed on 31st January 2011 and the PPA has been approved on 15.01.2011. Hence this PPA stands illegal.

Petitioner's Response:

The contents of above paras are wrong and denied. It is submitted that the Objections raised by the Objector are based on incorrect interpretation of the provisions of the Electricity Act. In this regard, it is submitted that this Hon'ble Commission has the necessary powers under Section 61 and Section 62 of the Electricity Act to determine tariff for the Petitioner's Project and any objections to the contrary are baseless.

It is submitted that this Hon'ble Commission has the jurisdiction under Section 86(1)(b) of the Electricity Act to regulate the purchase of electricity, including the price at which the electricity is to be procured from the generating companies. This Hon'ble Commission has the discretionary powers to either grant approval to the PPA under Section 62 of the Electricity Act or to direct the distribution licensee to resort to Competitive Bidding Process as per Section 63 of the Electricity Act. In the present case, this Hon'ble Commission chose Section 62 for the determination of tariff and as such, there is no occasion for the Objector to contend that the tariff determination in the present proceedings is illegal.

The Objector has alleged that the Petitioner has violated the MPERC (Power Purchase and Procurement Process) Regulations, 2004 which provided for future power procurement by the Distribution Licensees only through the Competitive Bidding process and accordingly the Objector has alleged that the PPA is illegal.

It is most respectfully submitted that the MPERC (Power Purchase and Procurement Process) Regulations, 2004 is in the nature of a delegated legislation framed by the Hon'ble State Commission under the power vested on it by Section 181 of the Electricity

Act, which is a statutory power of promulgating regulations as and when required. This power is in the nature of subordinate legislation and is derived from the enabling act, which is the Electricity Act 2003. It is most respectfully submitted that it is a settled position of law that a delegated legislation cannot override the provisions of the parent/enabling Act. In this regard, reliance is placed on the following Judgments passed by the Hon'ble Supreme Court:

- (a) *Judgment in the matter of St. Johns Teachers Training institute Vs. Regional Director (2003) 3 SCC 321, wherein the Hon'ble Supreme Court has held that Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. The relevant extracts of the said Judgment of the Hon'ble Supreme Court are reproduced hereunder:*

"A Regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and Regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it."

- (b) *Judgment in the matter of Kerala SamsthanaChethuThozhilali Union versus State of Kerala and Ors (2006) 4 SCC 327, wherein the Hon'ble Supreme Court has held:*

"17. A rule is not only required to be made in conformity with the provisions of the Act whereunder it is made, but the same must be in conformity with the provisions of any other Act, as a subordinate legislation cannot be violative of any plenary legislation made by Parliament or the State Legislature."

- (c) *Judgment in the matter of State of Madhya Pradesh versus M/s G.S. Dail and Flour Mills (1992) Supp (1) SCC 150, wherein the Hon'ble Supreme Court has held:*

"19. The second ground on which the Full Bench has sought to invoke the instructions is also not correct. Executive instructions can supplement a statute or cover areas to which the statute does not extend. But they cannot run contrary to statutory provisions or whittle down their effect".

It is accordingly submitted that if such arbitrary contention of the Objector is accepted then the entire tariff determination exercise under Section 62 and Section 86(1)(b) of the Electricity Act will be rendered otiose. It is submitted that the Objector's aforesaid allegations are wrong and based on an incorrect understanding of the existing regulatory regime. In this regard, reliance is placed on the following Judgments passed by the Hon'ble Appellate Tribunal for Electricity:-

- (a) Judgment dated 31.03.2010 in BSES Rajdhani Power Ltd. v. DERC &Ors.: 2010 ELR(APTEL) 0404:-

"31. In regard to the third aspect it is to be stated that clause 5.1 of the NTP which relates to the power under Section 63 of the Act cannot be read to debar the State Commission from exercising its statutory power for determination of tariff under Section 62(1) of the Act for all future procurement of power.

32. In the light of the above discussions, the argument advanced by the Ld. Counsel for the Appellants that resort to tariff determination under Section 62(1)(a) without adopting the Competitive Bidding Process will render clause 5.1 of the NTP redundant as the distribution licensees in the future will procure power from the generating companies only through the negotiated route, cannot be accepted as it is always open to the State Commission to direct the distribution licensee to carry out power procurement through Competitive Bidding Process only in case where the rates under the negotiated agreement are high. In other words, the State Commissions have been given discretionary powers either to chose Section 62, 62(1)(a) to give approval for the PPA or to direct the distribution licensee to resort to the Competitive Bidding Process as per clause 5.1 of the NTP read with Section 63 of the Act. As such, the main contention urged by the Ld. Counsel for the Appellant would fail."

(Emphasis Supplied)

- (b) Judgment dated 28.05.2015 passed in Noida Power Company Ltd. v. UPERC &Ors.in Appeal No. 88 of 2015:-

"21. The points which arose for consideration before this Tribunal inter alia were whether the compliance with Competitive Bidding Process as envisaged in Clause 5.1 of the National Tariff Policy is mandatory for procurement of power by a

distribution company and whether Section 63 of the Electricity Act is the exception to Section 62 and the guidelines issued by the Central Government will operate only when the tariff is being determined by the Competitive Bidding Process. This Tribunal observed that there are two routes and options provided under the Electricity Act: (a) tariff determination under Section 62(1)(a) by the Appropriate Commission in terms of Section 79 and Section 86 of the Electricity Act and (b) tariff discovery in terms of the Competitive Bidding Process in accordance with the Guidelines issued by the Government of India which shall be binding on the Appropriate Commission under Section 63 of the Electricity Act. This Tribunal considered Section 63 of the Electricity Act and Clause 5.1 of the National Tariff Policy which provides that the power procurement for future should be through a transparent Competitive Bidding Process using Guidelines issued by MoP on 19.1.2005 and also considered clarificatory circular dated 28.8.2006 issued by MoP and held that Section 63 is optional route for procurement of power by a distribution licensee through Competitive Bidding Process and in case the same is followed, the Appropriate Commission is required to adopt the said tariff. However, after referring to relevant judgments of the Supreme Court, this Tribunal held that the power under Section 62(1)(a) and Section 62(1)(b) conferred on the State Commission for determination of tariff through negotiated route cannot in any manner be restricted or whittled down by way of a policy document or a subordinate legislation or notification issued by the Government/Executive and any rules or executive instructions or notifications which are contrary to any provisions of the tariff statute shall be read down as *ultra vires* of the parent statute. **This Tribunal rejected the contention that tariff determination under Section 62(1)(a) without adopting Competitive Bidding Process will render Clause 5.1 of the National Tariff Policy redundant as the distribution licensees in future will procure power from the generating companies through the negotiated route. This Tribunal observed that the said submission cannot be accepted as it is always open to the State Commission to direct the distribution licensee to carry out power procurement through Competitive Bidding Process only in case where the rates under the negotiated agreement are high. This Tribunal clarified that the State Commissions have been given discretionary powers either to choose Section 62, 62(1)(a) to give approval to the PPA or to direct the distribution licensee to resort to the Competitive Bidding Process as per Clause 5.1 of the National Tariff Policy read with Section 63 of the Electricity Act.**

22. We find that the State Commission was mindful of this judgment. It has made a reference to it, but it has not discussed it at length or applied it to the facts of the instant case. The State Commission has taken a view that the said judgment relates to period prior to 5.1.2011. The State Commission has observed that after 5.1.2011 no MoU route long term agreement has been allowed by it in line with MoP Guidelines. It has then given a categorical finding that after 5.1.2011 for long term power purchase only competitive route is available. It is pointed out to us that on 5.1.2011, MoP had only brought in the procurement of power from the Government Generating Companies also under the Guidelines for Competitive Bidding Procurement which was notified in 2006. There was no other change in the Guidelines to conclude that the procurement of power from non-Governmental Generating Companies was modified on 5.1.2011 and, therefore, BSES Rajdhani will continue to apply to the present case. We do not want to express any opinion on this aspect but we find that the State Commission has not considered this submission. We say so because there is no discussion in the impugned order in regard to this submission. **The State Commission's observation that for long term power purchase, only competitive route is available appears to be in teeth of the clear finding of this Tribunal in BSES Rajdhani that the procurement of power through the negotiated route and not through the competitive route is permissible under Section 62 of the Electricity Act notwithstanding Section 63 thereof and MoP Guidelines mandating such Competitive Bidding Process for procuring power on long term basis.** Undoubtedly, this Tribunal has also laid down that the State Commissions have been given discretionary powers either to choose Section 62, 62(1)(a) to give approval to PPA or to direct the distribution licensee to resort to the Competitive Bidding Process as per Clause 5.1 of the National tariff Policy. **The State Commission, therefore, can in its discretion choose either course.** But, exercise of discretion has to be based on rules of reason and justice. Arbitrary exercise of jurisdiction is opposed to principles of fair play....”

(Emphasis Supplied)

It is further submitted that while referring to MPERC (Power Purchase and Procurement Process) Regulations, 2004 for making baseless allegations, the Objector has conveniently chosen to overlook the saving clauses in these Regulations which clearly provide that nothing contained in these Regulation can restrict the State Commission to adopt in conformity with the provisions of the Act or any procedure, which is inconsistent with any of the provisions of these Regulations. The relevant extracts of the MPERC (Power Purchase and Procurement Process) Regulations, 2004 Regulation in this regard

are reproduced hereunder:

“58. Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters.”

It is submitted that the allegations made by the Objector on the legality of the Power Purchase Agreement dated 05.01.2011 executed between the Petitioner and Madhya Pradesh Power Trading Company (“MPPTCL”) are baseless. It is submitted that the said PPA was duly presented by MPPTCL before this Hon’ble Commission for its approval on 13.01.2012. On 07.09.2012, this Hon’ble Commission after going through the provisions of the PPA accorded its approval to the PPA by the Order passed in Petition Nos. 7, 8, 9, 10 and 12 of 2012, after following the due process.

It is submitted that the Objector’s allegation that the PPA was executed by the Petitioner disregarding the provisions of the Memorandum of Understanding (“MoU”) dated 04.06.2008 executed between the Government of Madhya Pradesh (“Govt. of MP”) and the Petitioner are denied as incorrect and baseless. It is submitted that the Objector has alleged that:-

- (a) As per Clause 12 of the MoU, the rate at which the electricity would be purchased by the Govt. of MP will be ‘approved’ by this Hon’ble Commission.*
- (b) However, the Petitioner has disregarded Clause 12 of the MoU and has incorporated the term ‘determined’ instead of ‘approved’ in the PPA for fixing the rate at which electricity would be purchased by the Procurer.*

It is submitted that the aforesaid allegations of the Objector are baseless and contrary to the factual position. It is submitted that the Electricity Act nowhere mentions the term ‘approve’ with respect to fixing of tariff. The Electricity Act only specifies two terms, viz. ‘determine’ and ‘adopt’. As per Section 62 of the Electricity Act, the Appropriate Commission shall ‘determine the tariff’ and as per Section 63 of the Electricity Act, the Appropriate Commission will ‘adopt the tariff. The PPA has been entered into by the Petitioner in compliance of the provisions of the Electricity Act. Therefore, the Objector’s contention with respect to the terminology of the PPA is misplaced and erroneous.

It is submitted that this Hon'ble Commission has the jurisdiction under Section 86(1)(b) of the Electricity Act to regulate the purchase of electricity, including the price at which the electricity is to be procured from the generating companies. This Hon'ble Commission has the powers to either grant approval to the PPA under Section 62 of the Electricity Act or to direct the distribution licensee to resort to Competitive Bidding Process as per Section 63 of the Electricity Act. In the present case, this Hon'ble Commission chose Section 62 for the determination of tariff and as such, there is no occasion for the Objector to contend that the provisions of the MoU have been disregarded in the PPA.

It is further submitted that once the parties have entered into a PPA with mutually agreed terms and conditions, all previous understandings and agreements between the parties cease to exist. The parties are thereafter to be governed by the provisions of the PPA which has been duly approved by this Hon'ble Commission and is a statutory contract with legal sanctity. The Objector's objections that the PPA itself is a faulty document ought to be rejected. In view of the above, it is submitted that the Objections raised by the Objector deserve to be dismissed.

Comment:

46. Above instance specify that the PPA signed between presently Madhya Power Management Company vs. MB Power is illegal and hence, tariff determination for Unit No 2 can't be legally determined. Hence, it is a humble request from the Commission that since this is the first time that final tariff determination for Unit No. 2 is being carried out, hence hearing on PPA dated 05.01.2011 be fixed and this PPA should be cancelled which will not raise any question on determining the tariff for Unit No. 2.

Petitioner's Response:

The contents of above para are wrong and denied. It is submitted that the Objector is raising baseless Objections six years after the PPA has been duly approved by this Hon'ble Commission. The Petitioner has duly executed the PPA on 05.01.2011 and this Hon'ble Commission has accorded its approval to the said PPA vide its order dated 07.09.2012 after carefully examining the provisions of the PPA. The PPA, as such, is a statutory contract with legal sanctity. The Objector is attempting to question the veracity of the approval granted by this Hon'ble Commission by its order dated 07.09.2012. It is further submitted that the Objector is trying to bypass the statutory mandate by raising irrelevant grounds, which merit no consideration of this Hon'ble Commission.

Such actions of the Objector, seeking to bypass the statutory mandate are also against the accepted legal doctrine that a party cannot do indirectly, what it is not free to do directly. In this regard, reliance is placed on the Judgment passed by the Hon'ble Supreme Court in the matter of *U.P. Coop. Federation Ltd. v. Singh Consultants and Engineers (P) Ltd.*, (1988) 1 SCC 174, wherein the Hon'ble Supreme Court has held as under:

*"21. In the instant case, the learned Judge has proceeded on the basis that this was not an injunction sought against the bank but this was the injunction sought against appellant. But the net effect of the injunction is to restrain the bank from performing the bank guarantee. That cannot be done. **One cannot do indirectly what one is not free to do directly.** But a maltreated man in such circumstances is not remedy less. The respondent was not to suffer any injustice which was irretrievable. The respondent can sue the appellant for damages. In this case, there cannot be any basis for apprehension that irretrievable damages would be caused if any. I am of the opinion that this is not a case in which injunction should be granted. An irrevocable commitment either in the form of confirmed bank guarantee or irrevocable letter of credit cannot be interfered with except in case of fraud or in case of question of apprehension of irretrievable injustice has been made out. This is the well settled principle of the law in England. This is also a well settled principle of law in India, as I shall presently notice from some of the decisions of the High Court and decisions of this Court".*

(Emphasis Supplied)

It is further submitted that this Hon'ble Commission has approved PPA vide its Order dated 07.09.2012. It is a settled position of law that after passing an order, the Court becomes functus officio and cannot reopen the matter. The Hon'ble Appellate Tribunal for Electricity in Appeal No. 57 of 2015 titled as "Chhattisgarh State Power Distribution Company Limited Vs. Chhattisgarh State Electricity Regulatory Commission" has also taken a similar view and held as under: -

***"15. After passing the said orders, the State Commission has become functus officio. it could not have reopened the matter.** The remedy of the Appellant lied elsewhere, which it did not choose to adopt. Appeal No.57 of 2015 is, therefore, not maintainable".*

(Emphasis Supplied)

If the Objector was aggrieved by the approval granted to the PPA dated 05.01.2011, the only remedy available with the Objector would have been to file an Appeal under Section

111 of the Electricity Act. Admittedly, the Objector has not filed any Appeal challenging this Hon'ble Commission's Order dated 07.09.2012 and thus, at this juncture, such misplaced contentions of the Objector merit no consideration by this Hon'ble Commission.

The PPA has been duly signed by all the parties to the PPA and is the governing document for the terms and conditions of power purchase. There is no occasion for the Objector to now question the validity of the PPA which had been approved by this Hon'ble Commission six years back in Sep' 2012. This is especially since the present proceedings are for the determination of final tariff for supply of power from Unit 2 of the Petitioner's Project and not for the approval of the Petitioner's PPA. It is submitted that the Objector has raised irrelevant grounds of objection which deserve to be rejected by this Hon'ble Commission.

It is submitted that the Objector is raising baseless allegations which ought to be rejected by this Hon'ble Commission. The PPA has been approved by this Hon'ble Commission after conducting prudence check and in the interest of the consumers of the State to receive cheap and reliable power. In this regard, the Petitioner craves leave to reiterate its submissions in the foregoing paragraphs of the present Reply which have not been repeated for the sake of brevity.

In view of the above, it is prayed before this Hon'ble Commission to reject the arbitrary submissions made by the Objector which appear to have bene made with the sole objective of misguiding this Hon'ble Commission and derail the present proceedings which ought not to be allowed by this Hon'ble Commission. It is submitted that the Objections deserve to be rejected and this Hon'ble Commission may proceed with the tariff determination for Unit-2 of the Petitioner's Project.