
MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
5th Floor, "Metro Plaza", Bittan Market, Bhopal - 462 016



Petition No.40 of 2012

PRESENT:

Rakesh Sahni, Chairman

IN THE MATTER OF:

**In the matter of determination of the provisional tariff for 2 x 250MW
(Phase-I) coal based Power Project at Bina, District Sagar (M.P.)**

M/s Jaiprakash Power Ventures Ltd., Uttar Pradesh

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 12th December, 2012)

1. The petitioner, M/s Jaiprakash Power Ventures Ltd. (erstwhile M/s Bina Power Supply Co. Ltd. merged with M/s Jaiprakash Power Ventures Ltd.), has filed the subject petition on affidavit dated 16th May, 2012 for determination of provisional tariff for 2 x 250 MW (Phase-I) coal based power project at Bina, District Sagar, M.P. under Section 62 read with Section 86(1)(a) of the Electricity Act, 2003. The petition has been also filed under Regulations 2, 7.1 and 15 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009.
2. The petitioner has broadly submitted the following in the petition :
 - (i) *“M/s Jaiprakash Power Ventures Limited being a generating company within the meaning of Section 2(28) of the Electricity Act, 2003 is filing the present petition seeking Determination of Generation Tariff for sale of power to be generated by its 2 x 250 MW, Coal Based Power Project at Bina, Dist. Sagar, Madhya Pradesh for the period commencing from 30.06.2012. M/s Bina Power Supply Company Limited (BPSCL) entered into a Power Purchase Agreement (PPA) with Madhya Pradesh Power Trading Company Limited on 05.01.2011 pursuant to which the present Thermal Power Project is being developed.*
 - (ii) *Erstwhile BPSCL was originally a subsidiary of the Aditya Birla Power Company Ltd., from whom the petitioner has acquired BPSCL. The petitioner and BPSCL were in the business of generation of Power and the companies decided to consolidate their business through amalgamation. The present Project is now being developed by the petitioner Company.*
 - (iii) *It is pertinent to mention herein that the erstwhile BPSCL entered into PPA's on 5th Jan-2011 with Respondent No.1 and on 20th July, 2011 with Government of Madhya Pradesh (GoMP), for developing, commissioning, operation and maintenance of the Power Station and for generation and supply of 70% (inclusive of 5% of net generated power at variable cost) of the installed capacity of Phase1(2x250 MW)*

of the Power station for a period of 25 yrs at the Regulated Tariff being determined by this Hon'ble Commission.

- (iv) *It is submitted that Government of Madhya Pradesh vide Notification dated 03.06.2006 notified the MP Electricity Reforms Transfer Scheme Rules 2006 for regulating transfer and vesting the functions, properties, interest, right and obligations of MPSEB relating to Bulk Purchase and Supply of Electricity along with related agreement/arrangements in the State Government and transfer and re-vesting thereof by the State Government in Madhya Pradesh Power Trading Company Limited (herein also referred as “MP Tradeco”). It is pertinent to mention herein that Government of Madhya Pradesh on 10.04.2012 notified Madhya Pradesh Power Trading Company Limited as the Holding Company of all Distribution Licensees within the State of Madhya Pradesh and renamed the same to Madhya Pradesh Power Management Company Ltd (**Respondent No.1**).*
- (v) *It is submitted that by virtue of the aforesaid notifications the Respondent No.1 has been authorized to sign the PPAs with the petitioner for purchase of power on behalf of Respondent No.2 to 4 who are the Distribution Licensees within the State of Madhya Pradesh who are also the confirming parties to the PPA.*
- (vi) *A PPA was executed on 12th February, 1996 between Madhya Pradesh State Electricity Board (**MPSEB**) and erstwhile BPSCL to this effect with the object to procure power on the terms envisaged therein. The petitioner took over the erstwhile BPSCL to develop the said Project in 2008. It is currently establishing a 500 MW (2 x 250 MW) Thermal Power Project in Phase I and subsequently based on the availability of coal, Phase II of the Project would be established. “*
3. It is further stated in the petition that the PPA entered into between the petitioner and the Respondent No.1 also provides that the tariff is to be determined by this Commission. The relevant extracts of the PPA are reproduced as follows:

“10.1.1 The Tariff shall comprise Capacity Charge, Variable Charge and any other charges as may be determined by the Appropriate

Commission under Law and as per the norms contained in the Tariff Regulations notified by the Appropriate Commission.”

4. Some relevant details of the project and its cost along with other details as filed in the petition are given below:

- (i) It is submitted by the petitioner that it is in the process of developing a coal based thermal power plant in two phases. The first Phase of the Project shall have an installed capacity of 500 MW i.e. (2X 250) whereas the second phase with a proposed installed capacity of 750 MW i.e (3 X 250 MW) is to be developed subject to the availability of coal. The above facts have also been explicitly mentioned in the PPA under the definition of Contracted Capacity. However, the relevant extracts are reiterated as follows:

“Contracted Capacity shall mean the capacity equivalent to 65% of the Phase-I (2 X 250 MW) and 37 % of Phase-II (3X 250MW) (subject to availability of coal for Phase – II 3 X 250 MW) of Power Station’s installed Capacity contracted with the Procurer as per terms of this Agreement:”

- (ii) The petitioner had granted various contracts including the contracts for BTG, BOP, Transmission lines and Civil Works for the implementation of the Project so as to attain COD of unit 1 (250 MW) of phase I by March, 2012 as specified in the PPA dated 05.01.2011 which has since been extended to July 2012 vide letter dated 01.03.2012 from Respondent No.1.

- (iii) A brief overview of the Project Cost is tabulated below:

Brief overview of Project Cost

S No.	Particulars	Amount (Rs. in Cr.)
I	<u>Total Project cost</u>	3240.00
	<u>Means of Finance</u>	
li	<u>Equity</u>	972.00
lii	<u>Bank & Fl</u>	2268.00
	<u>Total Means of Finance</u>	3240.00

The Debt Equity Ratio being 70:30.

- (iv) The petitioner placed the Order for the main plant equipment (BTG Package including ESP and Station C&I) on M/s BHEL (Public sector undertaking). The contracts for the Balance of Plant (BOP) were awarded to reputed Suppliers based upon their past performances, quality and timely delivery etc. The petitioner awarded the Contract to M/s Jaiprakash Associates Limited for carrying out the entire Civil Works of the project on fast track basis.
- (v) The break-up of the project Cost under various heads is as under:

S No.	Particulars	Amount in Rs. Cr.
1).	Land	41.83
2).	Civil Work	846.83
3).	Plant & Equipment	1603.21
4).	Pre-Commissioning Expenses	201.21
5).	Overheads	113.98
	Total Capital Cost	2807
6).	IDC & Financing Cost	398
7).	Margin for Working Capital	35
	Total Project Cost	3240

- (vi) It has been further submitted by the petitioner that a common loan agreement dated 9th November' 2009 was executed between the erstwhile BPSCL as the "Borrower" and the Banks and Financial institutions as "Lenders" under the Lead of IDBI Bank Limited. IDBI Bank was also appointed as the "Facility Agent" and IDBI Trusteeship Services Limited as "Security Trustee". Amendatory Loan Agreement(s) to include additional Term Loan is being executed shortly by the petitioner with the aforesaid Lenders. The petitioner has availed/is availing term loans for an amount not exceeding Rs.2268 Cr from the Lenders towards part financing of the project.

5. The petitioner filed the following details/documents with the petition:
- Certificate dated 15.11.94 for Incorporation of the Bina Power Supply Company Limited under the Companies Act, 1956.
 - Certificate of the incorporation of Jayprakash Hydro-Power Limited and certificate of the GOI Ministry of Corporate Affairs for change of name

from Jayprakash Hydro-Power Limited to Jaiprakash Power Ventures Limited.

- c) Copy of the minutes of meeting held on 17th June, 2008 between M/s Bina Power Supply Company Limited and officers of GoMP & MD Tradeco.
- d) Copy of the MPSEB approval dated 8th August, 2008 for cancellation of PPA executed on 12.02.1996 and consent for new agreement.
- e) Copy of the Order of Hon'ble High Court Himachal Pradesh dated 25th July, 2011 in respect of the petition filed for merging Bina Power Supply Company Limited into the Jaiprakash Power Ventures Limited.
- f) Copy of the MOU dated 12.08.2008 between petitioner and GoMP. As per MOU the proposed investment for 5X250 MW is Rs.5000 Cr.
- g) Implementation agreement dated 30th January, 2009 signed between M/s Bina Power Supply Company Limited and GoMP.
- h) Copy of the PPA signed between M.P. Tradeco and M/s Bina Power Supply Company Limited dated 5th January, 2011 for Procurement of power on regulated tariff basis.
- i) Copy of the PPA signed between M/s Bina Power Supply Company Limited and Government of Madhya Pradesh on 20th July, 2011 for Procurement of Power on Variable charges basis.
- j) Copies of MoEF letters dated 23.04.1996, 23.03.2001 and 05.08.2009 in respect of environmental clearances for the project.
- k) Copy of the NOC dated 20th May, 2009 issued by Airport Authority of India for the project.
- l) Copy of the NOC dated 20th August, 2009 issued by Ministry of Defence, Government of India.
- m) Letter of Assurance dated 1st June, 2009 from Central Coalfields Limited for supply of coal for the project unit 1&2 under phase-1.

- n) Letter of Assurance dated 1st June, 2009 from South Eastern Coalfields Limited for supply of coal for the project unit 1&2.
- o) Copy of the contract to M/s BHEL for supply and erection for BTG package for 2X250 MW for Bina Thermal Power Station.
- p) Copy of the Contract to Jaiprakash Associates Limited for Civil, Structural and Architectural work of plant and Township including Railway siding dated 25th March, 2009.
- q) Copy of the common loan agreement dated 9th November, 2009.
- r) Copy of the letter dated 9th January, 2012 from the petitioner to request M.P. Tradeco for re-scheduling the CoD of unit-1 from March, 2012 to July, 2012.
- s) Copy of the M.P. Tradeco. letter dated 1st March, 2012 conveying approval of re-scheduling the CoD of unit-1 from March, 2012 to July, 2012.
- t) Copy of the certificate issued by the Chartered Accountant dated 9th April, 2012 for details of expenses up to 31st March, 2012.

6. With the above submissions, the petitioner sought the following tariff in its petition :

	Capacity (Fixed) Charges							Energy (Variable) Charges
	Return on Equity	Interest and Financing Charges on Loan Capital	Depreciation	Lease/ Hire Purchase Charges	O&M Expenses	Interest Charges on Working Capital	Cost of Secondary Fuel Oil	Cost of Primary Fuel
2012-2013	16%, 112.25	172.74	86.47	.03	62.74	29.31	14.84	296.19
2013-2014	16%, 192.42	301.95	148.23	.06	113.70	52.62	25.69	522.99
2014-2015	16%, 192.42	280.46	148.23	.06	121.16	53.45	25.95	538.68

The petitioner also claimed additional RoE @ 0.50% for achieving the CoD in 33 Months for Unit I of Phase I.

Particulars	2013	2014	2015
	Projection	Projection	Projection
Gross Generation (MU)	2171.75	3723.00	3723.00
Net Generation (MU)	1987.15	3406.55	3406.55
Auxiliary Consumption %	184.60	316.46	316.46
Variable Cost per unit	1.49	1.54	1.58
Fixed Cost per unit	2.41	2.45	2.41
TOTAL Cost per unit	3.90	3.99	3.99

7. With the above submission, the petitioner has prayed for the following in the petition :
- a) *Determine the Generation Tariff of Unit 1 and 2 of the Generating Station for Phase I as required under the PPA dated 05.01.2011.*
 - b) *Determine the Variable Charge to be paid by the Government of Madhya Pradesh under PPA dated 20.07.2011.*
 - c) *Determine the Tariff to be paid for the infirm power supplied by the petitioner's Project from the date of Synchronization to the date of Commissioning as mandated under Regulation 19 of the MPERC Tariff Regulations.*
 - d) *Determine the Provisional Tariff of the Project.*
 - e) *Determine an interim Provisional Tariff for the Project till this Hon'ble Commission fixes the Provisional Tariff as sought by the petitioner in prayer (d) above and make the said Tariff applicable for the power being supplied from the Project to the Respondents.*
 - f) *Allow the recovery of the filing fees as and when paid to the Hon'ble Commission and also the publication expenses from the beneficiaries.*
8. The case was listed for motion hearing on 12th June 2012 and the date of motion hearing was postponed to 25th June, 2012 on the request of the petitioner. The petition was admitted on 25th June 2012 and the petitioner was asked to file certain details / information along with all supporting data/documents to process the petition. All such details/information vis-à-vis response by the petitioner filed with the Commission shall be discussed in Para 11.0 of this Order.
9. With regard to the tariff for infirm power sought in the petition, it has been communicated to the petitioner vide Commission's Order dated 28th June

2012 that the provisions under Regulation 19 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulation, 2009 are explicitly clear and do not require any Order of the Commission in this regard.

10. In response to the Commission's directions, the petitioner filed the following additional details/documents on affidavit dated 18th July, 2012 :

- a) Copy of Detailed Project Report prepared for 2x250 MW (phase-I) in January, 2009.
- b) Extract of the minutes of the meeting of the Board of Directors of erstwhile Bina Power Supply Company Ltd. held on 30th September, 2009.
- c) Fuel supply agreement signed on 10th July, 2012 with Central Coalfields Limited.
- d) Apportionment of total expenses upto 31.03.2012 on the Phase-I capacity of 2x250 MW as per clause 8.3 of the Regulation, 2009.
- e) Copy of the Balance Sheet of Bina Power Supply Company Limited as on 31.03.2011.
- f) Copy of the Balance Sheet of Jaiprakash Power Ventures Limited as on 31.03.2011.
- g) Copy of the Balance Sheet of Jaiprakash Power Ventures Limited as on 31.03.2012.
- h) A certificate of chartered accountant dated 14.07 2012 certifying total expenditure of unit 1&2 as on 31.03.2012 along with break-up of components.
- i) Copy of the agreement with WRD Govt. of Madhya Pradesh for supply of water from Betwa River.
- j) Copy of the Information Memorandum prepared by IDBI Bank Ltd. in May, 2009 for term loan of Rs.1928 Cr.

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- k) Copy of the Information Memorandum prepared in December, 2011 by IDBI Bank Ltd. for term loan of Rs.340 Cr.
 - l) Copy of the additional common loan agreement dated 2nd June, 2012 with IDBI Bank Ltd. for term loan of Rs.340 Cr.
 - m) Year-wise and date-wise statement for infusion of equity and drawl of loans from different bankers.
 - n) Unit wise revised break-up of capital cost components and comparison with the original cost components in form TPS-5B.
 - o) Copy of the guaranteed performance parameters given by M/s BHEL.
 - p) Copy of the invoice dated 19.04.2012 for procurement of secondary fuel oil.
 - q) Detailed calculations showing the landed cost of coal including the break-up of various elements thereof both for coal allocated and coal purchased through e-auction.
11. In reference to the Commission's queries mentioned at Para 8, the petitioner also furnished its replies as follows:

- i. **Issue:-** To confirm that no PPA has been executed as on date by the petitioner with any party other than the respondents in the matter for sale of power from the project under Section 62 of the Electricity Act, 2003.

Petitioner's Response:- *"The Petitioner confirms that the Petitioner has not entered into any PPA other than PPA dated 05.01.2011 and PPA dated 20.07.2011 with the Respondents and the Government of Madhya Pradesh respectively".*

- ii. **Issue:-** Justification for seeking tariff for Unit-2 now as the same is scheduled for commissioning by end December, 2012.

Petitioner's Response:- *"The Commission may be pleased to determine Tariff for Unit I separately and combined for Unit I & II as the*

Unit I will be commissioned by end July, 2012 and Unit II (i.e. entire Phase I comprising of 2 Units of 250 MW each) will be commissioned by December, 2012”.

- iii. **Issue:-** It is observed that contract for civil work has been awarded to JP Industries. Please confirm whether or not the petitioner and the said civil contractor are related parties as defined in the Companies Act, 1956. If yes, required permission from Central Government for entering into contract be furnished. Details establishing that the contract awarded to them has resulted from transparent competitive bidding be also furnished

Petitioner’s Response:- *“The petitioner and Jaiprakash Associates Limited (herein referred to as “JAL”) are related as defined under Section 6 of the Companies Act, 1956. Further, it is humbly submitted that both the petitioner and JAL are **Public Limited Companies and listed entities** therefore Section 297 of the Companies Act, 1956 is not applicable on the petitioner or JAL. The Relevant extracts of Section 297 of the Companies Act, 1956 are being reproduced as follows:-*

“297. Board's sanction to be required for certain contracts in which particular directors are interested

(1) Except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company-

(a) for the sale, purchase or supply of any goods, material or services; or

(b) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company:

1[Provided that in the case of a company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government.]

2[(2) Nothing contained in clause (a) of sub-section (1) shall affect-

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- (a) *the purchase of goods and materials from the company, or the sale of goods and materials to the company, by any director, relative, firm, partner or private company as aforesaid for cash at prevailing market prices; or*
- (b) *any contract or contracts between the company on one side and any such director, relative, firm, partner or private company on the other for sale, purchase or -supply of any goods, materials and services in which either the company or the director, relative, firm, partner or private company, as the case may be, regularly trades or does business.*

Provided that such contract or contracts do not relate to goods and materials the value of which, or services the cost of which, exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract or contracts; or

- (c) *in the case of a banking or insurance company any transaction in the ordinary course of business of such company with any director, relative, firm, partner or private company as aforesaid.*

(3) *Notwithstanding anything contained in sub-sections (1) and (2) a director, relative, firm, partner or private company as aforesaid may, in circumstances of urgent necessity, enter, without obtaining the consent of the Board, into any contract with the company for the sale, purchase or supply of any goods, materials or services even if the value of such goods or cost of such services exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract; but in such a case, the consent of the Board shall be obtained at a meeting within three months of the date on which the contract was entered into.*

(4) *Every consent of the Board required under this section shall be accorded by a resolution passed at a meeting of the Board and not otherwise; and the consent of the Board required under sub-section (1) shall not be deemed to have been given within the meaning of that sub-section unless the consent is accorded before the contract is entered into or within three months of the date on which it was entered into.*

(5) *If consent is not accorded to any contract under this section, anything done in pursuance of the contract shall be voidable at the option of the Board.*

(6) *Nothing in this section shall apply to any case where the consent has been accorded to the contract before the commencement of the Companies (Amendment) Act, 1960.” (emphasis added).*

I say that in view of the above quoted relevant extracts of Section 297 of the Companies Act it is evident that no such approval from the Central Government was required by the petitioner and JAL for entering into the contract for civil works. I say that JAL is a company, inter-alia, engaged in civil construction of various projects including power projects. It is submitted that a joint venture of JAL and Steel Authority India Limited namely M/s Bokaro Jaypee Cement Limited (“BJCL”) invited bids for project construction work from various parties wherein JAL was selected to be the successful bidder, being the lowest bidder through transparent competitive bidding. Therefore, in order to construct the Project on fast track basis the petitioner selected JAL based on the bid submitted during the aforesaid bidding. It is also pertinent to mention herein that the petitioner had already entered into contract for BTG package on 20.01.2009, the LOA being issued on 20.09.2008, therefore it was important that the work for civil work is also synchronized with BTG works, hence, the petitioner keeping timely commissioning of the project in mind awarded the contract for Civil Works to JAL on 25.03.2009 at the lowest price bid during the M/s Bokaro Jaypee Cements Ltd bidding. M/s Bokaro Jaypee Cements Ltd invited bids in August 2008 following which the contract was awarded to JAL in November 2008.”

- iv. Issue:-** Detailed project report indicating original scope of work along with the investment approval by the Board of Directors.

Petitioner’s Response:- *“Detailed Project report as sought by the Hon’ble Commission which indicates the scope of work originally planned at an estimated cost of Rs.2,754 Crores. I say that the petitioner is also annexing the approval of the aforesaid investment accorded by the Board of Directors during meeting held on 30th September, 2009. Copy of the DPR and Minutes of the Meeting dated*

30th September, 2009 are annexed hereto and marked collectively as **Annexure A-1.**”

- v. **Issue:-** Fuel Supply Agreement for supply of coal by the coal companies mentioned in the petition.

Petitioner’s Response:- “The petitioner through the present affidavit is annexing the Fuel Supply Agreement dated 10th July, 2012 entered between the petitioner and Central Coalfield Limited for supply of 6.482 Lakh tons of Grade ‘E’ Coal per year as **Annexure A-2**. It is further submitted that for supply of (10.84 Lakh tons, as per LOA) 7.59 Lakh Tons (Likely ACQ) per year grade ‘F’ Coal a Fuel Supply Agreement is being signed with South Eastern Coalfields Limited and the same shall be executed shortly.”

- vi. **Issue:-** Detailed break-up of capital cost components with their apportionment amongst Unit-1 & 2 in terms of provisions under the Regulations.

Petitioner’s Response:- “The petitioner humbly submits the break up in respect of Unit I & II in accordance with Regulation 8.2 and 8.3 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 as **Annexure A -3**. It is submitted that to compute the Unit Wise Cost the petitioner has divided the Total Cost equally”.

- vii. **Issue:-** The common facilities between Unit-1 & Unit-2 be submitted and the cost of all such common facilities between Unit-1 & 2 be apportioned appropriately in terms of provisions under Regulation.

Petitioner’s Response:- It is humbly submitted that in view of the Para 5 and 10 above which are in response to Queries 3 (ii) and 3 (vi) respectively, the appropriation of common facilities is not required as the petitioner has already divided the Unit wise cost equally.

- viii. **Issue:-** Are there any common facilities related to the units under PH-II in the project cost claimed in the petition. If so, the capital cost be apportioned appropriately and the reasons for the items covered in the capital cost claimed in the petition and that these do not relate to the units under Phase-II be explained in details.

Petitioner's Response:- *“It is humbly submitted that at the present stage there are no facilities specifically created for Phase II. However, it is submitted that certain facilities such as Land, Barrage and Transmission Line, which have been constructed specifically for Phase I, could be put in use as and when Phase II is planned based on allocation of coal. It is humbly submitted that even the Detailed Project Report for Phase II can only be prepared after requisite coal allocation based on its quality/ quantity is finalized. It is submitted that after availability and quality of coal is fixed, the petitioner can finalize the design parameters of equipment e.g. Boiler, Turbine etc”.*

- ix. **Issue:-** Since the petitioner has acquired M/s Bina Power Supply Co. Ltd. (BPSCCL), hence, the petitioner is required to file the details with break-up of all assets acquired from BPSCCL under amalgamation scheme and the costs of these assets considered in the project cost and justification thereof.

Petitioner's Response:- *“It is humbly submitted that the petitioner had acquired BPSCCL and the last balance sheet of BPSCCL prior to amalgamation is dated 31st March, 2011, which carries the details of the assets acquired and is annexed hereto and marked as **Annexure A-4**. However, under an amalgamation scheme, BPSCCL as well as another subsidiary of petitioner viz Jaypee Karcham Hydro Corporation Limited were merged with the petitioner with the appointed date as 1st April, 2010. Balance sheet of the merged entity as on 31st March 2011 is also enclosed as **Annexure A-5**. It may be pertinent to mention that under the scheme of amalgamation approved by the Hon'ble High Court of Himachal Pradesh at Shimla vide its order 25th July, 2011 all assets, liabilities, permits, consents, licenses etc stood merged into the petitioner w.e.f., the appointed date i.e., 1st April, 2010 **at book values** of respective Companies”.*

- x. **Issue:-** The petitioner is required to submit unit-wise audited financial accounts up to 31st March, 2012 and un-audited accounts for the expenditure up to date and expected up to CoD of each unit.

Petitioner's Response:- *“It is submitted that petitioner is a Public Limited Company and it is required to maintain Books of Accounts in accordance with the provisions contained in the Companies Act and as*

*per the guidelines of The Institute of Chartered Accountants of India. The Books of Accounts of the petitioner are maintained for the Project and are not maintained Unit-wise. The Audited Balance Sheet of the petitioner as at 31st March, 2012, of which Jaypee Bina Thermal Power Plant is a Division, is enclosed as **Annexure A-6**. It is further submitted that Certificate dated 14th July, 2012 from the Statutory Auditors of the petitioner, certifying the expenditure of Rs Rs.2,806.26 Crores on the Project upto 31st March, 2012, is also enclosed as **Annexure A-7**.”*

- xi. Issue:-** The details and documents with regard to allocation of water for the project be submitted.

Petitioner’s Response:- “*The petitioner is enclosing agreement dated 28th June, 2012 for supply of 12,77,500 Cum. of Water from Betwa River entered with Government of Madhya Pradesh and it is annexed hereto and marked as **Annexure A-8**.”*

- xii. Issue:-** The reasons for deviation of the project cost of Rs.3240 Crore claimed in the petition with the cost of Rs.2753.60 Crore in financing plan submitted with the petition be explained with justification for increase in cost of each item vis-à-vis financing plan.

Petitioner’s Response:- “*It is humbly submitted that the Lead Bank viz IDBI Bank Ltd. had appraised the Project on behalf of the Consortium of Lenders and approved debt aggregating to Rs.1,928 Crs. A copy of their Information Memorandum (herein referred to as “IM”) dated May 2009 in this behalf is enclosed **Annexure A-9**. The related Loan documents have already been filed with the main petition. Further, it is humbly submitted that IDBI Bank conducted a Mid Term review and determined the Project Cost at Rs.3,240 crores and their IM dated December 2011, and the same is being annexed herein as **Annexure A-10** which provides detailed justification for changes in the cost under various heads and reasons thereof. Thus the Term Loan increased to Rs.2,268 Crs from Rs.1928 Crs on the basis of Debt: Equity ratio of 70:30.*

I say that the cost of the Project (Phase –I) comprising of Unit I&II of 250 MW each would be Rs.3,240 Crs which is being met from debt of Rs.2,268 Crs and equity of Rs.972 Crs by the petitioner. The Loan

documents for additional term loan of Rs.340 Crs are enclosed hereto and marked as **Annexure A-11**".

- xiii. Issue:-** Unit-wise drawdown schedule of the loans and infusion of equity till date and expected up to CoD be submitted.

Petitioner's Response:- *"It is humbly submitted that as regards to unit-wise drawdown is concerned, it is humbly submitted that infusion of requisite equity and proportionate loan was done in the ratio of 70:30 for Phase –I containing Unit I&II together depended upon the requirement of funds towards capital expenditure planned for specific period. Further, since most of the construction work such as Administrative Building and infrastructure facilities, Transmission Lines etc, are common in nature for Unit –I&II of Phase-I, the capital expenditure and drawdown of funds was not possible to be maintained unit-wise. However, only one item BTG is unit specific and the installation work of both BTG has been going on simultaneously. The time differential between commissioning of both units being only 5/6 months, unit-wise cost accounting was neither possible nor required as per Accounting Standards. However, the petitioner submits a date-wise statement of infusion of equity and drawl of loans for the perusal of the Hon'ble Commission and the same is annexed hereto and marked as **Annexure A-12**".*

- xiv. Issue:-** The petitioner has filed the loan documents for a total loan amount of Rs.1928 crores while a loan of Rs.2268 crores is filed in the petition. The petitioner is required to explain the difference of Rs.340 Crores between these two figures. The documents along with details of lenders and terms & condition for balance loan of Rs.340 crores be submitted.

Petitioner's Response:- *"It is humbly submitted that the Lead Bank viz IDBI Bank Ltd. had appraised the Project on behalf of the Consortium of Lenders and approved debt aggregating to Rs.1,928 Crs. A copy of their Information Memorandum (herein referred to as "IM") dated May 2009 in this behalf is enclosed **Annexure A-9**. The related Loan documents have already been filed with the main petition. Further, it is humbly submitted that IDBI Bank conducted a Mid Term review and determined the Project Cost at Rs.3,240 crores and their IM dated December 2011, and the same is being annexed herein as*

Annexure A-10 which provides detailed justification for changes in the cost under various heads and reasons thereof. Thus the Term Loan increased to Rs.2,268 Crs from Rs.1928 Crs on the basis of Debt: Equity ratio of 70:30.

I say that the cost of the Project (Phase –I) comprising of Unit I&II of 250 MW each would be Rs.3,240 Crs which is being met from debt of Rs.2,268 Crs and equity of Rs.972 Crs by the petitioner. The Loan documents for additional term loan of Rs.340 Crs are enclosed hereto and marked as **Annexure A-11.**”

- xv. **Issue:-** While comparing the break-up of capital cost provided in form TPS 5B with Schedule-VIII of the common loan agreement filed with the petition, a wide variation in the components and their cost is observed. The petitioner is required to explain the reason for aforesaid variation and file the correct status.

Petitioner’s Response:- “It is humbly submitted that the petitioner is filing a Form TPS 5B containing re-grouped figures, wherein the total remains the same. It is submitted that the difference was on account of categorization/ grouping of items. The petitioner in the reworked forms has regrouped the items on the basis of grouping used by IDBI Bank in their Project Appraisal. Copy of the reworked Form TPS 1 for unit wise Tariff and TPS 5B is annexed hereto and marked as **Annexure A-13(Colly).**”

- xvi. **Issue:-** The petitioner has filed Chartered Accountant’s certificate indicating actual expenditure as on 09.04.2012. The petitioner is required to file actual expenditure till date of each unit duly certified by Chartered Accountant.

Petitioner’s Response:- “It is humbly submitted that Certificate dated 14th July 2012, certifying expenditure of Rs. 2,806.26 Crores incurred upto 31st March, 2012 is annexed hereto and marked as **Annexure A-14.** It is further submitted that a certificate containing complete expenditure up to COD will be submitted after the petitioner finalizes its accounts post COD”

- xvii. **Issue:-** The petitioner has not filed the suppliers certificate for guaranteed station heat rate for Unit-1 & 2. The petitioner is required

to file certificate issued by the supplier/manufacturer indicating guaranteed station heat rate, boiler efficiency, turbine efficiency etc.

Petitioner's Response:- *"It is humbly submitted that the main plant i.e. Boiler, Turbine and Generator (BTG) has been procured from M/s BHEL. Further, the copy of the Contract for BTG entered with M/s BHEL has already been enclosed with the main petition and at Pg 400 of the petition the performance parameters have been provided. The petitioner craves the liberty to annex the relevant extracts at Pg 400 and the same is being annexed hereto and marked as **Annexure A-15**. It is further submitted that using the suppliers guaranteed performance parameters the petitioner has arrived at Gross Station Heat Rate of 2,449.5 Kcal/Kwh and the same is being reproduced as follows:-*

*"Guaranteed Heat Rate (GHR), 1,946.70 Kcal/kwh
Steam Generation Efficiency (SGE) at 100% TMCR 84.60 %
Designed Heat Rate =GHR/SGE= 1,946.70/84.6% =2,301.06 Kcal/kwh
Gross Station Heat Rate GSHR (as per MPERC norms- Clause 33.2 B) =
Min of (Max. Design Unit heat Rate 2,300kCal/kwh & Designed Heat Rate viz 2,301.06X1.065.
So, GSHR=2,300kCal/kwhX1.065=2,449.50kCal/kwh"(emphasis added)*

- xviii. Issue:-** The cost of secondary fuel oil be filed as per provision under Regulation 36.2 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulation, 2009. The supporting documents in support of the cost claimed for secondary fuel oil is also submitted.

Petitioner's Response:- *"The petitioner submits copy of the invoice dated 19/04/2012 for the procurement of secondary fuel as **Annexure A-16**. It is humbly submitted that based on the attached invoice the cost of Secondary Fuel is Rs. 70,151/- per KL and freight would be approximately Rs. 1,000/- per KL".*

- xix. Issue:-** The cost of coal needs to be filed as per provision under the Regulation 35.2 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulation, 2009. The petitioner is also required to submit the basis of landed cost of coal filed in the petition with complete

break-up of basic price and other applicable taxes, duties, royalties and cess etc. as per CIL notification.

Petitioner's Response:- *“The petitioner submits a detailed calculations showing the landed cost of coal in accordance with Regulation 35.2 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 (including the breakup of various elements thereof both for coal allocated and coal purchased through e-Auction) annexed hereto and marked as **Annexure A-17.**”*

12. Vide Commission's daily order dated 1st August, 2012, the petitioner was further asked to furnish some more essential details/information to the Commission. By affidavit dated 21st August, 2012, the petitioner submitted the information as sought. The response of the petitioner vis-a-vis the details sought by the Commission is given below :

(i) **Issue:** “Date of synchronization of Unit I along with clearance from Pollution Control Board and certificate from SLDC”.

Petitioner's Response

The petitioner confirmed that the Unit-1 synchronized on 1st August, 2012. The petitioner also enclosed a certificate dated 20.08.2012 issued by the Power System Operation Corporation Ltd., Western Region Load Dispatch Centre (WRLDC) certifying the date of synchronization of Unit-1.

The petitioner also enclosed the copy of letter dated 24th July, 2012 issued by MP Pollution Control Board granting consent of the Board for generation of electricity from 1x250 MW (Unit-I) under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981. It is mentioned in the approval granted by MP Pollution Control Board that the approval is only for one year subject to fulfilling certain terms and conditions and the petitioner shall obtain prior consent of MP Pollution Control Board to operate before commissioning of second unit.

The petitioner also enclosed a copy of the letter issued by MP Pollution Control Board changing the name of the industry from M/s Bina Power Supply Co. Ltd. to M/s Jaiprakash Bina Thermal Power Plant (a division of M/s Jaiprakash Power Ventures Ltd.).

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- (ii) **Issue:** “Date of CoD of Unit I which is yet to be achieved along with SLDC certificate for achieving CoD”.

Petitioner’s Response

The petitioner informed that the CoD of Unit-I is likely to be achieved shortly and the required certificate from SLDC/WRLDC shall be obtained and filed with the Commission.

- (iii) **Issue:** “Actual capital cost as on CoD for Unit I with Auditor’s certificate.”

Response

- The petitioner confirmed that the actual capital cost of Unit-1 would be available after COD of both Unit-I & II. It was further stated by the petitioner that the cost incurred in respect of Unit-1 would be furnished to the Commission on attaining CoD of Unit-1. The petitioner further stated that the apportionment between Unit-I & II shall be done in terms of Regulation 8.2 and 8.3 of MPERC Determination of Tariff Regulations. It was mentioned by the petitioner that the financial impact on the cost would crystallize after the commissioning of Unit-II i.e. the completion of the project since the contract with BTG Supplier (BHEL) is for both the units.
- The petitioner filed the Auditor’s Certificate dated 4th August, 2012 certifying expenditure of **Rs.2951.18 Cr.** as on **30.06.2012**.
- The petitioner also filed another statement apportioning the above-mentioned expenditure of **Rs.2951.18 crore** into Unit-1 and 2 in terms of Regulations.

- (iv) **Issue:** “Details of infirm power supplied to grid and actual fixed expenses for generation of infirm power along with Auditor’s certificate. The details of revenue billed and revenue earned from sale of infirm power along with SLDC certificate/bills and Chartered Accountant’s certificate”.

Response

Since the Unit-1 has not achieved CoD, the details shall be submitted by the petitioner after CoD.

- (v) **Issue:** “Drawdown schedule as on CoD for Unit I along with actual IDC as on CoD with Chartered Accountant’s certificate”.

Response

The petitioner submitted that the drawn down of the loan was made with a DER of 70:30 after the infusion of requisite equity for Phase I (containing Unit I & II together) depending upon the requirement of funds towards capital expenditure planned for a specific period. It was further submitted that since most of the construction work such as Administrative Building and infrastructure facilities, Transmission Lines etc. are common in nature for Unit I & II of Phase I, the capital expenditure and drawdown of funds was not feasible to be maintained unit-wise. However, only one item, BTG is unit specific whereas the installation work of both BTG has been going on simultaneously. The time differential between Commissioning of both units being only 5/6 months, unit-wise accounting of cost was not feasible. However, as submitted in Para 4(iii) above the petitioner shall endeavor to submit the actual IDC, as on the COD of Unit I, duly certified by Statutory Auditor shortly after attaining COD of Unit I.”

- (vi) **Issue** : “Apportionment of common facilities in units of Phase II with full justification”.

Response: The petitioner submitted the following:

“At present stage there are no facilities specifically created for Phase II. However, it is also submitted that certain facilities such as Land, Barrage and Transmission Line, could be put in use as and when Phase II is planned, based on allocation of coal. It is humbly submitted that even the Detailed Project Report for Phase II, including design parameters of equipment e.g. Boiler Turbine Generator etc., can only be prepared/ finalized after requisite coal allocation based on the quality, quantity, ash contents etc. The detailed justifications for Land, Barrage and Transmission Line are as under:-

- (a) **Land** - *The Project is a revival project which the petitioner had acquired from M/s Aditya Birla Group in May, 2008. As such the land, which was owned by Bina Power Supply Company Limited as on date of transfer, was acquired along with the Company and was valued as on 31.03.2008 at Rs. 6.83 crores. It is pertinent to mention herein that even as on date, the cost of land, as per the*

Books of Accounts is Rs. 6.83 crores. It is submitted that the implementation of Phase II depends upon availability and quality of Coal, which in the present scenario, is quite uncertain. The decision to this effect could not have affected the acquisition of land, as the petitioner had acquired a Company.

- (b) Barrage-** *It is submitted that Barrage cannot be treated as a common facility as the requirement of the Barrage would have been as it is for the Project irrespective of capacity of the Plant whether 500 MW or 1250 MW or any other capacity.*
- (c) Transmission Line** *-The transmission line for the Project was originally envisaged by us as a 400 kV D/c Twin Moose. During detailed deliberation and after suggestions from MPPMCL (erstwhile MPPTCL), Power Grid Corporation of India Limited suggested development of this line as a 400 kV Quad Line to optimize the right of way. Therefore, in the case of the transmission line the developer was guided by the suggestions of CTU.*

Without prejudice to the above, the petitioner would like to submit as under:

- (i) That the Project envisages two Phases with Phase I of 500 MW and Phase II of 750 MW.*
- (ii) That the PPA's entered into, also envisage the setting up of Phase II subject to availability of coal. The petitioner will be required to approach the Commission for adjudication of the capital cost and tariff payable for Phase II also, as and when implemented.*

In view of the above, it is humbly submitted that as and when Phase II of the Project is decided, based on coal allocation and the configuration/ capacity determined thereafter, the petitioner would have to approach the Commission for adjudication of capital cost and tariff for Phase II. The petitioner undertakes and confirms that as and when Phase II of the Project is implemented, subject to availability/ allocation of coal, the additional/ incremental cost shall be capitalized and no portion already included in Phase I shall form part of the capital cost of Phase II."

- (vii) Issue:** "The basis for revision in project cost along with all relevant documents".

Response

*“The petitioner confirms that it had submitted as **Annexure A-10** to the affidavit dated 18th July, 2012 filed on 20th July, 2012 the revised Project Information Memorandum (PIM) dated December, 2011, prepared by IDBI Bank Limited which is the Lead Bank for the Consortium of Lenders who have sanctioned Debt facilities for the Project. The detailed head wise justification for revision in project cost is appearing from page no. 54 onwards of the PIM (December, 2011). In addition to the same, a detailed chart showing comparison of head wise cost as per DPR I (Original DPR) and DPR II (Revised Project Cost) which contains item wise justifications for the variation of the cost is as annexed hereto and marked as **Annexure C-5**.*

In addition to the above, the petitioner would humbly submit that the Lead Bank i.e. IDBI Bank Limited while carrying out Mid Term review of the Project, vide its PIM dated December 2011, has at page No. 64 compared the Project Cost with the recently completed other Project viz. 500 MW (250X2 MW) Chhabra Thermal Power Station (CTPS) set up by Rajasthan Rajya Vidyut Vitaran Nigam Limited which was commissioned on 4th May, 2010. The capital cost of CTPS works out to Rs.5.55 crores per MW as compared to Rs.6.33 crores per MW for Bina, to be commissioned in end 2012, i.e. after two years. The difference is mainly on account of inclusion of Transmission Line in Bina, provision of Barrage and the unfavorable soil conditions due to the presence of Black Cotton soil, not to mention the Time Cost impact of more than 2 years.

To have an equitable comparison, if the Cost of Barrage (Rs. 180 Crores) and Transmission Line (Rs.58.75 Crores) are adjusted from the total cost of the petitioner’s Project, the residual Project Cost would be Rs.2,926.25 crores and the capital cost works out to be Rs.5.85 crores per MW. If the cost of CTPS of Rs.2,775 crores of May, 2010 is escalated for 2 years an interest rate of 6% p.a., the resultant cost works out to Rs.3,117.99 crores. [This is not important to be pleaded, we could use this at the argument stage, please reconsider.]

A comparative Chart showing the Project wise per MW cost for other Projects appraised during the same time frame is also submitted for kind perusal of Hon’ble Commission:-

Project	Unit X Capacity	Total Capacity (MW)	Project Cost (Rs Cr)	Cost per MW	Status
<i>DB Power</i>		600	3440	5.73	<i>Appraised in 2010</i>
<i>Abhijeet Group</i>	2 X 270	540	3182	5.89	<i>Appraised in 2010</i>
<i>Jindal Power Projects - (Phase III)</i>	2 X 600	1200	7100	5.92	<i>Appraised in 2009</i>
<i>SKS Power</i>	2 X 600	1200	6900	5.75	<i>Appraised in 2011</i>
<i>NTPC - Vindhyachal Project</i>	2 X 500	1000	5915	5.92	<i>Appraised in 2009</i>

The Hon'ble Commission may also please like to note that the cost per MW for the above Projects are appraised cost and not the completion cost, which in most cases is higher than the appraised cost. In view of the above it is humbly submitted that the per MW cost of petitioner's Project, after cost adjustment for Barrage and Transmission Line is at Rs.5.85 Crores Per MW and is quite comparable to other Projects."

(viii) Issue: "Fuel Supply Agreement with South Eastern Coalfields Ltd".

Response

The petitioner confirmed that the FSA with SECL is in an advanced stage of execution and is expected to be signed shortly.

(ix) Issue: "It is observed that there has been nil equity infusion in FY 2009-10 and no loan was drawn in FY 2008-09. The funding is shown by a loan drawal of Rs.431 crores in FY 2009-10 and equity infusion of Rs.224 crores in FY 2008-09. The reason for the aforesaid funding without loan in FY 2008-09 and without equity in FY 2009-10 be submitted".

Response

"The petitioner confirms that no loan was drawn during FY 2008-09. The petitioner (JPVL) acquired the erstwhile BPSCL in May, 2008 from M/s Aditya Birla Group and to start the operations for the revival of the Project, the petitioner infused substantial equity of Rs. 224.16 crores in FY 2008-09. Since Debt tie-up and syndication takes time, the petitioner with a view to fast track the project implementations, infused equity in FY 2008-09 itself and availed the drawl of debt from FY 2009-10 onwards (in the Debt-Equity ratio of 70:30). The Hon'ble Commission will appreciate that due to the fact that the petitioner had infused higher equity, there has been a saving in Interest During Construction (IDC) i.e.

*interest payable against Loan/Debt funds by using equity during FY 2008-09. Since the equity of Rs. 224.16 crores was infused in FY 2008-09 the petitioner could draw loan/debt to the tune of 2.33 (Debt equity ratio 70:30) times of the equity i.e. up to Rs. 523 crores before the petitioner was required to infuse further equity. The petitioner humbly submits that as per terms and conditions of the financial tie-up the petitioner is compulsorily required to maintain a Debt Equity Ratio of 70:30 and at no point in time the Debt can be higher than 2.33 times of Equity infused. A chart showing year wise Loan Drawal/ Equity Infused status and percentage thereto of the total is as annexed hereto and marked as **Annexure C-6.**"*

- (x) **Issue:** "A comparative statement indicating a break-up of various project cost components as provided in the project cost as on 31st March, 2012 as per CA's certificate and the project cost as on CoD being claimed by the petitioner vis-à-vis the appraised project cost in DPR".

Response

*"The petitioner submits that as per petitioner's reply in respect of query no. 4(iii) above the project cost as on COD of unit-I would be provided shortly. However, detailed comparison for revision in project, cost head wise, is being submitted as **Annexure C-5** with reference to Hon'ble Commission's query no. 4(vii) above. In addition to the same the petitioner also submits CA certificate dated 4th August, 2012 certifying the cost of Rs.2951.18 Crores that has been incurred by the petitioner on the Project as on 30.06.2012. The petitioner has divided this certified cost into Unit I and Unit II on the basis of guidelines in term of regulation 8.2 and 8.3 of Hon'ble MPERC."*

- (xi) **Issue:** "The reason for increase in the cost of major components like civil works pre-commissioning expenses and interest during construction from the appraised project cost in the DPR be also adequately explained".

Response

The petitioner submitted that the response to the above issue is same as made in issue 4 (vii) in the Commission's order.

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- (xii) **Issue:** “All appendices and exhibits of detailed project report not attached with it, be furnished”.

Response

“The petitioner submits that the exhibits of the DPR I which were inadvertently not attached with the additional affidavit submitted on 20th July, 2012 are enclosed as Annexure C-7. In addition to the same DPR II dated 11th October 2011 along with explanatory sheet of TCE, the consultants for making the DPR, is attached as Annexure C-8.”

- (xiii) **Issue:** “As per detailed project report and terms of main plant contract awarded to M/s BHEL, commercial operation date of first unit was to occur in 36 months from date of letter of award of contract for main plant i.e. by 21st September, 2011. Reasons for delay in achieving CoD and who is responsible for delay be informed. Liquidated damages recovered, if any, be indicated”.

Response

*“The petitioner confirms that LOI was awarded to BHEL on 20th September, 2008 which stipulated commissioning date as 36 months for Unit I which works out to 21st September, 2011. However, the LOI was entered into in September, 2008 even though the confirmation for validity of MoEF Clearance was received on 5th August, 2009. The purpose of placing advance orders on BHEL was in order to ensure timely deliveries of Plant & Equipment and also to ensure allocation of coal in time as Ministry of Power/ Coal were not considering coal allocation until BTG orders were placed. **The final advances against the BTG LOI could only be given to BHEL in January, 2010 after the financial closure was achieved.** In view of the above and also in view of the fact that the confirmation of validity of MoEF Clearance was received on 5th August, 2009, the working at site could start only **after 5th August, 2009.** Therefore, 36 months from 5th August, 2009 works out to 5th August, 2012. It is also pertinent to mention the fact that during July to September, 2011 unprecedented rains in Madhya Pradesh forced the closure of all Civil works during this period, which affected the petitioner as well as BHEL. The average rainfall in Bina District is about 900 mm whereas in 2011 the recorded rainfall was 1451 mm.*

Therefore, considering the above mentioned facts and circumstances of the case the Hon'ble Commission may observe that neither the petitioner nor the BHEL are at fault."

- (xiv) Issue:** "The Commission observed that the petitioner awarded the contract for civil works to JP Associates Ltd. on 25th March, 2009 at the lowest price received during the bidding process conducted by M/s Bokaro JP Cements Ltd. for construction of cement plant. As stated by the representatives appearing on behalf of the petitioner, the petitioner is required to file the complete details along with all relevant documents in respect of aforesaid contention of the petitioner".

Response

"The petitioner humbly submits that a compiled statement is enclosed (Annexure C-9) which indicated the cost (Rs.344.99 crores) which would have been paid by the petitioner to JAL for the itemized quantities at the rates applicable in case of JAL – Bokaro Project. Whereas, JAL – Bina Civil Work Contract works out to be Rs.285.60 crores indicating overall saving of Rs.59.39 crores. The detailed working sheet, showing net saving of Rs.59.39 crores is enclosed as Annexure C-9. I say that the petitioner also encloses the copy of the Civil Contract between JAL – Bokaro dated 25.03.2009 as Annexure C- 10. The Contract of JAL - Bina has already been submitted with petition dated 25.03.2009 vide annexure no. P-9 filed on 18.05.2012.

It is further submitted that Bokaro Jaypee Cement Limited (BJCL) (a Joint Venture of Jaiprakash Associates Limited and Steel Authority of India Limited (SAIL) invited tenders for construction of civil work activities for their Bokaro Cement Plant in August 2008. The tender documents were issued to the following parties namely :

- (i) M/s BSBK Pvt. Ltd.*
- (ii) M/s Simplex Infrastructure Ltd.*
- (iii) M/s Jaiprakash Associates Ltd.*
- (iv) M/s B. K. Kashyap & Sons Ltd.*

It is submitted that the rates of JAL were found lowest and the tender was awarded to JAL in November, 2008. It is submitted that the award of civil work at Bina took place in the month of March, 2009, which was

about four months later than the award of civil work at Bokaro to JAL. During these four months' period gap, some inflation also figures. But JAL was given contract at Bina for civil work on the condition that they accept the civil work rates equivalent to the rates at which they were working for Bokaro Cement, which they got in November, 2008. JAL finally agreed to those rates. Therefore, in view of the above, it is submitted that the rates given to JAL for civil work are very fair, reasonable and the lowest in the market prevailing at the time."

13. The Respondents in the matter were also asked to file their comments on the subject petition. The Respondent No. 1 vide its communication dated 18.08.2012 offered its comments on the petition and the additional submissions filed by the petitioner on various issues already taken up by the Commission and discussed in the foregoing paragraphs. The response of the petitioner on all such comments is mentioned in Annexure 1 with this order.
14. Further, the Respondent No.1 through its communication dated 15.09.2012 raised the issue of sharing the cost of dedicated Transmission line of 400 kV laid by the petitioner for evacuation of contracted capacity amongst the petitioner and the GoMP in terms of clause 4.8 of the PPA executed between the petitioner and the Respondents.
15. Since the abovementioned issue along with another issue related to certain settlement amount of Rs.52.24 crore (forfeited and retained by MPSEB) claimed in the petition were to be responded to by the GoMP, the Commission issued notice to Energy Department, GoMP also on 17th September, 2012 to plead as respondent and to appear in the matter on the next date of hearing in the matter. None appeared on behalf of the Energy Department, GoMP on 6th November, 2012.
16. The Commission observed during the next hearing held on 26th November, 2012 that the response from the Energy Department, GoMP on the issues at Para 6 (e) and (f) of the Commission's daily order dated 9th November, 2012 was still awaited. This inaction on the part of a Department of the Government was found unfortunate. The Energy Department, GoMP was again directed to file its response with the Commission on the above issues by 1st December, 2012. In response, Deputy Secretary Energy department, GoMP vide letter no.F-03-17/13/98 dated 30th November, 2012 agreed with the contention of the petitioner that an amount of Rs.52.24 crores was forfeited and retained by MPEB.

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17. Regarding the other issue of sharing of the cost of dedicated Transmission line of 400 kV laid by the petitioner for evacuation of contracted capacity, the Energy Department, GoMP, while mentioning a certain definition in the PPA, submitted that since the dedicated transmission line has to be constructed from the delivery point onwards, therefore, the issue of transmission cost is outside the scope of the generation tariff. It was further submitted by the Energy Department, GoMP that the cost of transmission charges or the sharing of cost of transmission line is an entirely different issue and cannot be linked with this petition. The prayer of the petitioner does not include determination of the Transmission tariff which is distinct from the Generation tariff hence the subject of transmission tariff should be dealt with separately and it is not germane to the subject petition. Vide affidavit dated 29th November, 2012, the respondent No.1 also submitted the same contention on this issue of sharing of the transmission cost.
18. The Respondent No.1 engaged a consultant to undertake a review of the petition and filed comments/observations with the Commission on 8th October, 2012. The petitioner also filed a detailed reply to the aforesaid comments in the report filed by Respondent No.1. The aforesaid report laid emphasis on allowing capital cost of not more than Rs.2920.69 crore or Rs.5.84 per MW in provisional tariff subject to true up.
19. Since the CoD of the Unit-1 was achieved on 31st August, 2012, the petitioner was asked to provide the following documents/details:
- (i) A certificate from SLDC regarding the date of synchronization and the date of commercial operation of Unit-I.
 - (ii) Detailed statement regarding infirm power supplied to grid and amount billed for sale of infirm power duly certified by SLDC.
 - (iii) Auditor's certificate regarding fuel expenditure for generation of infirm power and revenue earned from sale of infirm power.
 - (iv) Details of capital cost incurred upto CoD of Unit-I along with CA's certificate for capital cost actually incurred as on CoD of Unit-I after deducting the revenue earned from sale of infirm power as per provisions in Regulations.
 - (v) Actual funding of loan and equity as also the IDC for Unit-I as on CoD duly certified by the auditors.
 - (vi) A copy of the Fuel Supply Agreement if executed with SECL.
 - (vii) The landed cost of coal along with GCV of the same as per actual for the preceding three months of CoD.

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- (viii) The actual weighted average price of secondary fuel oil for the three preceding months of CoD along with the bills/invoices in support of the information. The break-up of the weighted average cost of each type of fuel oil along with quantity consumed be also submitted.
- (ix) As per PPA, the cost of transmission line is to be shared as mutually agreed between the petitioner and GoMP. This issue needs to be clarified by GoMP and the petitioner.
- (x) The break-up along with the details of expenses of Rs.87.24 Cr. as shown under “Expenses already incurred till 30th September, 2008 including settlement with MPSEB” needs to be furnished by the petitioner and clarified by the parties in the matter.
20. The petitioner filed the above information as sought in para (i),(ii),(iii),(v),(vii),(viii) and (x). But, regarding the capital cost incurred upto CoD of Unit-1 and the CA’s certificate for capital cost actually incurred as on CoD , the petitioner submitted that the details of Capital Cost incurred upto COD of Unit 1 are under compilation and the same would be submitted at the earliest. It was further informed by the petitioner that the final cost of Unit I may be determined only after the COD of Unit II. However, as stated above, the actual cost incurred on Unit 1 upto COD is under compilation and the petitioner undertook to furnish the same at the earliest.
21. Regarding the FSA with SECL, the petitioner submitted that the same is under execution and is expected to be signed shortly. However, a copy of the letter dated 04.10.2011 along with the notice dated 09.11.2012 issued by SECL for signing FSA was enclosed with the reply.
22. The Petitioner informed that it has written a letter to the GoMP on 22.09.2012 with submissions in respect of sharing of cost of transmission line.
23. With regard to the details of expenses for Rs.87.24 Cr. shown under “Expenses already incurred till 30th September, 2008 including settlement with MPSEB” , the petitioner submitted the following:
- “(a) *It is submitted that Rs.52.24 Crores has been written Off. This amount was deposited by the erstwhile Aditya Birla Group, through the erstwhile Bina Power Supply Company with the erstwhile MPEB (now MPPMCL), as Security Deposit. The said amount was forfeited by*

*MPEB vide their order dated 13.07.2002. Copy of the Order dated 13.07.2002 is annexed hereto and marked as **Annexure A-18**.*

(b) *It is submitted that Rs.35 crores have been paid to Aditya Birla Group for the takeover of the Project against the Market price of Land and the Development work thereon and has been shown in the Books of Accounts as Development expenses.”*

24. For updated audited accounts separately for unit 1&2 in respect of BPSCL, the petitioner submitted that the Books of Accounts are being maintained in accordance with the Accounting Standards of the Institute of Chartered Accountants of India. Therefore, the Unit wise accounting for all expenses has not been done. However, the common facilities of units I & II will be divided in terms of Regulations 8.2 and 8.3.
25. During the last hearing held in the matter on 26th November, 2012, the counsel on behalf of the petitioner agitated that substantial expenditure has been incurred on fuel and more than 100 MUs have been supplied to the respondents since CoD. Therefore, a provisional/interim tariff be granted to the petitioner at the earliest to recover the costs.

Commission's Analysis

26. At the outset, it is expedient to dispose of the issue related to transmission cost raised by both, the Energy Department, GoMP and Respondent No.1. The Commission is of the view that the contentions of neither has any merit for consideration at this stage since the subject petition for determination of generation tariff is before the Commission pursuant to the same PPA wherein the provision regarding “Interconnection and Transmission Facilities” under Para 4.8 provides for sharing of the cost of dedicated Transmission line of 400 kV laid by the petitioner for evacuation of contracted capacity as decided mutually between the petitioner and GoMP. Such provisions in PPA which have bearing on the cost components in the subject petition may not be left unresolved to create any dispute for the future since the PPA was also filed with the Commission for approval.
27. It would be relevant here to refer to the Electricity (Removal of Difficulty) Fifth Order, 2005. The preamble to this Order states, interalia,

“And whereas a dedicated transmission line in terms of sub-section (16) of section 2 of the Act is an electrical supply line for point-to-point

transmission for connecting a captive generating plant or a generating station to any transmission line or sub-stations or generating stations or the load centre, as the case may be;

And whereas such a dedicated transmission line is neither a transmission line in terms of sub-section (72) of section 2 of the Act nor it is a distribution system connecting the point of a connection to the installation of consumer in terms of sub-section (19) of section 2 of the Act;”

28. Clause 2 of this Order also specifically provides as follows :

“A generating Company or a person setting up a captive generating plant shall not be required to obtain license under the Act for establishing, operating or maintaining a dedicated transmission line, if it complies with the following”

29. It follows therefore, that such dedicated transmission line would be a part of the generation system, if it is erected by the Generating Company. Obviously, the generation tariff would then have to be decided after taking into account the costs incurred for the construction of such dedicated transmission lines.

30. A reading of sub-section (16) of section 2 of the Act would lead to no other conclusion. The argument that transmission tariff should be dealt with separately is in this context without basis. Transmission tariff can only be determined in case of a transmission licensee. It might be noted that most PPAs that the Respondent has executed with IPPs provide for evacuation of electricity ex-bus bar by the Respondent. In this peculiar case, the Generating Company cannot be deprived of its lawful dues under any garb.

In view of the abovementioned facts, the Energy Department, GoMP and the parties in the subject petition are directed to resolve this issue in terms of PPA before the final tariff petition is filed in the matter.

31. Coming to the various other issues raised by the petitioner and the Respondent No.1, the Commission has the following observations :

(i) The petition has been filed for the Capital cost of Rs.3240 crore while the Auditor’s certificate (as per provisions under the MPERC (Terms and conditions for determination of Generation tariff) Regulations’2009

and its amendments) is submitted for Rs.2951.18 crore only as on 30th June, 2012.

- (ii) The petitioner could not provide the details of expenditure as on CoD i.e 31st August, 2012 duly certified by the Auditor hence, the Annual Fixed Cost shall be worked out only up to 95% of the cost computed on the Capital cost of Rs 2951.18 crore as on 30th June, 2012 duly certified by the Auditor.
- (iii) The issue related to sharing the cost of Rs.61.17 crore presently incurred by the petitioner for dedicated transmission line of 400 kV for evacuation of contracted capacity in terms of clause 4.8 of the PPA has not attained finality.
- (iv) Since the Fuel supply agreement with SECL is yet to be executed by the petitioner therefore, the actual details regarding full quantity of coal received through linkage is unavailable at this stage.
- (v) The availability of coal for Phase II of the project is still not ascertained. The arrival of Phase II part of the project is uncertain at this stage.
- (vi) No additional capitalisation is claimed in the petition and the subsequent filings.
- (vii) The claim for additional RoE of 0.5% has been withdrawn by the petitioner.
- (viii) The Annual fixed cost and the Energy Charges shall be worked out on the basis of methodology, principles and norms prescribed in MPERC (Terms and conditions for determination of Generation tariff) Regulations'2009 and its amendments.
- (ix) The comments/objections submitted by Respondent No.1 take exception to elements within the capital cost of Rs.3240 crores filed in this petition. The Commission, however, is not in a position at this stage to take a view on this figure in the absence of requisite audited details. The Commission is restricting itself therefore, to the capital cost as per Auditor's Certificate of Rs.2951.18 crores only in determining the provisional tariff under this order.

32. Considering the above, the Commission has worked out the Annual Capacity (Fixed) charges and Energy charges for **250 MW Unit-I** as under:

A. Annual Capacity (fixed) Charges:

33. The tariff for supply of electricity from a thermal power generating station shall comprise of capacity charge and energy charge to be derived in the manner specified in the Regulations 38 and 39 of “Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2009. {RG-26 (I) of 2009} and its amendments.” The annual Capacity (fixed) Charges consist of:

- (a) Return on Equity;
- (b) Interest and Financing Charges on Loan Capital;
- (c) Depreciation;
- (d) Lease/Hire Purchase Charges;
- (e) Operation and Maintenance Expenses;
- (f) Interest Charges on Working Capital;
- (g) Cost of Secondary Fuel Oil;
- (h) Special allowance in lieu of R&M or separate compensation allowance, wherever applicable;

34. While calculating the Capacity (Fixed) Charges, the following are considered:

- i. Capital Cost of Rs.1475.59 crores for unit 1 up to 30th June 2012 is considered as per the auditor’s certificate dated 4th August, 2012 filed by the petitioner. The aforesaid capital cost including Rs.990.34 crores loan component and Rs.485.25 crores equity component as indicated in the apportionment of the total expenses up to 30th June, 2012 filed in additional submission dated 21st August, 2012, is considered in this order.
- ii. Revenue earned from sale of infirm power has been considered as per Regulations and as per information provided in this regard by the petitioner.
- iii. Base rate of Return on equity @ 15.5% along with grossing up with Minimum Alternate Tax (MAT) as per Regulations is considered in this order.

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- iv. Since the equity amount actually incurred as per auditor's certificate is more than normative as specified in the Regulation therefore, the equity over and above the normative is considered as normative loan and weighted average rate of interest has been applied while calculating the interest on normative loan.
 - v. Loan amount drawn up to 30th June, 2012 as certified by the auditor's is considered as the opening loan amount for calculation of interest and finance charges. Weighted average rate of interest on loan as indicated in the documents filed by the petitioner is considered.
 - vi. Repayment equivalent to depreciation determined for the year is considered as per Regulations, 2009.
 - vii. Weighted average rate of depreciation is considered as filed by the petitioner based on the rate of depreciation for different capital cost components as per Regulation and the detailed break-up of cost components filed in the petition.
 - viii. O & M expenses are considered as per norms specified in the third amendment to Regulations, 2009.
 - ix. Specific secondary fuel oil consumption is considered as per Regulations, 2009. The weighted average rate of secondary oil is initially considered as filed by the petitioner in additional submission dated 21st November, 2012. Further, clause 36.2 of the Regulations takes care of the cost of secondary fuel oil subject to fuel price adjustment at the end of the each year of tariff period as per the formula mentioned under clause 36.2 of the Regulations
 - x. Working capital is worked out as per provision 35.1 of the Regulation and interest on working capital is considered as per provision 27.1 of the Regulations, 2009 and its amendments.
 - xi. Regarding the cost of secondary fuel oil for calculating the working capital, proviso of clause 35.1 (ii) provides 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 view of the above the cost of main fuel oil (HFO) is taken by considering the cost per KL filed by the petitioner in additional submission dated 21st November, 2012.

- xii. Normative Annual Plant Availability Factor for recovery of annual capacity charges has been considered as per third amendment of Regulations, 2009.
 - xiii. For FY2012-13, the annual capacity charges have been pro-rated for **213 days**.
 - xiv. The recovery of annual capacity (fixed) charges shall be made by the petitioner in accordance with the Regulations 38.2 and 38.3.
35. The component-wise details of capacity (fixed) charges determined as follows:

(a) Return on equity:

Sr. No.	Particular	Unit	Approved provisionally for FY12-13
1	Opening Equity	Rs. Cr.	485.25
2	Opening Equity normative	Rs. Cr.	442.68
3	Equity addition during the year	Rs. Cr.	0.00
4	Closing equity	Rs. Cr.	442.68
5	Average equity	Rs. Cr.	442.68
7	Base rate of Return on Equity	%	15.50
8	Tax rate considered (MAT)	%	20.01
9	Rate of return on equity	%	19.38
10	Return on equity	Rs. Cr.	85.78

(b) Interest charges on loan:

Sr. No.	Particular	Unit	Approved provisionally for FY12-13
1	Opening Loan	Rs. Cr.	990.34
2	Excess equity to be treated as loan	Rs. Cr.	42.57
3	Total opening loan including normative loan	Rs. Cr.	1032.91
4	Loan addition during the year	Rs. Cr.	0.00
5	Repayment during the year	Rs. Cr.	68.17
6	Closing Loan	Rs. Cr.	964.74
7	Average Loan	Rs. Cr.	998.83
8	Weighted average rate of interest	%	14.50
9	Interest amount	Rs. Cr.	144.83

(c) Depreciation:

Sr. No.	Particular	Unit	Approved provisionally for FY12-13
1	Opening Gross Block	Rs. Cr.	1475.59
2	Gross Block addition during the year	Rs. Cr.	0.00
3	Closing Gross Block	Rs. Cr.	1475.59
4	Average Gross Block	Rs. Cr.	1475.59
5	Weighted average rate of depreciation	%	4.62
6	Annual Depreciation amount	Rs. Cr.	68.17
7	Cumulative depreciation as on 31 st March,13	Rs. Cr.	39.78

(d) Operation & Maintenance expenses:

Sr. No.	Particular	Unit	Approved provisionally for FY12-13
1	Installed Capacity	MW	250
2	Per MW O&M expenses	Rs. L/MW	17.08
3	Total O&M expenses	Rs. Cr.	42.70

(e) Secondary fuel oil expenses:

Sr. No.	Particular	Unit	Approved provisionally for FY12-13
1	Installed Capacity	MW	250
2	NAPAF	%	85
3	Gross Generation	MU's	1861.50
4	Normative Sp. Oil consumption	ml/kWh	1.00
5	Quantity of Sec. fuel oil	KL	1861.50
6	Rate of secondary fuel oil	Rs/KL	63216
7	Cost of secondary fuel oil	Rs. Cr.	11.77

(f) Interest on working capital:

Sr. No.	Particular	Unit	Approved provisionally for FY12-13
1	Cost of coal for 60 days	Rs Cr.	42.29
2	Cost of fuel oil for two months	Rs. Cr.	1.48
3	O&M Charges for one month	Rs. Cr.	3.56
4	Maint. Spares 20% of the O&M charges	Rs. Cr.	8.54
5	Receivables for two months	Rs. Cr.	105.72
6	Total working capital	Rs. Cr.	161.59
7	Applicable rate of interest	%	14.75
8	Interest on working capital	Rs. Cr.	23.83

(4) Annual capacity (fixed) charges:

Sr. No.	Particular	Unit	Approved provisionally for FY12-13
1	Return on equity	Rs Cr.	85.78
2	Interest charges on loan	Rs. Cr.	144.83
3	Depreciation	Rs. Cr.	68.17
4	Operation & Maintenance expenses	Rs. Cr.	42.70
5	Secondary fuel oil expenses	Rs. Cr.	11.77
6	Interest on working capital	Rs. Cr.	23.83
7	Annual capacity (fixed) charges	Rs. Cr.	377.08
8	Annual Capacity charges for 213 days	Rs. Cr.	220.05
9	Annual Capacity charges corresponding to 65% of the installed capacity of the unit	Rs. Cr.	143.03
10	95% of the above fixed cost allowed to be recovered by the petitioner	Rs. Cr.	135.88

36. As per the provisions under Regulation 15.4 of the third amendment to MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 notified on 30th June, 2012, the petitioner is provisionally allowed to recover 95% of the fixed cost allowed in above table. The aforesaid 95% fixed cost is Rs. **135.88** crores as computed at serial No.10 of the above table.

(B) Energy (Variable) Charges:

37. While calculating the energy (variable) charges, the following has been considered:

- i. Gross Station Heat rate has been worked out as per provisions under clause 33.2 (B) of the Regulations, 2009 considering the Turbine heat rate and Boiler Efficiency as filed in the petition as per supplier certificate.
- ii. Auxiliary Energy consumption and Specific Oil consumption is considered as per norms under third amendment of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 and the Principal Regulations respectively.
- iii. 250 MW unit of Jaypee Bina Power is considered as non pit-head and normative transit loss has been considered as per Regulations, 2009.
- iv. Weighted average GCV of coal has been worked out based on the availability of coal from different sources as informed by the petitioner in the additional submission dated 18th July, 2012 is as given below;

Particular	Unit	Linkage/availability as filed		
		SECL	CCL	e-Auction
Qty. of Coal	Million tons PA	1.075	0.919	0.216
GCV of Coal	Kcal/kg	3865	4524	3553.51
Rate of Coal	Rs./MT	1878.56	2410.55	4012.83
Wt. avg. GCV	Kcal/kg	4108.59		
Wt. avg. Rate	Rs./MT	2308.38		

- v. Weighted average rate and GCV of Coal as worked out above as per additional written submission dated 18th July, 2012 is considered. The details of the Energy Charges ex-bus are worked out as follows:

Energy Charges:

Sr. No.	Particular	Unit	Approved provisionally for FY12-13
1	Capacity	MW	250
2	NAPAF	%	85
3	Gross Station Heat Rate	kCal/kWh	2450
4	Sp. Fuel Oil Consumption	ml/kWh	1.00
5	Aux. Energy Consumption	%	8.50
6	Transit Loss	%	0.80
7	Weighted average GCV of Oil	kCal/ltr.	10,000
8	Weighted average GCV of Coal	kCal/kg	4109
9	Weighted Average price of Coal	Rs./MT	2308
10	Heat Contributed from HFO	kCal/kWh	10
11	Heat Contributed from Coal	kCal/kWh	2,440
12	Specific Coal Consumption	kg/kWh	0.5939
13	Sp. Coal Consumption including Transit Loss	kg/kWh	0.5987
14	Rate of Energy Charge from Coal	Rs./kWh	1.38
15	Rate of Energy Charge from Coal at ex bus	Rs./kWh	1.51

38. The base rate of the energy charges shall however, be subject to month to month adjustment of fuel price and GCV of main fuel. The above energy charges have been calculated for the purpose of calculation of two month's billing, which is used for calculation of interest on working capital. However, the actual billing of energy charges shall be as per the formula and other provisions detailed in Regulation 39.

(C) Other charges:

39. In addition to aforementioned Annual Capacity Charges and Energy Charges, the petitioner is allowed to recover the fee paid by the petitioner to MPERC for determination of generation tariff, E.D. and cess on auxiliary

power consumption levied by the Statutory Authorities from the beneficiaries on pro-rata basis.

40. The above tariff is provisionally determined by the Commission for 250 MW Unit-I w.e.f. the CoD of Unit to 31st March, 2013, based on the Auditor's Certificate and the documents placed before the Commission during various proceedings held in the subject matter. The provisional tariff so determined in this order shall be subject to adjustment as per proviso 15.3 of the Principal Regulations after the final tariff order is issued in the matter. The Commission has also taken into consideration the appropriate comments/suggestions offered by the respondents in the matter. However, this tariff is subject to revision after filing of the audited accounts along with all other clarifications which are still lacking to the satisfaction of the Commission.
41. The petitioner is directed to file the final tariff petition at the earliest along with the Audited accounts as on CoD. The unit-wise break-up of audited accounts be also submitted with the final Tariff petition in favour of its claims. All discrepancies and information gaps observed by the Commission while processing the instant petition be also eliminated while filing the final tariff petition.
42. With the above directions the subject petition No.40/2012 is disposed of.

Sd/-

(Rakesh Sahni)
Chairman

Date: 12.12.2012

Place: Bhopal

Response of the Petitioner to the Comments/suggestions by the

Respondent No.1

Comments of MPPMCL

1. The first unit of 250 MW has been anticipated to achieve CoD on 30.6.2012, whereas the petition has been filed by the petitioner after 16th May 2012. As per the provisions contained in clause 1.9 of MPERC (Details to be furnished and fee payable by licensee or Generating Company for Determination of Tariff and Manner of Making Application) Regulation, 2004, “Every new generating company shall file an application with the Commission at least two months ahead of commencement of commercial operation”. However, the petitioner has failed to comply with the provisions of the Regulation.

JPPVL’s response

I say that the contents of Para are denied. It is submitted that it is the Respondent No. 1’s contention that as per the MPERC (Details to be furnished and fee payable by licensee or Generating Company for Determination of Tariff and Manner of Making Application) Regulation, 2004 (**MPERC Regulations**) every new generating company shall file an application for Tariff Determination 2 months prior to Commissioning. Thus the Petitioner has failed to comply with the MPERC Regulations since the first unit of 250 MW was anticipated to have achieved Commercial Operation Date (**COD**) on 30.06.2012 and the Petition was filed on 18.05.2012. Therefore, the Petition is liable to be dismissed. It is submitted that such an interpretation of the MPERC Regulations is perverse as the underlying philosophy behind prescribing a time period for filing of Tariff Petition is to ensure that the Tariff Determination Process of this Hon’ble Commission coincides with the Commissioning of the Project, however, even if for the sake of argument it is assumed that the Petitioner has failed to comply with the said Regulation, however, the same does not make the Petition non-maintainable. It is submitted that there is no provision under the MPERC Regulations or under the Electricity Act, 2003 which mandates that if the timeline is not met then the Petition becomes non-maintainable/infructuous. Therefore, Respondent No.1’s contention that the Petition is liable to be dismissed on such technicality is liable to be rejected at the outset. Further, it is also pertinent to mention that even if the Petitioner did file the Petition on 18.05.2012, the Commissioning of Unit I has not taken place for a period

over 2 months thereafter, hence, the Petitioner has in effect complied with Regulation 1.9 of the MPERC Regulations.

Comments of MPPMCL

2. MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2009 were applicable for a control period of 3 years from FY 2009-10 to FY 2011-12. The Hon'ble Commission vide notification dated 10.2.2012 has extended the control period of the said Regulation upto March 2013. In spite of Tariff Regulations, 2009 being applicable only till March 2013, the petitioner has filed the tariff petition for the period FY 2012-13 to FY 2014-15. This is not in accordance to the provisions of the Tariff Regulations, 2009 and, hence, is liable to be dismissed. The petitioner may be directed to file a fresh petition for determination of tariff for the balance control period of the Tariff Regulations, i.e., upto 31st March 2013.

JPPVL's response

I say that it is an admitted position that this Hon'ble Commission vide its notification dated 10.02.2012 has extended the control period of the MPERC Tariff Regulations, upto March 2012. However, the Petitioner has filed Tariff Application for the FY 2012-13 to FY 2014-15. Since the control period of MPERC Tariff Regulations has been extended up to March, 2013, the Hon'ble Commission may be pleased to determine the tariff up to March 2013 or such other extended period as the Commission may decide in the interest of justice.

Comments of MPPMCL

3. It is to submit that the petitioner has stated that they have availed term loan facility for an amount not exceeding Rs.1928 Cr. from lenders toward part financing of the project and filed the common loan agreement. However, it has also been claimed that an additional loan agreement is under execution for term loan of Rs.340 Cr. In spite of the fact that the additional loan of Rs.340 Cr. is under execution as on the date of affidavit of the present appeal, the same has been shown as the part of the capital cost and tariff is being claimed on it. This is highly objectionable and it is requested that, while determining the capital cost, the amount of Rs.340 Cr. may not be considered to form the part of the capital cost.

JPPVL's response

I say that, it is an admitted position that as per the Mid Term Review conducted by IDBI Bank (Lead Bank for the consortium of Lenders), the Petitioner's Project was reappraised at a cost of Rs.3,240 Crs., to be financed at Debt: Equity ratio of 70:30. Thus, additional debt of Rs.340 Crs. needed to be funded by the Lenders. A copy of the Project Information Memorandum (PIM), dated December 2011, has already been submitted as Annexure A-10 along with the Petitioner's Additional Affidavit dated 18.07.2012. It is further humbly submitted that as on the date of filing of the instant Tariff Petition on 18.05.2012, the loan documents for additional debt of Rs.340 Crs. were under execution which in no way reflects that the Additional Debt is not required for the Project. It is further submitted that Financing Documents for the Additional Debt have since been executed and copies of the same were submitted as Annexure A-11 with the Petitioner's Additional Affidavit dated 18.07.2012. In view of the above it is submitted that the objection by the Respondent No.1 that the amount of Rs.340 crores may not be considered to form a part of the capital cost is untenable. It is also pertinent to mention that financing of any project involves disbursement of funds at various steps as even the financial institutions do not provide the Developer with the entire loan upfront, hence, the Additional Loan of Rs.340 Crores was well within the funding practices followed by Financial Institutions.

Comments of MPPMCL

4. The petitioner has claimed that the transmission line contract award is amongst the major contract award by the petitioner to carry out the implementation of the project. However, no such details have been provided by the petitioner along with the petition.

JPPVL's response

I say that the Petitioner has awarded the Transmission Line Contracts to M/s KEC International Limited for Rs.48.86 crores, Areva (now Alstom T&D India Ltd.), for Rs.6.11 crores, PGCIL consultancy charges for three contracts for Rs.2.87 crores, Rs.0.13 crores and Rs.0.73 crores and Survey charges to M/s RCS for Rs.0.05 crores. Copies of the aforementioned contracts are being annexed hereto and marked as **Annexure R-1 (Colly)**.

Comments of MPPMCL

5. In para (IV-Overview of relevant facts) under Point No.12, the petitioner has furnished the list of relevant dates and events. Under this head, it has been stated that contract for supply of BTG package was executed between the erstwhile BPSCCL and BHEL on 20.1.2009. The date of award of contract for supply of BTG has to be considered as the initiation of process of implementation of the project activity and the project is anticipated to achieve its CoD on 30th June 2012, i.e., after about 42 months, and thus the petitioner is not entitled to claim the additional return of 0.5% on Return on Equity for timely completion of the project.

JPPVL's response

I say that the Petitioner had claimed the Additional return on Equity of 0.50% in the instant Petition. However, the Petitioner vide Additional Affidavit dated 18.07.2012 had revised the said calculations without Additional Return on Equity of 0.50% and the Revised Form 5(b) was annexed as Annexure A-13. The Petitioner craves leave of this Hon'ble Commission to rely on the same in response to the averment being made by the Respondent No.1 in the said Para.

Comments of MPPMCL

6. Without prejudice to the above, the respondent humbly begs to submit the following submissions:-
- i) The petitioner has submitted tariff petition for FY 2012-13 to 2014-15 and thus it appears that they expect that the next tariff block period shall also be for three years i.e., for FY 2012-13 to FY 2014-15 whereas the Hon'ble Commission has already extended the control period of the Tariff Regulations, 2009 for a further period of one year and, accordingly, the petition should be based on the application for determination of tariff only for the control period. Hence, the petition is liable to be dismissed and petitioner may be advised to submit a fresh petition for the present control period.
 - ii) The petitioner has submitted that the total cost of project is `3240 Cr. Thus, per MW capital cost is more than Rs.6.4 Cr. This is exorbitantly high and it is humbly requested that the same may not be allowed.

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- iii) In this connection, it is to submit here that the Central Government in exercise of its power under section 3 of the Electricity Act, 2003 has notified the tariff policy vide Resolution No.23/2/2005-R&R (Vol. III) dated 6.1.2006. Para 5.3 of the Tariff Policy provides for the following among others:

“While allowing the total capital cost of the project, the appropriate Commission would ensure that these are reasonable and to achieve this objective, requisite benchmarks on capital cost should be evolved by the Regulatory Commissions.”

Accordingly, Hon’ble MPERC is also required to evolve requisite benchmarks on capital cost and it is, therefore, humbly prayed that the Hon’ble Commission may kindly initiate the process of evolving the benchmarks.

As specified in preamble of MPERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2009 and as per Section 61(a) of Electricity Act, 2003, SERC is guided by the principles and methodologies specified by the CERC for determination of Tariff applicable to Generating Companies. Accordingly, it is humbly submitted that, till such time the benchmarks are specified by Hon’ble MPERC, the benchmarks specified by Hon’ble CERC for the plants of 500 MW and above capacity may be considered in arriving at a just and reasonable capital cost in the instant petition.

Accordingly, it is submitted here that keeping in view the mandate of the tariff policy, first proviso to the clause (2) of Regulation 7 of the CERC Tariff Regulations 2009 provides as under:-

“Provided that in case of the thermal generating station and the transmission system, prudence check of capital cost may be carried out based on the benchmark norms to be specified by the Commission from time to time.”

Accordingly, the Hon’ble CERC initiated the process to Benchmark Capital Cost (Hard cost) for Thermal Power Stations with Coal as Fuel and vide its order dated 4.6.2012 has determined the benchmark norms for the same. CERC in its above process has considered the

plants of 500/600/660/800 MW capacity considering the fact that most of up coming additions to the power generation will be of this class. While determining the benchmarks, the Hon'ble CERC has observed that –

*“The main test for benchmarking of cost lies in ultimate tariff at which power will be generated through these units for sale. For construction of Super Critical power plants, it is necessary to reduce investment cost and to bring about an economic optimum between investment cost and efficiency gains. The increase in per unit cost on account of increase in fixed charges due to higher capital cost should be at best equal to savings in per unit variable cost due to increase in efficiency to keep the overall cost of electricity per unit for sale at par with subcritical plant with all other input cost parameters (fuel, environmental compliance etc.) remaining the same. **The incremental capital cost associated with a super critical plant as compared to a conventional sub critical plant is not significant (small to negligible) based on findings reported in International Energy Agency -Coal Industry Advisory Board (CIAB) paper titled Industry Perspectives of Increasing the efficiency of Coal Fired Power Generation.** Also as per numerous reports it is seen that in countries where supercritical technology is being used since number of years the situation is more or less similar. This is because the capital cost increase specific to the Super Critical Pulverized Fuel plant associated with superior materials and other features should get counter-balanced by cost savings due to the fact that the steam generator and Balance of Plant and ancillary equipments tend to be smaller (for same set of assumptions) as a result of the increased efficiency. The extrapolation done takes into account the reality of the condition that at introductory stage in India there can be certain premium for the technology and has been factored through trend analysis of available data.”*

Hon'ble CERC has determined the following benchmarks:

Benchmark Hard Cost for Green Field Coal Based Thermal Plant in Rs. Crores per MW

Unit size in MW	500	500	600	600	660	660	800	800
No. of Units	1	2	1	2	1	2	1	2
Total Hard Cost	5.08	4.71	4.87	4.54	5.37	5.01	4.96	4.79

Financing cost, IDC, taxes and duties, right of way charges, cost of R&R are not factored in bench marks cost.

It may please be observed from the highlighted observation of Hon'ble CERC that cost of super critical plants are higher by small to negligible amount to that of sub-critical generating plants. It is humbly submitted that from above, it can be construed that the per MW cost of a 2 x 250 MW plant shall be in the range of Rs.4.54 Cr. per MW (lowest in the above table). Thus, the capital cost of the project should be around Rs.2270 Cr. plus IDC and financing charges subject to prudence check.

- iv) The petitioner is claiming additional Return of 0.5% on the ground that the project has been completed within the timeline of 33 months specified in Appendix –I of Tariff Regulations, 2009. The petitioner has claimed that the completion time schedule should be reckoned from the date of investment approval by the Board (of the Generating Company), upto the date of commercial operation of units or block of units. In this connection, it is to submit that the statement at page 763 of the Vol. III of the petition states that the contract for supply of boiler turbine and generators was awarded on 20.9.2008 and contract was signed on 20.1.2009. Further, civil construction, including chimney, railway siding and marshalling yard, intake and barrage contract was awarded and executed on 25.3.2009 with M/s JAL and the work started on 25.3.2009. In view of above, 25.3.2009 should be considered as the date of the start of erection work. It can be no one's case that the decision of investment was taken after placing the contract for supply of boiler turbine generator and civil construction. This makes the date of investment decision suspect. The petitioner's

claim regarding the date of investment approval by the Board is not justifiable, since it defies logic that Company would undergo boiler, turbine, generator and civil work without the investment approval by the Board. It is, therefore, humbly prayed that the petitioner is not entitled for additional return of 0.5% on equity and the same may not be allowed in instant case. It is submitted that while calculating the Return on Equity, the petitioner has not considered the average of opening and closing equity. It is requested that the same may not be allowed to the petitioner.

- v) Gross station heat rate as provided in Regulation 33.2(B) which is applicable for coal based generating stations shall be made applicable which provides -

1.065 x design heat rate (kCal/kWh)
provisio under this clause states –

“provided that design heat rate shall not exceed the following maximum design unit heat rate depending upon the pressure and temperature ratings of the unit.”

“provided further that in case pressure and temperature para meters of a unit are different from above ratings, the maximum design heat rate of the nearest class shall be taken.”

The petitioner in Form TPS-II at page 756 of the petition has given the plant characteristics indicating Turbine Guaranteed Design Heat Rate as 1946.7kCal/kWh and Boiler Guaranteed Efficiency as 84.60%. As per the provisions contained in above Regulations, considering the Turbine Guaranteed Design Heat Rate as 1946.7kCal/kWh (as per actual) and Boiler Guaranteed Efficiency as 85% (as per norms), the Gross Station Heat Rate comes out to be 2439.100 kCal/kWh.

Accordingly, the Gross Station Heat Rate of 2439.100 kCal/kWh (1.065 x 2290.235) may please be considered after prudence check of the design para meters of the generating units.

- vi) As already submitted above in para 9 (iii) that the unit does not qualify for the additional return of 0.5% and, hence, a return on equity of

15.5% may only be considered for determination of tariff. It is humbly submitted here that the petitioner is a new company established for development of power project in the State of Madhya Pradesh and, hence, the applicability of the income tax or MAT may kindly be examined before grossing up of ROE. It is humbly prayed that the petitioner may not be allowed any grossing up of the income tax rate and same may be considered at the time of true-up filing by the petitioner, on actual basis.

- vii) The audited balance sheet submitted by the petitioner as on 31.3.2012 indicates a loan of Rs.1878.99 Cr. Further, the rate of 14.50% of IOL appears to be exceedingly high since during the year 2009-10, when the loan was sanctioned to the petitioner, the prevailing rate of interest was of the order of 9-10.5% and accordingly, it is requested to apply a rate of 10% for computation of IOL. It is exceedingly surprising that the rate of IOL of 14.50% is even higher than the interest on working capital which is a short term loan.

The rate of interest on loan claimed by the petitioner demonstrate the lack of efforts on the part of the petitioner to secure a competitive rate of interest for long term loan and it is, therefore, prayed that this being a long term loan, a rate of interest not more than 10% only may be allowed.

- viii) O&M expenses of Rs.62.74 Cr being claimed by the petitioner are arbitrary without any basis and against the prevailing norms of Tariff regulations, 2009. Even if we consider the proposed date of CoD, i.e., 31.7.12 and 31.10.12, normative O&M expenses comes out to be Rs.46.26 Cr. for the balance period of the year.

Normative working capital also covers one month's O&M expenses, maintenance spares @ 20% of normative O&M expenses, and, accordingly, O&M expenses as proposed in above para may only be allowed in normative working capital calculation also. Further, while calculating Receivables equivalent to two months RoE @ 15.5% only be considered against 16% claimed by petitioner.

- ix) In line with CERC Tariff Regulations, 2009, Hon'ble MPERC in clause 27.1 of the MPERC Tariff Regulations, 2009 has prescribed that *the*

rate of interest on working capital shall be equal to Short-term Prime Lending Rate of SBI as on April 1 of the relevant year.

This Regulation has been amended by Hon'ble CERC vide Notification dated 21.6.2011. The amended Regulation states that the rate of interest on working capital shall be on normative basis and shall be considered as follows-

- 3(ii) *SBI Base Rate plus 350 basis points as on 1.7.2010 or as on 1st April of the year in which the generating station or a unit thereof or the transmission system, as the case may be, is declared under commercial operation, whichever is later, for the units or station whose date of commercial operation lies between the period 1.7.2010 to 31.3.2014.*

As indicated in Preamble of the Tariff Regulations, 2009, SERC is guided by the principles and methodologies specified by CERC for determination of tariff and, hence, Hon'ble Commission is requested to amend the MPERC Tariff Regulations, 2009 in line with the above amendment issued by Hon'ble CERC.

The existing norms of MPERC on interest on working capital is putting an additional burden on the ultimate consumer of the State which is against the spirit of the Act u/s 61 (d) which states inter alia –

“safeguarding of consumers’ interest and at the same time, recovery of the cost of electricity in a reasonable manner”.

In view of above, it is requested to allow interest on working capital only at the rate as amended by Hon'ble CERC after amending the MPERC Tariff Regulations, 2009.

Petitioner has claimed that cost of secondary fuel is Rs.70,151/- per KL and freight would be approximately Rs.1000/- per KL. This is exceedingly high since Hon'ble Commission in its order dated 24.7.12 in petition No.28 of 2012 of M/s BLA Power Ltd. has allowed the rate of oil as Rs.45332 per KL of 10000 Kcal/Lt. Thus, there is a huge mismatch in pricing of secondary fuel in both the similarly situated power generating plant and needs to be investigated by Hon'ble Commission. The Annual Fixed Charges will be reduced by about Rs.9

Cr. if the secondary fuel oil rate allowed to M/s BLA Power by Hon'ble Commission may also be considered in the instant case.

- x) It is to submit that at page 500 of Vol. III "Project at A Glance" has been filed wherein it has been quoted that "To Part Finance Cost overrun in the Project, RTL of Rs.340 Crore". Thus Rupee Term Loan of Rs.340 Cr. is to Finance Cost overrun in the project and due to cost overrun amount there will be additional impact on beneficiary and ultimate consumer of the State. It is humbly submitted that cost over run is attributable to the petitioner and may not be allowed to pass through in tariff and IDC and FC should not be allowed in lieu of it. Additional Loan Agreement was executed only in June 2012, however it has shown to be invested and being prayed to consider as capital cost whereas the petition has been filed on 18th May 2012. Thus, the claim of petitioner is baseless and may please not be considered.

JPPVL's response

- (i) I say that the Petitioner has dealt with the same in Paragraph 6 above and the same is not being repeated herein for the sake of brevity.
- (ii) Reply are vehemently denied. I say that the Hon'ble CERC vide its Order dated 04.06.2012 in the matter of '*Benchmark Capital Cost (Hard cost) for Thermal Power Stations with Coal as Fuel*' has decided that the benchmarking of cost lies in ultimate tariff at which power will be generated through thermal units for sale. Annexure II to this said order shows the capital cost for Thermal Power Station/Unit size(s) 500/600/660/800 MW which shall be taken into consideration while determining the capital cost in accordance with clause (2) of Regulation 7 of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009. It is humbly submitted that the Petitioner objects to the contentions of Respondent No. 1 in comparing certain Norms stated to be specified by the Hon'ble CERC for plants of 500/ 600/ 660/ 800 MW capacity as these are not comparable to the Petitioner's Project of 2x250 MW. It is submitted that the inference drawn by Respondent No. 1 that "*per mega watt cost of a 2x250MW plant shall be in the range of Rs.4.54 Crs. per MW*" is totally erroneous and misleading as it is based on the capital cost of 1200 MW (2x600 MW) plant and not for 500 MW (2x250 MW). It is pertinent to note that there are no norms suggested / issued for 250 MW Plants and multiples thereof, by Hon'ble CERC. It is humbly submitted that it is a universally accepted principle that as the machine size goes down, the

per MW cost substantially increases. Thus, since the per MW cost of 2x500 Plant is Rs.4.71 Crores / MW, 2x250 Plant being just half in size, the per MW cost should be substantially be higher. Thus the contention of the Respondent No.1 is totally untenable and is liable to be rejected.

It is further submitted that it would be prudent to compare it's the Petitioner's project cost with the estimated project cost of 2x250 MW Satpura Thermal Power Station extension Unit 10 & 11 at Sarni district, Betul, MP. A copy of the chart with cost comparison is annexed hereto and marked as **Annexure R-2**. It is submitted that from a bare perusal of the aforementioned chart it is clear that Satpura TPS, even though being an extension project, having no provision of Barrage and Transmission Line, will be costing Rs.3,032.34 Crs. i.e. Rs.6.065Crs. per MW. If the values of Petitioner's Barrage and Transmission Line of Rs.(180 Crs. and 58.75 Crs.) are added, the total cost of the said Power Plant would work out to be Rs.3,271.08 Crs. i.e. Rs.6.54 Crs. per MW which is much higher than the expected completion cost of Bina TPS at Rs.6.41 Crs. per MW. Therefore, in view of the above, it is humbly submitted that the Hon'ble Commission will appreciate that the estimated completion cost of the Petitioner's Project is well within acceptable limits.

- (iii) I say that the Petitioner has dealt with similar contentions of the Respondent No.1 in paragraph 9 above and the same are not being repeated herein for the sake of brevity.
- (iv) I say that the entire equity requirement of Rs. 972 crores being 30% of the estimated Project Cost of Rs.3,240 crores, has been fully deployed as on 30.06.2012 and the same has been confirmed by CA certificate dated 04.08.2012 submitted as Annexure C-3 along with Petitioner's Affidavit dated 21.08.2012.
- (v) I say that the Respondent No.1 is only trying to mislead this Hon'ble Commission by providing incorrect calculations. A copy of the correct calculation for Gross Station Heat Rate of 2,449.50kCal/kWh is annexed hereto and marked as **Annexure R-3**. It is submitted that the Respondent No. 1 in its calculation has divided the Turbine Guarantee Design Heat Rate of 1,946.70 Kcal/KWH by 85%, (norm) to arrive at the figure of 2,290.235, whereas the division should have been by the Boiler Guaranteed Efficiency of 84.60% which would have given the result of 2,301.063. In any case the first proviso to Section 33.2(B) of

the MPERC Tariff Regulations provide “*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*”, which in this case for sub-bituminous India Coal for Electrically driven BFP is 2,300kCal/kwh, which multiplied by 1.065 is equal to 2,449.50kCal//kwh, which has been used by the Petitioner as Gross Station Heat Rate.

- (vi) I say that the Petitioner has already revised the calculations by not taking additional return on equity of 0.50%. Thus, the submission of Respondent No. 1 “*that the petitioner may not be allowed any grossing up of the income tax rate and same may be considered at the time of true-up filing by the petitioner, on actual basis*” is liable to be rejected at the very outset.
- (vii) I say that the contention of Respondent No.1 is based on conjunctures and surmises whereas the Petitioner has actually been paying interest on Rupee Term Loan @ 14.50% p.a., hence, the averment of Respondent No. 1 is untenable. The Petitioner humbly submits that the interest payable on the Rupee Term Loan, as per the financing arrangement with the consortium of Lenders, is linked to the Base-Rate of respective FI’s/ Banks and has been varying from 12% p.a. in 2008-09 to 14.75% p.a. in 2012-13. It is pertinent to submit that for the working based upon the Projected Cost of Rs.3,205 Crs. an interest rate of 14.50% p.a. has been used from the Projected COD onward, however, the CA certificates submitted by the Petitioner contains the actual interest and financing expenses incurred.
- (viii) I say that as per the MPERC Tariff Regulations which has been extended up to March, 2013, Regulation 26 contains the Norms for calculating O&M expenses, which do not apply to the Petitioner as they primarily appear to apply to the MP State Generation Companies for prior control periods. Therefore, the Petitioner has adopted the Norms prescribed by Hon’ble CERC in Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009, Regulation 19 for the year 2012 – 13, for 200/210/250 MW sets, of Rs. 21.51 lac/MW, for both Units I & II individually, based on their expected CODs. Therefore, the contention of Respondents No. 1 of calculating O&M expenses at Rs.46.26 Crs. is misplaced and without any basis.
- (ix) I say that the Petitioner has since revised the rate of return on equity from 16% to 15.50%. Further, the said contention of the Respondent

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- No. 1 regarding O&M expenses has already been dealt with in paragraph 18 above and is thus not being repeated herein for the sake of brevity.
- (x) I say that the Petitioner has calculated interest for working capital requirements based on the provisions contained in MPERC Tariff Regulations provided under Regulation 27, which specifies normative interest on working capital based on the Short Term Prime Lending Rate of State Bank of India. In view of the above, it is submitted that since there is a specific provision in this respect provided by this Hon'ble Commission, the contention of Respondent No.1 to allow interest on working capital at the rate mentioned in CERC Tariff Regulations 2009, amended vide Notification dated 21st June, 2011, is unfounded and untenable. It is further submitted that the Respondent No.1 through this para is also seeking an amendment of the MPERC Regulations. The Hon'ble Supreme Court in the case of PTC vs. CERC has held that any alteration/ amendment of Regulation being sought has to be done by an appropriate Writ Petition as Regulations are in the nature of Subordinate Legislation. Therefore, in view of the Hon'ble Supreme Court's Judgment the plea of the Respondent No.1 cannot be made before this Hon'ble Commission and the same is liable to be rejected.
- (xi) I say that the contention of Respondent No. 1 is untenable and unfounded as the invoice value of LDO purchased between April to August, 2012 varies from Rs.59,125/kL to Rs. 70,000/kL based on the purchases made outside the State (CST 2%) or within the State (VAT 13%). It appears that the rate of 45,332/KL mentioned by Respondent No. 1 may be for HFO, which in the Petitioner's case for the purchases in July, 2012, is approximately Rs.45,000/ MT and it is pertinent to mention that both these fuels are used in Operation of the Petitioner's Thermal Power Plant.
- (xii) I say that the contention of Respondent No.1 is wrong and unfounded since this is a Mid-Term Re-Appraisal which may result either in saving or additional cost. The revision in the Project Cost of the Petitioner's Project, by way of Mid Term Review by the Lead Bank (IDBI Bank), which is the usual practice followed by Lenders, was on account of fine tuning of the Project Estimates based upon the execution of work, placement of orders and detailed engineering. It is submitted that the Respondent No.1 is referring to cost overrun due to time overrun, which is not the case of the Petitioner's Project. The revision in the

Project Cost of the Petitioner's project is on account of revision in estimates, detailed engineering and placement of orders and the detailed explanations and justifications in respect thereof have been submitted as Annexure C-5 along with Additional Affidavit dated 21.08.2012. It is also pertinent to mention herein that the data in Form TPS 5B filed with the instant Petition is based on the estimated completion cost of the project whereas the CA certificate reflects the actual cost incurred as on the relevant date.

(xiii) Reply, merit no rejoinder.

Comments of MPPMCL

- 7 It is to submit that petitioner must furnish audited details of capital expenditure for each unit of Phase-I for determination of tariff, duly considering the apportionment of common facilities between two Phases of 2 x 250 MW and 3x250 MW and between two units of Phase-I. It is humbly requested that the petition may be considered only after receipt of aforementioned information.

JPPVL's response

I say that the Petitioner could have only submitted the audited expenditure details after the COD. The Petitioner's submissions on this issue have been submitted vide Para 2 C (in reply to Query 4 (iii)) of Additional Affidavit dated 21.08.2012 which are reproduced hereunder for ready reference:

"The Petitioner confirms that the actual capital cost of Unit-I, would be available after the COD of both Unit-I & II are achieved. However, it is humbly submitted that on attaining of COD of Unit-I, cost incurred in respect of this Unit, upto the said date, would be furnished to the Hon'ble Commission. The cost shall be further apportioned by the Petitioner between Unit-I & II in terms of regulation 8.2 and 8.3 of MPERC Determination of Tariff Regulations. It is also humbly submitted that the contract with BTG Supplier (BHEL), being for both Unit-I & II, the financial impact on the cost would crystallize after the Commissioning of Unit-II i.e. completion of the Project."

Comments of MPPMCL

- 8 Petitioner and Jaiprakash Associates Limited (JAL) are related companies and no permission from Central Government has been obtained by them. It is to submit that while awarding the contract, no transparent competitive bidding process has been followed by the petitioner. When the companies are

related, transparent competitive bidding process should have been followed before awarding contract. This is a serious ambiguity and, lapses on the part of the petitioner should not in any way be allowed to be passed on to the ultimate consumer of the State of MP. The Respondent begs to submit that cost comparison of similar works at ideally situated locations, may please be carried out to arrive at just and reasonable cost of civil works of plants and capital cost may be determined only after prudence cost analysis, considering cost overrun attributable to petitioner.

JPPVL's response

I say that the provisions of section 297 of the Companies Act are not applicable to the Petitioner as has been explained in detailed vide para 6 & 7 of the Additional Affidavit dated 18.07.2012 as the Civil Works Contract is between two Limited and Listed Companies. In addition to above, the Petitioner would like to draw the kind attention of Hon'ble Commission to Para N of the submission dated 21st August, 2012 wherein the JAL-Bina and JAL-Bokaro Civil Work Contract have been explained in detail and the Petitioner craves leave of this Hon'ble Commission to rely on the same at the time of hearing and thus the same are not being repeated herein for the sake of brevity.

Comments of MPPMCL

- 9 The DPR filed by petitioner was prepared in January, 2009 and investment approval was accorded by the BoD of petitioner on 30th September, 2009, however, it has not been clarified by the petitioner that how the contract have been awarded for Boiler Turbine Generator and civil work in 20.1.2009 and 25.3.2009 respectively and LOA has been issued on 20.9.2008 without prior approval of the BoD. It appears that even the clause 297 of Companies Act, 1956 has not been complied with as regards to obtaining BoD approval within three months of the date on which contract was entered into.

It is to submit that para 8 of the above affidavit, the estimated cost of the project was Rs.2754 Cr., as approved in Board of Directors meeting. Now, an amount of Rs.3240 Cr. is the revised project cost, which is about 18% higher than the original project cost and needs detailed prudence check.

Original estimated project cost is Rs.2700 Cr. (as per page 138 of DPR) and not Rs.2754 Cr. Further, extract of MoM dated 30.9.2009 of BoD submitted by petitioner is Resolution to approve to borrow term loan facility from the

Bank. This cannot be considered as investment approval of BoD which is being desired by Hon'ble Commission.

Available land for power generating stations has been shown as 693.783 Hectares, costing about Rs.6.68 Cr. CEA in its Publication, "Review of land requirement for Thermal Power Stations" dated September, 2010 has revised land requirement for Thermal Power Plant of 2 x 500 MW capacity to 1090 Acres i.e. 1.09 Acres per MW. Thus land requirement for 250 MW capacity will be 272.5 Acres i.e. about 111 Hectares. Considering the above cost, the cost of land allowable in capital cost comes out to Rs.1.07 Cr. for Unit-I.

JPPVL's response

I say that as mentioned in paragraph 26 above, Section 297 of the Companies Act is not applicable to the Petitioner. Further, the Revised Project Cost, as per the Mid Term Review carried out by the Lead Bank (IDBI Bank), is Rs.3,240 Crs. It is further submitted that the submissions of Respondent No. 1 regarding land requirement based on extrapolation of data contained in CEA's publication dated September, 2010, is incorrect and misleading, in as much as the comparison has been made with a 2x500 MW capacity plant, by converting the same to per MW land requirement and then multiplying by 250 MW, being the capacity of Unit-I for Phase I.

Comments of MPPMCL

10 Para 6, 7 & 8: Cost of the land is to be apportioned in all the five Units of both the Phases and cost of the land as submitted in above para may only be allowed. It is to submit that land, barrage and transmission line are meant for catering all five Units of the Phase-I & II of Power Plant and these costs must be apportioned properly for arriving just and reasonable capital cost of Unit-I.

JPPVL's response

I say that the detailed justification for non-apportionment of Land, Barrage and Transmission Line into Phase I & II of the project has been submitted vide para F to submission dated 21.08.2012 and the same is not being repeated herein for the sake of brevity.

Comments of MPPMCL

11 Petitioner has not submitted cost of assets of BPSCL considered in the Project cost along with its justification and, accordingly, it is requested to direct the petitioner to submit the same.

JPPVL's response

I say that detailed submission have been made vide para 13 of submission dated 18.07.2012 and the Balance Sheet of erstwhile Bina Power Supply Company Limited as on 31.03.2008 is enclosed herein as **Annexure R-4**. In addition to the above, Petitioner would also like to submit before the Hon'ble Commission that for the revival of the Project, the Petitioner had purchased the erstwhile Bina Power Supply Company Limited from M/s Aditya Birla Group in May, 2008, wherein the land as per the Balance Sheet as on 31.03.2008 was valued at Rs.6.83 Crs., This land was acquired by M/s Aditya Birla Group some time in 1998. Petitioner has obtained a Registered Valuer's Report to determine the "Fair Value" of the land as of May, 2008, which the Registered Valuer has certified as Rs.46.76 Crs., and a copy of the Valuation Report is annexed hereto and marked as **Annexure R-5**.

Comments of MPPMCL

- 12 Petitioner has denied to provide unit-wise audited financial accounts upto 31st March 2012 and unaudited account for the expenditure up to date and expected up to CoD of each units. This information is required for determination of the tariff of unit-I of Phase-I and in case of unavailability of this information, the unit-wise tariff cannot be determined. It is, therefore, requested to direct the petitioner to submit the same for its scrutiny.

JPPVL's response

I say that the same has been dealt with in paragraph 21 above and the same is not being repeated herein for the sake of brevity. It is further submitted that the Petitioner has since submitted Audited Balance Sheet of Jaiprakash Power Venture Limited (JPVL) as at 31.03.2012 as Annexure A-6 of the submission dated 18.07.2012 and CA certificate dated 4th August, 2012 certifying the expenditure incurred up to 30.06.2012 as Annexure C-3 and division of the same in respect of Unit-I & II as Annexure C-4 of the Petitioner's submission dated 21.08.2012.

Comments of MPPMCL

- 13 Para 12 & 13 : It is to submit that IDBI Bank in its mid-term review found that there is a cost overrun in the project. Thus, the erection and commissioning activities have not been performed efficiently by the petitioner and this has resulted into cost overrun. This is attributable to the petitioner and it is, therefore, prayed that same may not be allowed in tariff as pass through.

JPPVL's response

I say that the contention of Respondent No.1 that *“erection and commissioning activities have not been performed efficiently by the petitioner and this has resulted into cost overrun”* is erroneous and misplaced. The Petitioner further craves leave of this Hon'ble Commission to refer to paragraph 22 above and the same is not being repeated herein for the sake of brevity.

Comments of MPPMCL

- 14 Unit-wise drawdown schedule of loan and infusion of equity has not been made available by the petitioner. This may result in wrong calculation of IDC and apportionment of financing charges.

JPPVL's response

I say that the draw down schedule of loan and equity has been submitted as Annexure A-12 in the Petitioner's submission dated 18.07.2012 and the Petitioner craves leave of this Hon'ble Commission to rely on the same at the time of hearing.

Comments of MPPMCL

- 15 It is to submit that there is gross mis-match in data submitted by the petitioner in the Form-TPS-5 B and CA certified statement. Total IDC and financing charges has been shown as Rs.398 Cr. in Form TPS-5 B upto CoD whereas the CA certified statement indicate total IDC and FC as Rs.314 Cr. on 31.3.2012. Similarly, cost of civil work is also differing by an amount of Rs.147 Cr. Thus, the data submitted by the petitioner requires a thorough scrutiny before determination of capital cost.

The petitioner has not complied with the direction of Hon'ble Commission for filing actual expenditure till date of each Unit duly certified by CEA and instead they have filed CA certificate of expenditure upto 31.05.2012.

JPPVL's response

I say that the data in Form TPS 5B is based upon the estimated completion cost of the project whereas CA certificate reflects the actual cost incurred as on the relevant date. The Petitioner has since filed a CA certificate for expenditure incurred up to 30.06.2012 and the Petitioner craves leave of this Hon'ble Commission to rely on the same at the hearing.

Comments of MPPMCL

16 Petitioner has considered steam generation efficiency as 84.60% which is against the provision of Tariff Regulations, 2009 and 85% has to be considered. Accordingly, the Gross Station Heat Rate of 2439.100 kCal/kWh (1.065 x 2290.235) may please be considered after prudence check of the design parameters of the generating units.

JPPVL's response

I say that the said contention of the Respondent No.1 have already been dealt with by the Petitioner in paragraph 15 above and the same is not being repeated herein for the sake of brevity.

Comments of MPPMCL

17 The details of cost of coal submitted by the petitioner indicate that coal obtained through E-Auction process is costing more than double to that of SECL coal supplies and having least gross calorific value.

In view of above, it is humbly submitted that the petitioner may be directed to obtain coal linkage for its full capacity so that there will be no need for purchase of coal through E-Auction as the costly E-Auction coal will put exceedingly high burden on the ultimate consumer of the State. It is, therefore, submitted that the cost of E-Auction coal should not be more than the landed price of coal to be procured from SECL. Further, the cost of CCL coal is also high looking to its calorific value and comparative cost analysis may be carried out.

JPPVL's response

I say that that Fuel Supply Agreement (FSA) with Central Coal Field Limited (CCL) has since been signed and the copy of the same has been submitted as Annexure A-2, along with the Petitioner's submission dated 21.07.2012 and supplies against this FSA have since commenced. The FSA with South Eastern Coal Field Limited (SECL) is in advance stage of execution and the same is expected to be signed shortly. Further, it is pertinent to mention that as per the Coal scenario being reported by, both the print media and the electronic media, there is an acute shortage / availability of Coal in the country due to which many Power Stations in the country are not able to operate at the optimum capacity. Despite the same, Coal India Limited (CIL) and its subsidiaries are reportedly not entering into fresh FSA's. As reported, the Office of Prime Minister of India had to intervene and direct CIL to sign fresh FSA's. However, fresh FSA's entered into, contain deviations from the

earlier FSA's and CIL / Subsidiaries have diluted even the guaranteed quantities.

In view of the above, it is submitted that the contentions of Respondent No.1 suggesting that the Petitioner may be directed to obtain coal linkage for its full capacity and that the cost of E-auction Coal should not be more than the landed price of Coal to be procured from SECL and also that the cost of Coal from CCL is high looking at its calorific value, are hypothetical and devoid of any logic and bad in law.

It is further pertinent to submit that the Petitioner has achieved the Commercial Operation Date of Unit – I with effect from 00:00 Hrs of 30.08.2012. Copies of letters/ documents evidencing the same are annexed hereto and marked as **Annexure R-6 (Colly)**.