

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

5th Floor, "Metro Plaza", Bittan Market, Bhopal - 462016



Petition No. 43 of 2020

PRESENT:

S.P.S Parihar, Chairman

Mukul Dhariwal, Member

Shashi Bhushan Pathak, Member

IN THE MATTER OF:

Determination of Multi-Year Tariff for the 2X660 MW Super Critical Coal Based Thermal Power Station at Nigrie, District Singrauli, Madhya Pradesh for the control period of FY 2019-20 to FY 2023-24 under Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.

AND IN THE MATTER OF:

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

Petitioner

Versus

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

Respondents

ORDER

(Passed on this day of 3rd May' 2021)

1. M/s Jaiprakash Power Ventures Ltd. (hereinafter called “the petitioner” or “JPVL”) has filed the subject petition on 18th June' 2020 for determination of generation tariff under the Multi-year Tariff framework in respect of its 2X660 MW Super Critical Coal Based Thermal Power Station at Nigrie, District Singrauli, Madhya Pradesh for the control period from from 1st April' 2019 to 31st March' 2024 under Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 {RG-(IV) of 2020}.
2. The subject petition has been filed under Section 62 and Section 86(1) (a) of the Electricity Act, 2003 and the petition is based on the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 {RG-(IV) of 2020}.
3. Madhya Pradesh Electricity Regulatory Commission (hereinafter referred to as “the Commission or MPERC”) issued MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 {RG-(IV) of 2020} (hereinafter referred to as “the Regulations” 2020) for the new control period i.e. FY 2019-20 to FY 2023-24 on 20th February' 2020 and notified in the Madhya Pradesh gazette on 28th February' 2020.
4. The Nigrie Thermal Power Station under the subject petition comprises of two generating Units of 660 MW each. Date of Commercial Operation (CoD) of both Units of the petitioner’s power plant are as given below:

Table 1: CoD of Unit No.1 & 2

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

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

6. A brief background of the subject petition is given below:
- i) Vide order dated 26th September' 2014 in petition no. 03/2014 ,the Commission determined the provisional tariff of Unit No. 1 Nigrie power station from its CoD (i.e., 3rd September' 2014) to 31st March' 2016 based on the actual capital expenditure certified by the Auditor. The provisional tariff for Unit No. 2 was not determined by the Commission as Unit No. 2 was not commissioned by that time.
 - ii) Subsequently, vide order dated 31st March' 2015 in IA No. 1 in Petition No. 03/2014, the commission determined provisional tariff of Unit No. 2 from its CoD (i.e., 21st February' 2015) to 31st March' 2016.
 - iii) Meanwhile, Hon'ble Supreme Court of India, vide its judgment 25th August' 2014 read with its order dated 24th September' 2014 had cancelled allotment of 204 coal blocks with effect from 31st March' 2015. The allocation of Amelia (North) Coal Mine to Madhya Pradesh Jaypee Minerals Ltd. also stood cancelled.
 - iv) Pursuant to tender and e-auction process conducted in accordance with the Coal Mines (Special Provisions) Rules, 2014, the petitioner was declared as the successful bidder for Amelia (North) coal mine. Accordingly, the Coal Mine Development and Production Agreement was executed on 02.03.2015 and subsequently 'Vesting Order' was issued to the petitioner on 23.03.2015.
 - v) Vide letter dated 18th May' 2015, Govt. of Madhya Pradesh, Energy Department issued directives to the Commission under Section 108 of the Electricity Act for down ward revision of energy charges in aforesaid matter.
 - vi) Vide order dated 28th January' 2016 in SMP No. 49 of 2015, the Commission has redetermined Energy Charges for Nigrie super critical thermal power project based on the landed price of coal determined in the aforesaid order.
 - vii) Vide order dated 24th May' 2017 in Petition No. 72/2015, the Commission determined final tariff of the project from CoD of Unit No. 1 to 31st March' 2015 based on the Annual Audited Accounts for FY 2014-15. Tariff for FY 2015-16 was determined on provisional basis subject to true-up based on Annual Audited Accounts.

- viii) Aggrieved with the aforesaid order dated 24th May' 2017, the petitioner has filed an Appeal No. 244 of 2017 with the Hon'ble Appellate Tribunal for Electricity (APTEL) and same is subjudice before the Hon'ble Appellate Tribunal for Electricity.
- ix) Further, vide order dated 20th July' 2018, the Commission determined the true-up of generation tariff for FY 2015-16 for the project based on the Annual Audited Accounts for FY 2015-16.
- x) Aggrieved with the aforesaid true-up order dated 20th July' 2018, the petitioner filed an Appeal No. 293/2018 with the Hon'ble Appellate Tribunal for Electricity. The aforesaid Appeal is also subjudice before the Hon'ble Tribunal.
- xi) Further, Vide order dated 29th Novemeber' 2018 in Petition No 7 of 2018, the Commission had issued the MYT order for the control period from FY 2016-17 to 2018-19 based on the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015. The petitioner filed an appeal No 96/2019 with the Hon'ble Appellate Tribunal for Electricity regarding certain issues on the aforesaid MYT Order.
- xii) Vide order dated 25th July' 2019 and 22nd October' 2019, the Commission determined the true up of generation tariff for FY 2016-17 and FY 2017-18 respectively for the project based on the Annual Audited Accounts. Aggrieved with the aforesaid orders, the petitioner Appeal No 341/2019 and 49/2020 before the Hon'ble Appellate Tribunal for Electricity on certain issues.
- xiii) Subsequently, vide order dated 22nd October' 2019, the Commission determined the true-up of generation tariff for FY 2017-18 for the project based on the Annual Audited Accounts for FY 2017-18 which was again challenged by the petitioner vide an Appeal No 49/2020 before the Hon'ble Appellate Tribunal for Electricity regarding certain issues. Aforesaid both the Appeals are still subjudice before the Hon'ble Appellate Tribunals for Electricity.
- xiv) The Commission vide order dated 26th November' 2020 in petition no 44 of 2019 determined the true-up of generation tariff for FY 2018-19 for Nigrie thermal power project based on the Annual Audited Accounts for FY 2018-19.

7. The element- wise Annual Capacity (fixed) charges claimed by the petitioner for 2x660 MW Nigrie thermal power project in the subject petition for the control period from FY 2019-20 to FY 2023-24 are as given below:

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

SNo	Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Depreciation	564.57	576.10	587.56	599.02	610.47
2	Interest on Loan	694.67	639.61	583.10	525.24	466.03
3	Return on Equity	383.66	390.48	397.26	404.03	410.80
4	Interest on Working Capital	87.35	81.46	81.38	81.29	81.25
5	O & M Expenses	267.43	276.80	286.57	296.60	307.03
5A	O & M Expenses (400 kV Transmission Line & Bay)	1.37	1.42	1.47	1.52	1.57
6	Lease rent payable for Land (yearly)	0.44	0.44	0.44	0.44	0.44
7	Annual Capacity Charges	1999.48	1966.32	1937.78	1908.14	1877.61
8	No of days applicable for the period	366.00	365.00	365.00	365.00	366.00
9	Total Capacity Charges for applicable days	1999.48	1966.32	1937.78	1908.14	1877.61
10	Less:-Non-Tariff Income	0.00	0.00	0.00	0.00	0.00
11	Net Capacity Charges	1999.48	1966.32	1937.78	1908.14	1877.61
12	32.43% of Capacity charges	648.43	637.68	628.42	618.81	608.91

8. The petitioner filed the following Energy (variable) charges for the control period from FY 2019-20 to FY 2023-24:

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

Financial Years	Energy Charges
FY 2019-20	1.508
FY 2020-21	1.508
FY 2021-22	1.508
FY 2022-23	1.508
FY 2023-24	1.508

9. With the above submission, the petitioner prayed the following:
- (a) *Determine the Generation Tariff of the Project for FY 2019-20, FY 2020-21, FY 2021-22, FY 2022-23 and FY 2023-24 as claimed in Para 9.1;*
 - (b) *Allow the recovery of the Court Fees paid to the Commission for filing instant Petition and also the publication expenses from the beneficiariess.*
 - (c) *Energy Development Cess on energy supplied to MPPMCL and Plant Auxiliary Consumption*
 - (d) *Electricity Duty on Plant Auxiliary Consumption*
 - (e) *Water Charges paid to Water Resources Department, Government of MP.*
 - (f) *Other Statutory Charges incidental to billing.*
10. The subject MYT petition has been examined by the Commission in accordance with the principles, methodology and the norms specified in the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 and other supplementary submissions filed by the petitioner in response to the additional information / details sought by the Commission alongwith all other documents placed on record by the petitioner. The Commission has also examined the subject MYT petition in light of the comments/ suggestions offered by the Respondent No.1 and other stakeholder and the response of the petitioner on the same.
11. In this order, the Commission has considered the same opening figures of capital cost, funding and cumulative depreciation for the project which were admitted as closing figures by the Commission in its last true-up order for FY 2018-19 issued on 26th November' 2020 in P-44/2019.

Procedural History

12. Motion hearing in the subject petition was held on 07th August' 2020. Vide daily order dated 10th August' 2020, the petition was admitted and the petitioner was directed to serve copies of its petition to all Respondents in the matter. The Respondents were also asked to file their comments/response on the petition by 05th September' 2020.
13. On preliminary scrutiny of the subject petition, vide Commission's letter dated 02nd September' 2020, the information gaps and requirement of additional details/documents were communicated to the petitioner seeking its comprehensive reply on the same with all the supporting documents by 25th September' 2020.

14. Vide letter dated 28th September' 2020, the petitioner sought three weeks extension for filing their reply with the following submission:

“We would humbly like to submit that submissions for the detailed queries raised by the Commission are under preparation and we would need some more time to finalize the same as the nodal officer is down with COVID-19 and is expected to join in next week. We, therefore request the Commission for granting an extension of three week time for submitting the para wise reply. We shall be grateful for allowing us an extension of three weeks”

15. Vide Commission's letter dated 5th October' 2020, the petitioner was allowed to file their response on the subject petition by 16th October' 2020.
16. By affidavit dated 29th October' 2020, the petitioner filed its response on the issues raised by the Commission.
17. By affidavit dated 16th December' 2020, Respondent No. 1 filed its comments/response on the subject petition. By affidavit dated 28th December' 2020, the petitioner filed rejoinder to the reply/comments filed by Respondent No. 1. The petitioner's responses on each comment offered by the Respondent No. 1 along with the observations is mentioned in the **Annexure- I** annexed with this order.
18. The public notice for inviting comments/suggestions from stakeholders was published on 30th November' 2020 in the following newspapers:

- i. Dainik Jagran (Hindi), Bhopal
- ii. Dainik Jagran (Hindi), Rewa
- iii. Central Chronicle, (English), Bhopal

19. The Commission received the comments from only one stakeholder. By affidavit dated 28th December' 2020, the petitioner filed its response on each issue raised by the stakeholders. The response of the petitioner on the comments/objections filed by the stakeholders along with observations is mentioned in **Annexure II** annexed with this order.
20. The public hearing in the subject petition was held on 05th January' 2021 through video conferencing wherein the representatives of the petitioner, Respondent No.1 and the stakeholder who offered comments appeared.

Capital Cost

Petitioner's submission

21. The petitioner regarding capital cost of the project submitted the following:
- i. The Commission vide Order dated 20-07-2018 in Petition No. 41 of 2017 had determined the Capital Cost as on 31-03-2016 at Rs 10,585.56 Crores.
 - ii. Further, the Commission vide Order 25-07-2019 in Petition No. 05/2019 approved net additional capitalization of Rs 174.14 Crores for FY 2016-17. Similarly, the Commission vide Order 22-10-2019 in Petition No. 07/2019 approved net additional capitalization of Rs 11.42 Crores for FY 2017-18. Thus, total Capital Cost approved by the Commission upto 31.03.2018 is Rs 10,771.13 Cr.
 - iii. The petitioner in true-up petition No. 44 of 2020 for FY 2018-19 filed the additional capitalization of Rs. 7.61 Crore.
 - iv. The details of Gross Fixed Assets as filed in true up petition for FY 2018-19 as on 1st April' 2018, proposed additional capitalization during FY 2018-19 and Gross Fixed Assets as on 31st March' 2019 as filed by the petitioner in true-up Petition No. 44 of 2019 are given below:

(Amount in Rs. Crores)

Sl. No.	Particulars	Capital Cost as on 01.04.2018 approved by Commission	Net Addition during FY 2018-19 filed in P-44/2019	Capital Cost as on 31.03.2019 filed in P-44/2020
1	Land	37.00	-	37.00
2	BTG	5,017.92	-	5,017.92
3	BOP	1,603.86	1.08	1604.94
4	Civil	1,522.72	6.53	1529.25
5	Total Hard Cost	8,181.52	7.61	8,189.11
6	Establishment Charges	268.13	-	268.13
7	Start Up Fuel	221.82	-	221.82
8	Interest during Constructions (IDC)	2,282.68	-	2,282.68
9	IDC Debt Component of Unallocated portion from 03.09.2014 to 20.02.2015	29.69	-	29.69
10	Foreign Exchange Rate Variation	(91.95)	-	(91.95)
11	Liquidated Damages	(120.77)	-	(120.77)
12	Total Soft Costs (6 to 11)	2,589.62	-	2,589.62
Total Capital Cost		10,771.13	7.61	10,778.74

- v. The petitioner in last true-up petition also filed additional capitalization of Rs. 148.77 Crore in Amelia Mines during FY 2018-19.

22. Accordingly, the details of Gross Fixed Assets as submitted in True up petition for FY 2018-19 as on 1st April' 2018, additional capitalization during FY 2018-19 filed in petition No 44 of 2019 and Gross Fixed Assets as on 1st April' 2019 as filed by the petitioner are as given below:

Table 4: Opening GFA as on 1.04.2019 Filed by the petitioner (Rs in Crores)

Particulars	Amount
Opening GFA as on 1.04.2018 as submitted in True up Petition for FY 2018-19 (P No 44/2019)	10,771.12
Additional Capitalization proposed during FY 2018-19 in P-44/2019 (Station+Mines)	156.37
GFA as on 1.04.2019 filed by the petitioner in MYT Petition	10,927.49

Provisions Under Regulations

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

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

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

Commission's Analysis

24. Regulation 6.2 of the Tariff Regulations, 2020 provides that in case of an existing generating station or unit thereof, the application for determination of Multi-year tariff shall be made by the generating company based on admitted capital cost including additional capital expenditure already admitted in last true up order of the Commission and estimated additional capital expenditure for the respective years for the tariff period 2019-24 in accordance with the the Tariff Regulations, 2020.
25. The petitioner has filed capital cost of Rs. 10,927.49 Crore as on 01st April' 2019 for the project in the subject petition same as the closing capital cost filed by the petitioner in its true-up petition for FY 2018-19 (Petition 44 of 2019) as on 31st March' 2019.
26. Based on Annual Audited Accounts for FY 2018-19, the Commission issued last true-up order for FY 2018-19 on 26th November' 2020.
27. To work out the opening capital cost as on 1st April' 2019, the Commission has considered the closing Gross Fixed Assets of **Rs 10,772.20 Crores** as on 31st March' 2019 as admitted in last true up order dated 26th November' 2020 for FY 2018-19 in Petition No 44 of 2019 as the base figure of capital cost in this order.

Additional capitalization

Petitioner's Submission:

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

"7.1 It is respectfully submitted that the Petitioner chooses to refrain from submitting any conclusive amount of Additional Capitalization made during FY 2019-20 since Balance Sheet as on 31-03-2020 is yet to be approved by shareholders in Annual General Meeting. Final and actual figures of the Additional Capitalization shall be shared at the time of the True Up of FY 2019-20. However, from the point of view of calculations of Capacity Charges from FY 2019-20 to FY 2023-24, the Petitioner submits provisional details of additional capital cost incurred by the Petitioner during FY 2019-20 which is summarized as under:-

(Amount in Rs. Crores)

Sl. No.	Particulars	Provisional Addition in Generating Station during FY 2019-20			Addition in Amelia Mines during FY 2019-20	Total Addition during FY 2019-20
		Addition	Adjustments / Deletions	Net Addition		
1	Land	-	-	-	0.07	0.07
2	BTG	-	-	-	-	-
3	BOP	0.70	0.14	0.56	1.04	1.60
4	Civil	-	-	-	0.57	0.57
5	Total	0.70	0.14	0.56	1.68	2.24
6	Intangible Assets	-	-	-	-	-
7	Cost of ownership of Mining Rights	-	-	-	145.65	145.65
8	Total	0.70	0.14	0.56	147.34	147.90

7.2 It is further submitted that the actual expenditure incurred during FY 2019-20 shall be submitted at the time of the true up for FY 2019-20. However, the total capital cost after taking into account the provisional additional capitalization during FY 2019-20 incurred in Generating Station upto 31.03.2020 is as hereunder:-

(Amount in Rs. Crores)

Sl. No.	Particulars	Capital Cost upto 31.03.2019 as per True Up Petition No. 44/2019	Provisional Net Addition in during FY 2019-20	Total Capital Cost upto 31.03.2020 (Generating Station)
		Generating Station	Generating Station	
1	Land	37.00	-	37.00
2	BTG	5,017.92	-	5,017.92
3	BOP	1,604.94	0.56	1,605.50
4	Civil	1,529.25	-	1,529.25
5	Total Hard Cost	8,189.11	0.56	8,189.67
6	Establishment Charges	268.13	-	268.13
7	Start Up Fuel	221.82	-	221.82
8	Interest during Constructions (IDC)	2,282.68	-	2,282.68
9	IDC on Debt Component of Unallocated portion from 03.09.2014 to 20.02.2015	29.69	-	29.69
10	Foreign Exchange Rate Variation	(91.95)	-	(91.95)
11	Liquidated Damages	(120.77)	-	(120.77)
12	Total Soft Costs (6 to 11)	2,589.62	0.56	2,589.62
	Total Capital Cost (5+12+13+14)	10,778.74	0.56	10,779.30

7.4 Thus, summarizing tentative Capital Cost up to 31-03-2020 after making the additions during FY 2019-20 in both Generating Station and Amelia, as mentioned in above Paragraphs, the total capital cost incurred upto 31.03.2020 is as hereunder:-

(Amount in Rs. Crores)

Sl. No.	Particulars	Generating Station upto 31.03.2020	Amelia (Mines) upto 31.03.2020	Total Capital Cost upto 31.03.20020
1	Land	37.00	0.07	37.07
2	BTG	5,017.92	-	5,017.92
3	BOP	1,605.50	1.66	1,607.16
4	Civil	1,529.25	3.12	1,532.37
5	Total Hard Cost	8,189.67	4.85	8,194.53
6	Establishment Charges	268.13	-	268.13
7	Start Up Fuel	221.82	-	221.82
8	Interest during	2,282.68	-	2,282.68
9	IDC on Debt Component of Unallocated portion	29.69	-	29.69
10	Foreign Exchange Rate	(91.95)	-	(91.95)
11	Liquidated Damages	(120.77)	-	(120.77)
12	Total Soft Costs (6 to 11)	2,589.62	-	2,589.62
13	Cost of ownership of Mining	-	291.25	291.25
14	Total Capital Cost	10,779.30	296.10	11,075.39

7.5 It is further submitted that for the purpose of this Petition Annual Additional Capitalization from FY 2020-21 to FY 2023-24 only Annual Cost of Ownership of the Mining Rights of Rs 145.66 Crores (Rs 612/- per MT multiplied by 85% of 2.8 million tonnes of Amelia Mines Capacity) is being submitted. However, actual Additional Capitalization for the respective years shall be submitted during the true ups of the respective years and the Petitioner humbly seeks liberty to submit claims regarding additional capital expenditure to be incurred during FY 2020-21 to FY 2023-24.

7.6 It is also submitted that from the point of view of calculation purposes the Capital Cost as on 31.03.2021, 31.03.2022, 31.03.2023 & 31.03.2024 are being submitted as Rs 11,221.05 Crores, 11,366.70 Crores, 11,512.36 Crores & 11,658.01 Crores.

Provisions under Regulations

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

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

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

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

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

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

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

- 31.1 *A generating company requiring to incur additional capital expenditure in the existing generating station for compliance of the revised emission standards shall share its proposal with the beneficiaries and file a petition before Commission for undertaking such additional capitalization.*
- 31.2 *The proposal under clause above shall contain details of proposed technology as specified by the Central Electricity Authority, scope of the work, phasing of expenditure, schedule of completion, estimated completion cost including foreign exchange component, if any, detailed computation of indicative impact on tariff to the beneficiaries, and any other information considered to be relevant by the generating company.*
- 31.3 *Where the generating company makes an application for approval of additional capital expenditure on account of implementation of revised emission standards, the Commission may grant approval after due consideration of the reasonableness of the cost estimates, financing plan, schedule of completion, interest during construction, use of efficient technology, and such other factors as may be considered relevant by the Commission.*
- 31.4 *After completion of the implementation of revised emission standards, the generating company shall file a petition for determination of tariff. Any expenditure incurred or projected to be incurred and admitted by the Commission after prudence check based on reasonableness of the cost and impact on operational parameters shall form the basis of determination of tariff.*
31. On additional capitalization claimed by the petitioner, the Respondent No. 1 submitted the following:
- *“The petitioner has consider Rs. 0.56 crores as additional capital expenditure in Generating Station & Rs. 147.34 crores as additional capital expenditure towards Amelia coal mines, totaling to Rs. 147.90 crores as additional capital expenditure during FY 2019-20. It is submitted by the petitioner, that the Balance Sheet for FY 2019-20 is not yet approved by the Shareholders and as such this claim is provisional. In this regard, it is submitted that, the financial year 2019-20 has already over long back & therefore, any expenditure during the period can only be considered on actual basis. Further, claim of Rs.147.34 Crore made by the Petitioner towards expenditure on Amelia Coal Mine and Cost of Ownership of Amelia Coal Mine during FY 2019-20 is not admissible under any provision of*

Tariff Regulations 2020 and also in light of this Hon'ble Commissions' earlier orders in which all the previous claims of Capital expenditure towards Amelia Coal mines had already rejected.

- The petitioner under para 7.5 of the petition has consider Annual Additional Capitalization from FY 2020-21 to FY 2023-24 towards Annual cost of Ownership of the Mining Rights of Amelia coal mines as Rs. 145.66 crores. This claim is not admissible under any provision of Tariff Regulations 2020 and also in light of this Hon'ble Commissions' earlier orders in which all the previous claims of Capital expenditure towards Amelia Coal mines have already been rejected.*
- All the previous claims of Capital expenditure towards Amelia Coal mines have already been rejected by the Commission Tariff Petitions filed by the Petitioner.*
- Despite repeated rejection of the claim towards Amelia Coal Mines by this Hon'ble Commission and no stay/ relief having been granted by Hon'ble APTEL in various appeals filed by the Petitioner against ordered rejecting the claim, the Petitioner has again claimed expenditure on Amelia coal Mine and Cost of Ownership of Amelia Coal Mine in the present petition. Therefore, it is most humbly prayed that the claim of Additional Capital Cost towards expenditure on Amelia Coal Mine may kindly be rejected.*
- The Hard Cost approved till 31.03.2018 is approximately Rs. 6.2 Crore per MW, which is higher than CERC notified Bench Mark Hard Cost of Rs. 5 Crore per MW. There is no scope for any further increase in hard cost of the project. Therefore, it is humbly prayed that the Additional Capital Expenditure claimed in this petition may not be considered.*

Commission Analysis

32. It is observed from the submission that the petitioner has filed the estimated additional capitalization of Rs. 0.70 Crore for FY 2019-20 towards External water supply system, Fire fighting System Emergency D.G. set, and some other minor equipments. The petitioner has also filed de-capitalization of Rs. 0.14 Crore pertaining to BOP works at the generating station during FY 2019-20 therefore, net additional capitalization of Rs. 0.56 Crore is claimed by the petitioner. In form TPS 9 of the petition, the petitioner has filed the break-up of proposed additional capitalization during FY 2019-20 as given below:

Rs. in Crore

Sr. No.	Particulars	Add. Cap. FY 2019-20 (Power Station)
1	External water supply system	0.06
2	Fire fighting System	0.24
3	Other Equipments	0.11
4	Emergency D.G. set	0.15
Total		0.56

33. In para 7.1 of the petition, the petitioner mentioned that it has chosen to refrain from submitting any conclusive amount of Additional Capitalization made during FY 2019-20 since Balance Sheet as on 31.03.2020 is yet to be approved by shareholder Annual General Meeting. During FY 2020-21 to FY 2023-24, no additional capitalization in Nigrie power station is claimed by the petitioner.
34. The petitioner has filed the provisional additional capitalization during FY 2019-20 in Nigrie Thermal Power Station and has also filed the additional capitalization of Rs. 145.66 Crore in Amelia Mines during FY 2020-21 to FY 2023-24. In para 7.5 of the subject petition, the petitioner mentioned about additional capitalization in Amelia Mine from FY 2020-21 to FY 2023-24 that it has claimed only annual cost of the ownership of the mining rights i.e., Rs. 145.66 Crore in Amelia Coal Mine on account the Additional Premium @ Rs. 612 per MT multiplied by 85% of 2.8 million tonne of Amelia Mine Capacity.
35. The provisional/proposed additional capitalization filed during FY 2019-20 to FY 2023-24 and its corresponding funding are as given below:

Table 5: Add. Cap. and Funding claimed during FY 2019-20 to FY 2023-24
(Rs in Crores)

Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Additional Capitalization(Station+Mines)	147.90 (0.56+147.34)	145.66 (Mines)	145.66 (Mines)	145.66 (Mines)	145.66 (Mines)
Loan	(0.39+103.14)	101.96	101.96	101.96	101.96
Equity	(0.17+44.20)	43.70	43.70	43.70	43.70

36. With regard to the additional capitalization filed in the subject petition, vide Commission's letter dated 02nd September' 2020, the petitioner was asked to file a comprehensive reply to the following issues with all relevant supporting documents:

- i. Whether the assets capitalized during the year are under original scope of work. If so, all supporting documents establishing that the assets capitalized are under original scope of work be filed. The petitioner is also required to explain that the addition of assets is on account of the reasons mentioned in Regulation 27.1 of the Tariff Regulation, 2020.
 - ii. The information of additional capitalization like detailed reasons of asset additions, provision of Regulations under which the additional capitalization filed along with supporting.
 - iii. If the assets capitalized are beyond the original scope of work, the petitioner is required to explain that the addition of assets is on account of the reasons mentioned in Regulation 28.1 of the Tariff Regulations, 2020.
 - iv. Whether the petitioner has taken due care in writing -off the assets from the original cost in case of any expenditure on replacement of old asset.
 - v. In case of any delay in completion of works from contractor's side, the details of penalty if any, imposed on the contractor be informed.
 - vi. Copy of the bills / invoices of all such assets under additional capitalization with a statement indicating all such details of works / assets, bill amount, invoice / bill no. date of the invoice / bill etc. be also filed.
37. In response to above, by affidavit dated 29th October' 2020, the petitioner submitted the following:
- i. The Petitioner very humbly submits that the said additional capitalization is within the original scope of work of Rs 12,400/- Crores authorized by the Resolution of Board of Directors dated May 30th, 2015 approving Final Project Cost attached herewith as Annexure-4.
The reasons for addition of assets along with bills/invoices in desired format are attached as Annexure-5.*
 - ii. The Petitioner very humbly submits that the Additional Capitalization is being made under Regulation 27.1 not under Regulation 28.1.*
 - iii. The Petitioner hereby confirms that all due care has been take to reduce the amount of decapitalization from the original cost.*
 - iv. It is humbly submitted that during FY 2019-20 no penalties have been recovered from any contractors/vendors.*
 - v. All the bills/invoices for the amounts capitalized during FY 2019-20 are attached in Annexure to Reply to Para (i) & (ii).*

38. On perusal of the details and documents filed by the petitioner, the Commission observed that the reply filed by the petitioner regarding the provisional/proposed additional capitalization during FY 2019-20 required detailed examination on several counts specified in the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 as well as duly reconciliation with the Annual Audited Accounts of FY 2019-20.

39. With regard to truing-up exercise, Regulation 9.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 provides that:

“A generating company shall file a petition at the beginning of the Tariff period. A review shall be undertaken by the Commission to scrutinize and true up the Tariff on the basis of the capital expenditure and additional capital expenditure actually incurred in the Year for which the true up is being requested. The generating company shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred for the period from 1.4.2019 to 31.3.2024, duly audited and certified by the auditors.”

40. In view of the above, the additional capitalization filed by the petitioner during the control period is required to be examined on several counts specified in the Regulations 2020. Based on the information made available by the petitioner, this exercise shall be carried out while undertaking true-up for the respective year based on Annual Audited Accounts and other requisite details in this regard. The petitioner shall be at liberty to approach the Commission for approval of additional capitalization at the appropriate stage based on the actual expenditure incurred and duly reconciled with the Annual Audited Accounts.

41. With regard to the claim of the petitioner regarding proposed additional capitalization during FY 2020-21 to FY 2023-24, the Commission has observed that the claim of petitioner for additional capitalisation towards the assets of Amelia Coal Mine towards the “Additional Premium” is not in accordance with the provisions under Regulations 2020. The Commission has never allowed the additional capitalization in Amelia Coal Mine in earlier tariff/True-up orders till date. Hence, the claim towards proposed additional capitalisation on account of assets of Amelia Mine and the “Additional Premium” is not considered by the Commission in this order.

42. Accordingly, the status of opening Gross Fixed Assets (GFA) as on 1st April' 2019 will remain same in this order as considered by the Commission as on 31st March' 2019, in its true up order dated 26th November' 2020 for FY 2018-19 in P/ No 44 of 2019. The same shall remain unchanged during the control period in this order.
43. With regard to additional capitalization towards compliance of the environmental norms, the petitioner submitted that it shall file the true up in the corresponding/respective year along with the details and supporting documents of actual Additional Capital Expenditure on account of installation of FGD in line with the prevailing MPERC Regulation.

Debt: Equity:

Petitioner's Submission

44. The petitioner has filed the opening loan and equity balance as on 1st April' 2019 by considering the closing balance of equity and loan as on 31st March' 2019 as filed in the true up petition for FY 2018-19 in Petition No 44 of 2019. The petitioner has also filed normative loan and equity addition (70 : 30) towards proposed/provisional additional capitalization filed during FY 2019-20 in terms of the provision under Regulations, 2020. The petitioner has not filed any additional capitalization during FY 2020-21 to FY 2023-24.
45. Accordingly, for proposed additional capitalization during FY 2019-20, the petitioner considered normative debt:equity ratio i.e. 70:30 in terms of Regulations' 2020 as given below:

Particulars	FY 2019-20
Provisional Additional Capitalization Claimed	0.70
Loan	0.49
Equity	0.21

Provisions under Regulations

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

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

Provided that:

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

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

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

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

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

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

33.5 Any expenditure incurred or projected to be incurred on or after 1.4.2019 as may be admitted by the Commission as additional capital expenditure for

determination of tariff, and renovation and modernisation expenditure for life extension shall be serviced in the manner specified in clause 33.1 of this Regulation.

Commission's Analysis

47. Regulation 33.3 of MPERC (Terms & Conditions for Determination of Generation Tariff) Regulations' 2020 provides that "in case of generating station declared under Commercial Operation prior to 01st April' 2019, the debt equity ratio allowed by the Commission for determination of tariff for the period ending 31st March' 2019 shall be considered". Therefore, the Commission has considered the opening equity and opening loan as on 01st April' 2019 based on the closing loan and equity as per true-up order for FY 2018-19 issued on 26th November' 2020 in Petition No 44/2019.
48. The Commission has not considered the proposed/projected additional capitalization during FY 2019-20 filed by the petitioner in this order and the same shall be dealt in true-up order for the FY 2019-20 based on the Annual Audited Accounts. Further, The petitioner has not filed any additional capitalization during FY 2020-21 to FY 2023-24. Therefore, no addition of loan and equity is considered during the MYT control period.
49. Therefore, the equity balance of Rs. 2406.42 Crore and loan balance of Rs. 6026.95 Crore as on 31st March' 2019 as approved by the Commission in true-up order dated 26th November' 2020 in Petition No 44 of 2019 for FY 2018-19 shall remain same as on 01st April' 2019.

Annual Capacity (fixed) Charges

50. Regulation 17.1 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020, stated that the Annual Capacity Charges shall derived on the basis of annual fixed cost (AFC) of a generating station shall consist of the following components:
 - (a) Return on Equity;
 - (b) Interest on Loan Capital;
 - (c) Depreciation;
 - (d) Interest on Working Capital;
 - (e) Operation and Maintenance Expenses;

Return on Equity

Petitioner's Submission

51. The petitioner filed the Return on Equity during control period from FY 2019-20 to FY 2023-24 in form 1(II) of the petition as given below:

Table 6: Return on Equity Claimed

Sr. No	Particulars	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening Equity	Rs.Cr.	2453.01	2497.39	2541.09	2584.78	2628.48
2	Add: Increase due to addition during the year/period (Station)	Rs.Cr.	0.21	0.00	0.00	0.00	0.00
3	Add: Increase due to addition during the year/period (Mines)	Rs.Cr.	44.20	43.70	43.70	43.70	43.70
4	Less: Decrease due to de-capitalization during the year/period (Station)	Rs.Cr.	0.03	0.00	0.00	0.00	0.00
5	Closing Equity	Rs.Cr.	2497.39	2541.09	2584.78	2628.48	2672.18
6	Average Equity	Rs.Cr.	2475.20	2519.24	2562.94	2606.63	2650.33
7	Base Rate of ROE	%	15.50%	15.50%	15.50%	15.50%	15.50%
8	Return on Equity	Rs. Cr.	383.66	390.48	397.26	404.03	410.80

Provisions in the Regulation:

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

34 . Return on Equity:

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

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

Provided that

- (a) *in case of a new project, the rate of return of a new project shall be reduced by 1.00% for such period as may be decided by the Commission, if the generating station is found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO)/ Free Governor Mode Operation (FGMO):*

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

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

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

35. Tax on Return on Equity:

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

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

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

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

shall be considered as MAT rate including surcharge and cess. For example: - In case of the generating company paying

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

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

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

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

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

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

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

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

Commission’s Analysis:

54. Regulation 33.3 of the Regulations, 2020 provides that, in case of the generating station declared under commercial operation prior to 1.4.2019, debt- equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2019 shall be considered. In accordance with the aforesaid Regulation, the Equity balance as on 31st March’ 2019 as admitted by the Commission in the true-up order dated 26th November’ 2020 for FY 2018-19 is considered as the base figures for opening equity balance as on 01st April’ 2019. However, the Commission has not considered the proposed additional capitalization during the control period and its corresponding equity in this order. Therefore, the equity balance as on 01st April’ 2019 shall remain unchanged during the control period.

55. In compliance to Regulation 34.2 of the Regulations, 2020, the petitioner submitted that the petitioner's project has been duly operating under RGMO/ FGMO. The petitioner further submitted that the Project have been operating with the ramp rate of over 1% per minute. In this regard, for reference purpose a confirmation from State Load Dispatch Center (SLDC) has been filed by the petitioner with the additional submission.
56. The petitioner has claimed Return on Equity by considering the base rate of return. Accordingly, Return on Equity has been worked out for the control period FY 2019-20 to FY 2023-24 considering the base rate of return as given below:

Table 7 : Return on Equity considered in this Order

Sr. No.	Particular	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening Equity	Rs.Cr.	2406.42	2406.42	2406.42	2406.42	2406.42
2	Equity addition during the year	Rs.Cr.	0.00	0.00	0.00	0.00	0.00
3	Closing Equity	Rs.Cr.	2406.42	2406.42	2406.42	2406.42	2406.42
4	Average Equity	Rs.Cr.	2406.42	2406.42	2406.42	2406.42	2406.42
5	Base Rate of ROE	%	15.50%	15.50%	15.50%	15.50%	15.50%
6	Return on Equity	Rs.Cr.	373.00	373.00	373.00	373.00	373.00

Interest on Loan Capital

Petitioner's submission:

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

Table 8: Interest on Loan claimed

Sr. No.	Particulars	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening Loan	Rs. Cr.	6129.65	5668.60	5194.45	4708.85	4211.79
2	Add: Increase in Normative Loan	Rs. Cr.	103.63	101.96	101.96	101.96	101.96
3	Less: Decrease due to de-capitalization	Rs. Cr	0.11	0.00	0.00	0.00	0.00
4	Less: Repayment during the year	Rs. Cr.	564.57	576.10	587.56	599.02	610.47
5	Closing Loan	Rs. Cr.	5668.60	5194.45	4708.85	4211.79	3703.28
6	Average Loan	Rs. Cr.	5899.13	5431.53	4951.65	4460.31	3957.54
7	Wt. average Rate of Interest of actual Loans	%	11.78%	11.78%	11.78%	11.78%	11.78%
8	Interest on loan	Rs. Cr.	694.67	639.61	583.10	525.24	466.03

Provisions in Regulation

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

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

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

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

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

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

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

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

Commission's analysis:

59. Regulation 36.2 of the Regulations, 2020 provides that the normative loan outstanding as on 1.4.2019 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2019 from the gross normative loan. In accordance to the aforesaid Regulation, loan balances as on 31st March' 2019 admitted in the last true-up order for FY 2018-19 dated 26th November' 2020 is considered as the base figures for opening loan balance as on 01st April' 2019. Further, the Commission has not considered the proposed additional capitalization during FY 2019-20 and during FY 2020-21 to FY 2023-24, no additional capitalization in Nigrie power station is claimed by the petitioner therefore, the loan balances for each financial year is worked out accordingly by considering the normative repayment equivalent to depreciation for the respective year.
60. In form TPS 13 of the petition, the petitioner has worked out the weighted average rate of interest @11.78% based on actual loan portfolio as on 31.03.2019 as filed in true-up petition for FY 2018-19.
61. On perusal of the subject petition it was observed that the weighted average rate of interest claimed by the petitioner during each year of control period is comparatively higher than the weighted average rate of interest during FY 2017-18 to FY 2018-19. It was further observed that the petitioner claimed higher rate of interest in comparison to past period in some of the loan schemes.

In view of the above, the petitioner was asked to explain the reasons for higher rate of interest under aforesaid loan schemes. Detailed calculation for actual weighted average rate of interest during FY 2019-20 was asked to filed with supporting documents in respect of actual weighted average rate of interest claimed in the petition.

62. In response to above, by affidavit dated 29th October' 2020, the petitioner submitted the following:

"JPVL has implemented 300MW Baspa II HEP, 400MW Vishnuprayag HEP, 1000MW Karcham, Wangtoo HEP, 500MW BINA TPP and 1320MW NIGRIE STPP. Nigrie STPP was set up based on the dedicated coal mines namely from Amelia (North) & Dongri Tal - II coal mines. The operation of the company had been satisfactory till FY2014-15. However, the operation of the company had been unsatisfactory for FY 2015-16 onwards and had not been able to pay the dues to

its lenders in respect of Interest and Principal. The unsatisfactory operations of the Company primarily have been on account of loss in Nigrie STPP due to following reasons:

The Company had set up a supercritical thermal power plant with two units of 660 MW each. The first unit commenced operations in September 2014 and the second unit commenced operations in February 2015. These units procured coal and were fuelled from the Amelia (North) and the Dongri Tal-II coal mines. However, in September 2014, the Hon'ble Supreme Court of India cancelled the allocation of nearly all of the coal blocks allotted during the period between 1993 and 2011, which included the Amelia (North) and the Dongri Tal - II coal blocks. It would be pertinent to mention that when the Hon'ble Supreme Court took this decision an investment of over Rs.9500 Crs had already been made in JNSTPP, Unit-1 of the Plant was already in operation and Amelia (North) coal block was already in operation supplying coal to Nigrie STPP.

To keep Nigrie STPP operational, the Company bid for and secured the Amelia (North) coal block against stiff competition at a negative bid of Rs. 612/- per metric tonne in addition to 'Fixed Rate' of Rs. 100/- per metric tonne.

Despite competing and having won the Amelia (North) coal block, the viability of Nigrie STPP remained challenging due to:

- (i) No clarity on second coal block/ linkages for supplying coal to JNSTPP, which is required to operate JNSTPP at full capacity;
- (ii) Long-term PPAs: Nigrie STPP had entered into a long term power purchase agreement ("PPA") with the Madhya Pradesh Power Management Company Limited ("MPPMCL") / Government of Madhya Pradesh ("GoMP") for 37.5 per cent. of the installed capacity including for 7.5 per cent of the power generated at variable tariff;

Since new bids inviting power suppliers to enter into long term PPAs had not been forthcoming in the recent past, the Company has not been able to secure any new long term PPAs with third parties, which could enable Nigrie STPP to utilize the power it produces in excess of what is being supplied to MPPMCL, in order to improve its sustainability;

- (iii) Under-recovery of variable fuel costs: As mentioned above, the Company bid for and secured the Amelia (N) coal block against stiff competition at a negative bid of INR 712/- per metric tonne. Due to the negative bid and certain other bid conditions which were imposed at the time of securing

the Amelia (North) coal block, the Company, while continuing to be operating, is being unable to fully recover the cost of coal for Nigrie STPP from the sale of power generated under the PPA with MPPMCL / GoMP; and

(iv) Low merchant /un-remunerative power tariff.

JPVL divested two of its Hydro Project namely Baspa II- 400MW HEP and Karcham Wangtoo HEP-1000MW in 2015, the proceeds were utilized mainly to pay dues of the lenders. However the operation could not improve mainly due to unsatisfactory operations of Nigrie STPP.

The above situation required re-structuring of debt of JPVL for which JPVL was working with the Lenders for long. Lenders initiated Resolution Plan/Debt Restructuring from July, 2016.

In April 2019, a resolution plan was accepted by the Lenders inter alia including conversion of part debt into CCPS payment of interest @ 9.5% p.a. till the operations of JPVL are stabilized and also restating the repayment schedule of outstanding loan inter alia subject to Lenders having right to recompense for the sacrifice made by them in accordance with the RBI guidelines. The said resolution plan on completion of all CP's have become effective from December, 2019.

The relevant clause of Framework Agreement dated 18.04.2019 for Lender's right to recompense is as under:

“RIGHT TO RECOMPENSE

11.1 The Borrower acknowledges and admits that the Lenders have made sacrifices in granting reliefs and concessions to the Borrower by, inter alia, reducing the rate of interest, waiver of default and/or penal interest, and agreeing to convert all or part of the Convertible Debt into CCPS.

11.2 The Borrower further acknowledges and agrees that if in the opinion of the Lenders, the profitability and cash flows of the Borrower improves, the Lenders shall have the right to receive recompense for the sacrifices made by them in accordance with the IRAC Norms.

Provided that the maximum amount of recompense should be limited to the sum of waivers provided by the Lenders and the present value of future economic loss on account of reduction in interest rate.

11.3 Any determination by the Lenders in this relation shall be binding on the Borrower.

Lowering of Interest @ 9.5% p.a. was necessary to ensure the lenders did not have to convert a higher amount into Equity/CCPS. Therefore to ensure servicing of the debt with the assumption that since this lowering of interest is not resultant of credit up gradation of the Company, JPVL will continue to realize tariff based at documented rate of interest and pay only @ 9.5% p.a. for the time being, subsequently Lenders under the recompense clause will recover the amount foregone by them at this stage.

In view of above the rate of interest for computation of tariff will be on the basis of last available weighted average rate of interest i.e. rate of interest applicable at the time of True Up Petition for FY 2017-18 and FY 2018-19.

63. On perusal of the above submission, the Commission observed the following:
- i. The operation of the petitioner's company had been unsatisfactory from FY 2015-16 onwards and had not been able to pay the dues to its lenders. The unsatisfactory operations of the petitioner's company primarily have been on account of loss in Nigrie STPP due to reasons mentioned by the petitioner.
 - ii. Further, the petitioner's company divested two of its Hydro Project, the proceeds were utilized mainly to pay dues of the lenders. The petitioner submitted that the above situation required re-structuring loan of JPVL and Lenders initiated Resolution Plan/Debt Restructuring from July, 2016.
 - iii. In April 2019, a resolution plan was accepted by the Lenders including conversion of part debt into CCPS payment of interest @ 9.5% p.a. till the operations of the petitioner's company are stabilized and also restating the repayment schedule of outstanding loan subject to Lenders having right to recompense for the sacrifice made by them in accordance with the RBI guidelines.
 - iv. The resolution plan on completion of all CP's have become effective from December, 2019.
 - v. Lowering of Interest @ 9.5% p.a. was necessary to ensure the lenders did not have to convert a higher amount into Equity/CCPS. Therefore, to ensure servicing of the debt with the assumption that since this lowering of interest is not resultant of credit up gradation of the Company, JPVL will continue to realize tariff based at documented rate of interest and pay only @ 9.5% p.a. for the time being,

subsequently Lenders under the recompense clause will recover the amount foregone by them at this stage.

64. The petitioner has submitted that the rate of interest for computation of tariff will be on the basis of last available weighted average rate of interest i.e. rate of interest applicable at the time of True Up Petition for FY 2017-18 and FY 2018-19. However, the petitioner is actually paying interest @ 9.5%, therefore, the actual weighted average rate of interest @ 9.5% is provisionally considered in this order. The petitioner is directed to file actual weighted average rate of interest in the true up petitions for respective year of the control period.
65. Considering the above, the interest on loan capital has been worked out during the control period as under:
- i. Opening loan balance as on 01.04.2019 is considered same as admitted by the Commission as on as on 31.03.2019 in the last true-up order for FY 2018-19.
 - ii. No loan addition/deduction of loan is considered during the control period;
 - iii. Normative repayment equal to depreciation in accordance to Regulations is considered;
 - iv. Weighted average rate of interest @ 9.5% based on the re-structuring debt plan.
 - v. The aforesaid weighted average rate of interest shall be subject to true-up on actual weighted average rate of interest for each year of the control period.
66. Based on the above, the interest on loan worked out during the control period is as given below:

Table 9: Interest on Loan Allowed

Sr. No.	Particular	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening Loan	Rs. Cr.	6026.95	5480.22	4933.49	4386.76	3840.03
2	Loan Additions during the year	Rs. Cr.	0.00	0.00	0.00	0.00	0.00
3	Repayment of Loan equal to Depreciation	Rs. Cr.	546.73	546.73	546.73	546.73	546.73
4	Closing Loan as on 31 st March	Rs. Cr.	5480.22	4933.49	4386.76	3840.03	3293.30
5	Average Loan	Rs. Cr.	5753.58	5206.85	4660.12	4113.39	3566.66
6	Weighted Average Rate of Interest	%	9.5%	9.5%	9.5%	9.5%	9.5%
7	Annual Interest amount on Loan	Rs. Cr.	546.59	494.66	442.72	390.79	338.85

Depreciation

Petitioner's submission:

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

Table 10: Depreciation Claimed

Sr. no.	PARTICULARS	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening Capital Cost	Rs. Cr.	10,927.49	11,075.39	11,221.05	11,366.70	11,512.36
1A	Asset Additions During the year	Rs. Cr.	148.04	145.66	145.66	145.66	145.66
1B	Decapitalization during the year	Rs. Cr.	0.14	-	-	-	-
2	Closing Capital Cost	Rs. Cr.	11,075.39	11,221.05	11,366.70	11,512.36	11,658.01
3	Average Capital Cost	Rs. Cr.	11,001.44	11,148.22	11,293.88	11,439.53	11,585.19
4	Rate of Depreciation	%	5.132%	5.168%	5.202%	5.236%	5.269%
5	Depreciation for the period	Rs. Cr.	564.57	576.10	587.56	599.02	610.47
6	Cumulative Depreciation at the end of year	Rs. Cr.	2,908.73	3,484.84	4,072.40	4,671.41	5281.88

Provisions of the Regulation:

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

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

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

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

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

Provided that in case of hydro generating station, the salvage value shall be as provided in the agreement, if any, signed by the developers with the State Government for development of the generating station:

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

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

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

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

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

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

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

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

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

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

Commission’s Analysis:-

69. Regulation 37.2 stated that the value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission. In accordance to the aforesaid Regulation, Gross Fixed Assets as on 31st March’ 2019 admitted by the Commission in the True-up Order for FY 2018-19 dated 26th November’ 2020 is considered as the base figures for Gross Fixed Assets as on 01st April’ 2019. However, the proposed additional capitalization during control period and its corresponding depreciation has not been considered in this order. Therefore, the Gross Fixed Assets as on 01 April’ 2019 shall remain same for the entire control period.
70. Vide letter dated 2nd September’ 2020, the petitioner was asked to file the basis of the rate of depreciation claimed in the petition in light of Asset-Cum-Depreciation register maintained as on date vis-à-vis the addition of assets claimed in the subject petition
71. By affidavit dated 29th October’ 2020, the petitioner submitted that the depreciation @ 5.08% being claimed in the instant petition has been considered based on the calculations submitted under Petition No. 44 of 2019 for true up of FY 2018-19. In form TPS 11 of the subject petition, the petitioner worked out the weighted average rate of depreciation for each year of the control period based on the depreciation rates as per Depreciation Rate Schedule provided under the Regulations, 2020.
72. However, the Commission is not considering additional capitalization filed during FY 2019-20 in this order and same shall be dealt with in true-up petition based on the Annual Audited Accounts. Further, no additional capitalization claimed by the petitioner during FY 2020-21 to FY 2023-24 therefore, the same weighted average rate of depreciation of 5.08% as considered in the last true-up order for FY 2018-19 and claimed by the petitioner is considered in this order.

73. Cumulative depreciation as on 31st March' 2019 admitted in true-up order dated 26th November' 2020 is considered as opening cumulative depreciation in this order.

74. Based on above, the annual depreciation is worked out in this order as given below:-

Table 11: Depreciation

Sr. No.	Particular	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening Gross Fixed Assets	Rs Cr.	10772.2	10772.2	10772.2	10772.20	10772.20
2	Assets Addition during the year	Rs Cr.	0.00	0.00	0.00	0.00	0.00
3	Closing Gross Fixed Assets	Rs Cr.	10772.2	10772.2	10772.2	10772.20	10772.20
4	Average Gross Fixed Assets	Rs Cr.	10772.2	10772.2	10772.2	10772.20	10772.20
5	Weighted Average Rate of Depreciation (%)	%	5.08%	5.08%	5.08%	5.08%	5.08%
6	Annual Depreciation	Rs Cr.	546.69	546.69	546.69	546.69	546.69
7	Cumulative Depreciation at the end of the year	Rs Cr.	2885.23	3431.92	3978.61	4525.30	5071.99

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

Operation & Maintenance Expenses

Petitioner's Submission

76. The petitioner filed the Operation and Maintenance expenses for its 2x660 MW Nigrie thermal power project for the control period from FY 2019-20 to FY 2023-24 as given below:

Table 12: Operation & Maintenance Expenses claimed (Rs. in Crore)

Particular	Units	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Annual O&M expenses	Rs in Crore	267.43	276.80	286.57	296.60	307.03

Provision in Regulations:-

77. The norms for Operation and Maintenance Expenses for thermal generating units commissioned on or after 01/04/2012 are prescribed under Regulation 40.2 of the

Regulations, 2020 for the generating Unit of “600 MW and above” for control period FY 2019-20 to FY 2023-24 are as given below:

Table 13: Norms for O&M Expenses (Rs. lakh/MW/Year)

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

Commission’s Analysis

78. For Thermal Power Station, the Commission has worked out the Annual Operation and Maintenance Expenses as per the norms prescribed under aforesaid Regulations, 2020 for the control period FY 2019-20 to FY 2023-24 as given below:

Table 14: O& M Expenses for Generating Unit

Particular	Units	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Installed Capacity	MW	1320	1320	1320	1320	1320
Per MW O&M Expenses Norms	Rs in Lakh/MW	20.26	20.97	21.71	22.47	23.26
Annual O&M expenses	Rs Crore	267.43	276.80	286.57	296.60	307.03

79. The petitioner has also claimed the Operation & Maintenance expenses of dedicated transmission lines & Bay based on the transmission Regulations as given below:

Table 15: Statement of O & M expenses of Transmission Line & Bay (Rs. in Crores)

Sl. No.	Particulars		FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	O&M Expenses of 400kV Trans. Line	161x2=322 ckt km	1.16	1.20	1.24	1.28	1.33
2	O&M Expenses of 400kV Bay	2 Nos of 400kV Bay	0.21	0.22	0.23	0.24	0.25
	Total O&M Expenses	Rs. Cr.	1.37	1.42	1.47	1.52	1.57

80. With regard to O&M expenses of dedicated transmission line and bay, the Respondent No. 1 (MPPMCL) submitted the following:

- *The petitioner has claimed separate expenditure in respect of O & M Expenses (400 KV Transmission Line and Bay). This claim is strongly opposed by the Answering Respondent as there is no provision in 2020 Tariff Regulations for making such a claim and the claims made earlier in respect of O & M Expenses (400 KV Transmission Line and Bay) were already rejected several times.*

- The claim of O & M Expenses for 400 KV Transmission Line was rejected in P. No. 72 of 2015. The relevant portion of the order dated 24.05.2017 passed in the said petition is extracted below :

“189. The petitioner has also claimed the Operation & Maintenance expenses on Transmission lines as given below –

Operation & Maintenance Expenses on transmission lines & Bays claimed

S. No.	Particulars		FY 2014-15	FY 2015-16
1	O & M Expenses of 161 kms of 400 kV Double Circuit Transmission Line	161x2-322 ckt km	1.17	1.26
2	O & M Expenses of 400 kV Bay	2 Nos of 400kV Bays	0.33	0.36
Total O & M Expenses			1.50	1.62

192. The Commission has worked out the Annual Operation and Maintenance Expenses as per the norms prescribed under aforesaid Regulations, 2012 for the generating unit of “600 MW and above” as given below :

O& M Expenses for Generating Units (Rs. in Crores)

Particular	Units	FY 2014-15		FY 2015-16
		03.09.2014 to 20.02.2015	21.02.2015 to 31.03.2015	01.04.2015 to 31.03.2016
		Unit 1	Unit 1 & 2	Unit 1 & 2
Generating Unit Capacity	MW	660	1320	1320
Per MW O&M Expenses Norms	Rs in Lakh/MW	13.98	13.98	15.09
Annual O&M expenses	Rs in Crore	92.27	184.54	199.19

193. With regard to O&M expenses of Transmission Line, it is observed that the Transmission line in the subject petition is a dedicated line and its cost has been appropriately included in the capital cost considered in this order. Further, the petitioner had not claimed the operation and maintenance (O&M) expenses for the said dedicated transmission line in its petition No. 3 of 2014. For the first time in the subject petition, the O&M expenses of dedicated transmission line are claimed by the petitioner.

194. *The dedicated transmission line is neither a transmission line in terms of sub-section (72) of Section 2 of the Electricity Act' 2003 nor it is a distribution system connecting the point of a connection to the installation of consumer in terms of sub-section (19) of Section 2 of the Electricity Act, 2003. The O&M expenses of a transmission line are part of the Annual Fixed Cost determined by the Commission under section 62 of the Electricity Act, 2003 for a transmission licensee whereas, the subject petition can not be considered for determination of AFC for the transmission line under section 62 of the Electricity Act, 2003. The cost of dedicated transmission line has been considered in the capital cost of the generating station and the tariff of the said generating station has been determined in terms of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations' 2012 which does not provide for any O&M expenses of dedicated transmission line separately. In view of the aforesaid, the claim of petitioner for O&M expenses of dedicated transmission line has no merit hence not considered in this order."*
81. *Subsequently, the Petitioner has again claimed O & M Expenses for 400 kV Transmission Line and Bay in P.Nos. 41/2017, 07/2018, 05/2019 , 07/2019 & 44/2019. However, the said claim was rejected by this Hon'ble Commission by its orders dated 20.07.2018, 29.11.2018, 25.07.2019, 22.10.2019 & 26.11.2020 passed in the said petitions. It is therefore most humbly prayed that the Commission may graciously be pleased to reject the claim of O & M Expenses in respect of 400 kV Transmission Line and Bay.*
82. On perusal of the aforesaid claim, the Commission observed that despite of disallowance of O&M expenses on transmission line and Bay by the Commission in past orders, the petitioner claimed separate O&M expenses of transmission lines & Bay on the basis of norms prescribed under MPERC (Terms & Condition for determination of Transmission tariff) Regulations.
83. It is further observed that on the issue of O & M Expenses for 400 kV Transmission Line and Bay, several Appeals filed by the petitioner are pending before the Hon'ble APTEL for adjudication. However, no interim or other relief has been granted by the Hon'ble Tribunal. It is therefore most humbly prayed that this Hon'ble Commission may graciously be pleased to reject the claim of O & M Expenses in respect of 400 kV Transmission Line and Bay.

84. Vide Letter dated 02nd September' 2020, the petitioner was asked to explain the reasons for claiming separate O&M expenses of such a dedicated transmission line , the cost of which has been appropriately considered in the capital cost of its power plant.
85. By affidavit dated 29th October' 2020, the petitioner submitted the following:

It is humbly submitted that each Control Period Tariff /Year gives rise to separate cause of action to the Petitioner and each claim is required to be determined in light of the extant regulatory and statutory framework. The issue is sub-judice before the Hon'ble Appellate Tribunal and as such has not attained finality and the Petitioner is bona-fide in claiming the O&M related to the Transmission lines. Therefore, in light of the above, the Commission may consider the issue of O&M expense of dedicated transmission lines as the same is being sought under the control period FY 2019-24 and the same is independent of the matter sub-judice before the Hon'ble APTEL.

It is further submitted that the Petitioner is claiming O&M expenses of dedicated transmission lines for the period FY 2019-24 as the O&M granted to the Petitioner in the prior control period was inadequate. Further, it may be noted that the present transmission line is a part of the project and capital cost of the same has been approved by this Commission. Therefore, once the capital cost has been allowed, any O&M expense incurred on the capital asset has to be allowed and the Petitioner may not be made to bear the same from its own pocket. In this regard, the following submissions are noteworthy:

- (a) *Regulation is not pre-condition to exercise power by this Commission:*
- i. *It is stated that framing or existence of a Regulation is not a pre-condition for this Hon'ble Commission to exercise its powers under Section 62 read with Section 86 of the Electricity Act. The above stated legal proposition has been affirmed by the Constitutional Bench of the Hon'ble Supreme Court in its Judgment in the case of PTC India Ltd. Vs. CERC & Ors. (2010) 4 SCC 603 [Para 55 & 57] which is now embedded in the Regulatory jurisprudence followed by this Hon'ble Tribunal in Appeal No. 86 of 2014 titled as Chattisgarh State Power Distribution Co. Ltd. & Ors. vs. CERC & Ors. [Para 19.5] Further, Section 10 of the Electricity Act clearly*

mandates the Generating Company to establish, operate and maintain the Dedicated Transmission Lines

(b) It is respectfully submitted that:-

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

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

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

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

4.2 Procurers Obligations...

- i. *The Procurer shall have obtained open access and/ or connectivity for evacuation of the Scheduled Energy from the delivery Point at lease 60 (sixty) days prior to the commissioning of the first unit*
- ii. *The Procurer shall have established the necessary evacuation infrastructure beyond the delivery point required for evacuation of the Scheduled Energy at least 210 days prior to the commissioning of the first unit...."*
- iii. *It is submitted that even though the responsibility for setting up the evacuation infrastructure was part of MPPMCLs' obligation, the same was carried out by the Petitioner at the request of the MPPMCL, therefore forms part of the Project and Petitioner would be entitled to recover the O&M cost for the dedicated transmission line.*
- iv. *It is pertinent to note that the transmission line set up by the Petitioner is clearly covered by Section 2(72) of the Electricity Act, 2003. It accomplishes the function of a dedicated transmission line by carrying power from the source of generation*

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

(c) O&M Expenses of dedicated transmission lines may be allowed in view of the objective of the Electricity Act: It is well settled position of law which has been time and again affirmed by the Hon'ble Tribunal in catena of judgments that in a cost plus Tariff the State Commission must allow all the reasonable expenditures to the Generator after prudence check. It is also pertinent to mention that all Section 62 Generating Stations are in fact governed by principles enumerated under Section 61 of the Electricity Act. Further, Section 61 (c), (d) and (e) clearly mandate that there should be reasonable recovery of the cost of electricity. Therefore, Petitioner is entitled to reimbursement of all legitimate costs incurred by it in generation and supply of power to MPPMCL.

(d) O&M expense of dedicated transmission line is allowed by SERC's and CERC:

- i. In the instant case, the Dedicated Transmission Line was declared as part of the generation system, therefore it was the responsibility of the Petitioner to operate and maintain the said Transmission line, consequent to which Petitioner has incurred substantial costs qua Operation and Maintenance. Hence, the O&M expenses incurred by Petitioner on the Dedicated Transmission Line is a cost incurred with regards to generation and supply of power and such cost are a pass through in a cost-plus tariff regime.
- ii. It is most respectfully submitted that even the Ld. Central Commission and its Regulations does not provide specifically for O&M Expense of Dedicated Transmission Line. However, Ld. CERC owing to various projects having such requirement provided the same. The same is evident from the CERC Order dated 11.03.2010 in Petition No. 308 of 2009 wherein the following has been held:

“51. The petitioner has submitted that O&M charges for dedicated transmission lines and sub-stations /bays for captive power generating station has not been provided in the O&M expenses for thermal power generating stations under the 2009 regulations specified by the Commission. Hence, the petitioner has claimed the following O&M expenses for the dedicated transmission line:

...52. The petitioner has submitted that out of the 7 no. of bays for associated

transmission system, 3 no. of bays fall within the side of the petitioner and the rest 4 no. of bays fall within the Raipur sub-station of Power Grid Corporation of India (PGCIL) for connection to the double bus scheme. The petitioner has also submitted that the assets included in the 4 bays at Raipur sub-station belonged to the petitioner and it has awarded the O&M contract to PGCIL for O&M of these 4 bays. The submission of the petitioner is found to be in order and the O&M expenses claimed is allowed. Accordingly, the total O&M expenses allowed for the generating station and transmission system is as under:"

(e) *Accordingly, it is humbly submitted that this Commission may appreciate that the cost of Dedicated Transmission Line is to be fully serviced through the Tariff, as any under recovery with regards to the cost of installing and maintaining the Dedicated Transmission Line will result in significant drop in the Return on Equity allowed in the tariff of Petitioner and the project will not be commercially viable. The Hon'ble Tribunal vide its Judgment dated 17.11.2015 in Appeal No. 220 of 2014 titled as 'Chhattisgarh State Power Distribution Co. Ltd Vs Chhattisgarh State Electricity Regulatory Commission &Ors' [Para 6] has affirmed the said legal position. Therefore, in view of the above, it is requested to the Commission to kindly allow O&M expenses of dedicated transmission line.*

86. On perusal of the aforesaid submission filed by the petitioner the Commission observed that no separate norms are provided in the Regulations, 2020 for operation & maintenance expenses on dedicated transmission lines and Bay as claimed in the subject petition. Further, the cost of dedicated transmission lines have been appropriately considered in the project capital cost of the petitioner's power plant while determining the final capital cost of the project.
87. Further, in all earlier tariff/true-up orders since COD of the project, the Commission had taken the consistent approach on this issue and separate O&M expenses for dedicated transmission line and bay had not been considered.
88. In view of the above background and facts and since this case is currently pending adjudication before the Hon'ble Appellate Tribunal for Electricity under several Appeals filed by the petitioner against the tariff/true-up orders issued by the Commission therefore, the claim of the petitioner for separate Operation and Maintenance expenses of dedicated transmission line and bay is not considered in this order.

Interest on Working Capital

Petitioner's submission

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

Table 16: Interest on working Capital claimed (Rs. In Crores)

Sr. No.	Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Cost of Coal/Lignite	228.02	228.02	228.02	228.02	228.02
2	Cost of Secondary Fuel Oil	2.57	2.57	2.57	2.57	2.57
3	Maintenance Spares	53.49	55.36	57.31	59.32	61.41
4	Maintenance Spares (Transmission Lines & Bay)	0.27	0.28	0.29	0.30	0.31
5	O&M Expenses	22.29	23.07	23.88	24.72	25.59
6	O & M expenses (Trans. Lines & Bay)	0.11	0.12	0.12	0.13	0.13
8	Receivables	418.11	414.70	411.18	407.53	404.23
9	Total Working Capital	724.87	724.12	723.38	722.59	722.27
10	Rate of Interest on Working Capital	12.05%	11.25%	11.25%	11.25%	11.25%
11	Total Interest on Working Capital	87.35	81.46	81.38	81.29	81.25

Provisions in Regulation:

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

38.1 "The Working Capital shall cover:

- (1) Coal- based thermal generating stations
 - (a) Cost of coal towards stock, if applicable, for 15 days for pit-head generating stations and 30 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal stock storage capacity whichever is lower;
 - (b) Advance payment for 30 days towards cost of coal for generation corresponding to the normative annual plant availability factor;
 - (c) Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary

fuel oil;

- (d) Maintenance spares @ 20% of operation and maintenance expenses specified in Regulation 39 and 40 of these Regulations;*
- (e) Receivables equivalent to 45 days of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor; and*
- (f) Operation and maintenance expenses for one month.*

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

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

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

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

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

Commission’s analysis:

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

(a) Cost of coal for 60 Days

92. The petitioner's power station is non pit-head station therefore, the cost of coal for 60 days (30 days towards stock and 30 days towards advance payment) for generation corresponding to the normative annual plant availability factor is considered for working capital purpose. The weighted average rate of coal is worked out as per the details filed by the petitioner for the preceding three months in accordance to the Regulations.
93. GCV of coal has been considered as per the details filed by the petitioner on 'received basis' for the preceding three months i.e., January, February and March' 2019. The Petitioner also filed the laboratory test reports for GCV of coal on received basis for aforesaid preceding three months in this regard. Accordingly, the 60 days cost of coal for working capital is worked out as under:

Table 17: Computation of 60 Days cost of coal for working capital

Particular	Units	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Installed Capacity	MW	1320	1320	1320	1320	1320
Gross Station Heat Rate	kCal/kWh	2200.00	2200.00	2200.00	2200.00	2200.00
Gross Generation	MUs	9855.65	9828.72	9828.72	9828.72	9855.65
Gross Calorific Value	kCal/Kg	3925.31	3925.31	3925.31	3925.31	3925.31
Sp. Coal Consumption	kg/kWh	0.5637	0.5637	0.5637	0.5637	0.5637
Annual Coal Consumption	MT	5555634	5540454	5540454	5540454	5555634
Coal Stock for 60 Days	MT	910760	910760	910760	910760	910760
Rate of Coal	Rs./MT	787.69	787.69	787.69	787.69	787.69
Coal Cost (60 Days)	Rs in Cr.	71.74	71.74	71.74	71.74	71.74

(b) Secondary Fuel Oil Cost

94. The petitioner filed the cost of secondary fuel oil based on the fuel oil procured during June'16, May'17 & Feb'18'. The petitioner submitted the details of different fuel oil procured and worked out the weighted average rate of secondary fuel oil.
95. Regulation 38.1 of the Regulations, 2020 provides that in case of use of more than one secondary fuel oil, cost of fuel oil stock shall be provided for the main secondary fuel oil. In view of the above provision, the petitioner was asked to confirm along with details that the cost of only main fuel is considered while determining the working capital.
96. By affidavit dated 29th October' 2020, the petitioner informed that while computing the annual working capital requirement, the petitioner has claimed the cost of High

Furnace Oil only as main secondary fuel oil for two months as per Regulation 38.1 of the MPERC Tariff Regulations, 2020.

97. The petitioner has worked out the weighted average rate of main fuel oil as Rs. 31,345.37 /KL for the control period based on the landed price of main fuel oil purchased during the year. The same weighted average rate of oil is considered in this order. Accordingly, the cost of two months' main fuel oil stock at normative availability is worked out as given below

Table 18: Cost of Main Secondary Fuel Oil for 2 Months availability

Particular	Units	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Installed Capacity of the Unit	MW	1320	1320	1320	1320	1320
NAPAF	%	85.00%	85.00%	85.00%	85.00%	85.00%
Gross Generation	MUs	9855.65	9828.72	9828.72	9828.72	9855.65
Normative Specific Oil Consumption	ml/kWh	0.50	0.50	0.50	0.50	0.50
Quantity of Sec Fuel Oil required	KL	4927.82	4914.36	4914.36	4914.36	4927.82
Two months' stock of main fuel oil (HFO)	KL	821.30	819.06	819.06	819.06	821.30
Weighted Avg. Rate of Main Fuel Oil (HFO)	Rs./KL	31,345.37	31,345.37	31,345.37	31,345.37	31,345.37
Oil Cost (Two Months Stock)	Rs. Crores	2.57	2.57	2.57	2.57	2.57

(c) O&M Expenses

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

Table 19: O&M Expenses for 1 Months (Rs. in Crore)

Financial Years	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Annual O&M Expenses	267.43	276.80	286.57	296.60	307.03
O&M Expenses for one month	22.29	23.07	23.88	24.72	25.59

(d) Maintenance Spares

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

Table 20: Maintenance Spares (Rs. in Crore)

Particular	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Annual O&M Expenses	267.43	276.804	286.57	296.60	307.03
20% of Annual O&M Expenses	53.49	55.36	57.31	59.32	61.41

(e) Receivables

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

Table 21: Receivables for 45 Days (Rs. in Crores)

Particular	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Variable Charges- 45 days	55.92	56.75	56.75	56.75	56.07
Fixed Charges- 45 days	218.07	213.44	208.21	203.01	197.32
Receivables- 45 days	273.99	269.37	264.13	258.93	253.24

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

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

Further, Regulation 3.1(7) reads as under:

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

102. The petitioner has claimed rate of interest on working capital for the control period as given below:

Table 22: Rate of Interest on Working Capital claimed (%)

Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Interest on allowed Working Capital	12.05%	11.25%	11.25%	11.25%	11.25%

103. In line with Regulation 38.3 of the Tariff Regulations, the rate of interest on working capital shall be considered the bank rate as on 01.04.2019 or as on 1st April of the year during the tariff period 2019-20 to 2023-24. Further, the Bank Rate' means the one-year marginal cost of lending rate (MCLR) of the State Bank of India issued from time to time plus 350 basis points.

104. Considering the one year SBI MCLR as on 01.04.2019 is of 8.55% plus 350 bps, the interest on working capital worked out as 12.05%. Further, the one year SBI MCLR as on 1.4.2020 (i.e. 7.75%) is available, therefore, the Commission has considered the rate of interest on working capital for the period from 1.4.2020 to 31.3.2024 as 11.25% (i.e. 1 year SBI MCLR of 7.75% as on 1.4.2020 + 350 bps) as filed by the petitioner. Accordingly, the interest on working capital has been considered as 12.05% for 2019-20 and 11.25% for the period from 2020-21 to 2023-24. Accordingly, rate of interest on working capital is computed as under:

Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
MCLR as on 1 st April of the year specified by SBI.	8.55%	7.75%	7.75%	7.75%	7.75%
Plus 350 basis point	3.50%	3.50%	3.50%	3.50%	3.50%
Rate of Interest on Working Capital Allowed	12.05%	11.25%	11.25%	11.25%	11.25%

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

Table 23: Interest on Working Capital Allowed

Sr. No.	Particular	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Cost of Coal for 60 Days	Rs Cr	71.74	71.74	71.74	71.74	71.74
2	Cost of Main Secondary Fuel Oil 2 months	Rs Cr	2.57	2.57	2.57	2.57	2.57
3	O&M Expenses for One Months	Rs Cr	22.29	23.07	23.88	24.72	25.59
4	Maintenance Spares 20% of O&M expenses	Rs Cr	53.49	55.36	57.31	59.32	61.41
5	Receivables for 45 days	Rs Cr	273.99	269.37	264.13	258.93	253.24
6	Total Annual Working Capital	Rs Cr	424.08	422.10	419.63	417.28	414.54
7	Rate of Interest on Working Capital	%	12.05%	11.25%	11.25%	11.25%	11.25%
8	Annual Interest on working Capital	Rs Cr	51.10	47.49	47.21	46.94	46.64

Non-Tariff Income

Provision in Regulation:

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

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

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

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

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

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

108. Vide affidavit dated 29th October' 2020, the petitioner submitted

It is respectfully submitted that Non-Tariff income for FY 2019-20 is being submitted on provisional basis & projected Non-Tariff from FY 2020-21 to FY 2023-24 is being

submitted on the basis of Simple Average of Non-Tariff Income from FY 2015-16 to FY 2019-20.

(Rs. in Crores)

Year	Non-Tariff Income	Basis
2019-20	22.34	Provisional
2020-21	14.72	Projected
2021-22	14.72	Projected
2022-23	14.72	Projected
2023-24	14.72	Projected

109. In view of the above, the Commission has provisionally considered the non-tariff income as filed by the petitioner, which is subject to true-up based on Annual Audited Accounts of each year of the control period. Further, Regulation 58.1 stated that the non-tariff income shared in the ratio of 50:50 with the beneficiaries and the generating company on annual basis. Accordingly, the Commission has considered following non tariff income in this order:

Table 24: Non-Tariff Income

(Rs. in Crore)

Year	Non-Tariff Income	50% of the Non-Tariff Income
FY 2019-20	22.34	11.17
FY 2020-21	14.72	7.36
FY 2021-22	14.72	7.36
FY 2022-23	14.72	7.36
FY 2023-24	14.72	7.36

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

Lease/Hire Purchase Charges

111. In the subject petition, the petitioner claimed Rs. 0.44 Crore as yearly lease rent payable for FY 2019-20 to FY 2023-24.

Commission's Analysis.

112. The petitioner claimed Rs. 0.44 Crore against lease rent payable for land during the year. Vide Commission's letter dated 02nd September' 2020, the petitioner was asked

to inform under what provisions of MPERC Tariff Regulations, 2020, these expenses are claimed by the petitioner.

113. By affidavit dated 29th October' 2020, the petitioner submitted the following:

It is respectfully submitted that the Petitioner is paying lease rent on account of Land Lease and Railway Lease Rent to the Statutory Body/Govt. Body, which is a part of the Project. On this basis, the Petitioner has prayed that the payable Lease Rent be allowed while arriving at AFC. The petitioner furnish the details of the Lease Rent claimed for FY 2019-20. Challans by which the payments have been made are attached by the petitioner as Annexure-7 alongwith the statement -----.

In this regard, it may be noted that had the Petitioner purchased the same land cost of the same would have been allowed by this Commission. However, in the present instance, leasing of land is resulting in saving of extra expenditure which would have been incurred if the land was purchased. Therefore, it is in this context the Petitioner is praying to allow the lease rent incurred.

It is to be noted that this Commission, in the past, has allowed expense towards lease rent.

In this context, it is submitted that the expenditure on lease rent is a revenue expenditure which is required to be incurred for maintaining the operation of the generating station. This Commission has been vested with the regulatory powers by the Electricity Act to allow such expenditures even if there is no corresponding provision under the Tariff Regulations, 2020. It may be noted that a similar situation arose before the Hon'ble CERC wherein the CERC referred to its regulatory power and allowed revenue expenditure even when there was no corresponding provision in the relevant tariff regulations. Relevant extracts of Order dated 05.10.2018 passed in Petition No. 172/MP/2016 is as follows:-

“However, the expenditure towards transportation of fly ash from the generating station to the place of users is an expenditure of a revenue nature. There is no corresponding provision under the 2014 Tariff Regulations for allowing the revenue expenses /expenses of O&M nature under „Change in Law“. It is pertinent to mention that the Hon'ble Supreme Court in PTC India Limited V CERC &ors{(2010) 4 SCC 603}, had held that regulatory power can be exercised only when there is no provision in the regulations framed under section 178 of the Act. The relevant observations of the Hon'ble Supreme Court are extracted as under:

“40. As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licenses, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in inter-State trading of electricity, if considered necessary, etc.. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a pre-condition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178....”

Therefore, in view of the above, it is submitted that this Hon’ble Commission may exercise its regulatory power and allow the expenditure on account of lease rent. Further, even the Tariff Regulations, 2020 envisages the provisions of ‘Power to Relax’ and ‘Power to Remove Difficulty’. Accordingly, considering the nature of the said expenditure, it is humbly prayed to allow Rs. 0.44 Crores incurred/to be incurred by the Petitioner for lease rent.

114. On perusal of the aforesaid submission filed by the petitioner, it is observed that the petitioner has not justified its claim towards lease rent to be payable during the control period in accordance with the Regulations, 2020. Since, there is no provision in the tariff regulations, 2020 for recovery of lease rent therefore, the petitioner submitted that the Commission may exercise its regulatory power and allow the expenditure on

account of lease rent under the provisions of 'Power to Relax' and 'Power to Remove Difficulty'.

115. In view of the above, the Commission has not considered the expenditure towards lease rent payable by the petitioner.

Normative Annual Plant Availability Factor

116. Regulation 49.3 (A) of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 provides that Normative Annual Plant Availability Factor of coal based thermal generating Units/ stations for all capacities which have achieved COD on or after 01/04/2012 is 85%. The same is considered for recovery of Annual Capacity (fixed) Charges in this order.

Summary of Annual Capacity (fixed) Charges

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

Table 25: Summary of Annual Capacity (Fixed) Charges (Amount in Rs Crore)

Sr. No.	Cost Component	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Return on equity	373.00	373.00	373.00	373.00	373.00
2	Interest charges on loan	546.59	494.66	442.72	390.79	338.85
3	Depreciation	546.69	546.69	546.69	546.69	546.69
4	O & M expenses	267.43	276.80	286.57	296.60	307.03
5	Interest on working capital	51.10	47.49	47.21	46.94	46.64
6	Annual Capacity (fixed) Charges	1784.81	1738.63	1696.19	1654.02	1612.20
7	Less: Non-Tariff Income	11.17	7.36	7.36	7.36	7.36
8	Net Annual Capacity Charges	1773.64	1731.27	1688.83	1646.66	1604.84
9	Annual Capacity (Fixed) Charges corresponding to 30% of the Installed Capacity	532.09	519.38	506.65	494.00	481.45

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

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

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

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

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

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

Energy (Variable) Charges

Petitioner's submission:

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

Table 26: Energy Charges Rate Claimed

Particular	Unit	FY 2019-20 to FY 2023-24
Capacity	MW	1320
NAPAF	%	85
Gross Generation at Generator Terminals	MUs	9855.65
Net generation at ex- bus	MUs	9288.95
Gross Station Heat Rate	kCal/kWh	2200.00
Sp. Fuel Oil Consumption	ml/kWh	0.50

Aux. Energy Consumption	%	5.75%
Transit Loss	%	0.80
Weighted average GCV of Oil	kCal/ltr.	10000.00
Price of oil(field)	Rs/ltr	31,345.37
Weighted average GCV of Coal (on received basis) less 85Kcal/kg	kCal/kg	3925.31
Weighted Average landed price of Coal	Rs./MT	2511.19
Heat Contributed from HFO	kCal/kWh	5.00
Heat Contributed from Coal	kCal/kWh	2195.00
Specific Coal Consumption	kg/kWh	0.559
Sp. Coal Consumption including Transit Loss	kg/kWh	0.564
Energy Charge from Coal	Rs Crore	1.404
Rate of Energy Charge from Oil	Rs./kWh	0.017
Total Energy Charges		1.422
Rate of Energy Charge at ex-bus	Rs./kWh	1.508

Provisions in Regulation:

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

18. Energy Charges:

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

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

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

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

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

43.2 Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be

determined to three decimal places in accordance with the following formula:

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

Where,

AUX = Normative auxiliary energy consumption in percentage.

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

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

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

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

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

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

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

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

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

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

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

Commission's analysis:

124. The MPERC Tariff Regulations, 2020 provides that the energy (variable) charges shall cover both primary and secondary fuel costs and shall be payable during the calendar month for the scheduled energy on ex-power plant basis.
125. In order to determine the energy charges of thermal power station, the operating parameters like gross station heat rate, auxiliary energy consumption, secondary fuel oil consumption and plant availability factor need to be examined as per provisions under the Regulations, 2020.

Gross Station Heat Rate:

126. On perusal of the details regarding Energy charges filed with the petition, it is observed that the petitioner has filed gross station heat rate of 2200 Kcal/KWh for the control period of FY 2019-20 to FY 2023-24 in accordance to MPERC (Terms & conditions for determination of Generation Tariff), Regulations, 2020.

127. Regarding the Gross Station Heat Rate of thermal generating units achieved CoD on or after 1.4.2012 till 31.03.2016, Regulation 49.3 (C)(i) of MPERC the Regulations, 2020, provides as under:

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

128. The Units of 2 X 660 MW Nigrie Thermal Power Station achieved CoD on 03rd September' 2014 and 21st February' 2015, respectively which falls under the period mentioned in the aforesaid Regulations. Further, the Commission issued the final tariff order for Nigrie Thermal Power Station on 24th May' 2017. In the aforesaid final tariff order, the Commission determined the Gross Station Heat Rate of 2200 Kcal/Kwh based on the operating parameters guaranteed by the manufacturer in light of the provisions under the Regulations. The same norms of Station Heat Rate as approved by the Commission in the final tariff order dated 24th May' 2017 is considered in this order for the control period of FY 2019-20 to FY 2023-24.
129. Hence, the Station Heat Rate norms of 2200 Kcal/Kwh as filed by the petitioner and determined by the Commission is considered for the project in this order for the control period of FY 2019-20 to FY 2023-24.

Auxiliary Energy Consumption

130. While claiming the Energy Charges, the petitioner considered the normative Auxiliary consumption of 5.75% for the project for control period FY 2019-20 to FY 2023-24 in accordance with the Tariff Regulations, 2020.
131. Regulation 49.3 (E) of the Regulations, 2020 provides the norms for auxiliary energy consumption for thermal generating station/unit of 300 MW and above with natural draft cooling tower which have achieved COD on or after 01/04/2012 is 5.75% hence, the same is considered in this order.

Secondary Fuel Oil Consumption

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

Particulars	Unit	Norms
Gross Station Heat Rate	kCal/kWh	2200
Specific Oil Consumption	ml/kWh	0.50
Aux. Energy Consumption	%	5.75%
Transit losses	%	0.80%

Gross Calorific Value of Coal:

135. With regard to Gross Calorific Value (GCV) of Coal, Regulation 43.4 of the Regulations, 2020 provided as unde:
- “The generating company shall provide to the beneficiaries of the generating station the details of parameters of GCV and price of coal i.e. domestic coal, imported coal, e-auction coal, etc., as per the forms prescribed to these Regulations:*

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

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

136. With regard to GCV of coal for Coal based Thermal Power Stations, Regulation 43.2 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020, provides that weighted average gross calorific value of coal “as received”, in kCal per kg less 85 Kcal/kg on account of variation during storage at generating station shall be considered for determination of energy charges. The aforesaid Regulation further provides that in case of blending of coal from different sources, the weighted average Gross Calorific Value of coal (primary fuel) shall be arrived in proportion to blending ratio.
137. On scrutiny of the subject petition, the commission observed that the petitioner filed energy charges based on the weighted average GCV of coal on “As Received Basis” less 85 Kcal/kg on account of variation during storage at generating station for the three preceding months i.e. for the January’19, February’19 & March’19 for FY 2019-20 to FY 2023-24.
138. Vide Commission’s letter dated 02nd September’ 2020, the petitioner was asked to file the weighted average GCV of coal for three preceding months as per Regulation 43.2 of the Tariff Regulation, 2020. The petitioner was also asked to file GCV of coal as per joint coal analysis report and bill/invoice raised by the coal companies along with the copies of joint coal analysis report and invoices. Laboratory test report in support of weighted average GCV “as received basis” was also sought in this regard.
139. By affidavit dated 29th October’ 2020, the petitioner filed weighted average GCV of 4010.31 Kcal/kg as received basis for preceeding three months in annexure 11.1 filed with the aforesaid submission The petitioner also filed weighted average GCV of coal so arrived after reducing (adjustment)of 85 kCal/kg in line with the Regulation 43.2,

therefore, the net GCV of coal of 3925.31 Kcal/kg is considered for determination of energy charges. The petitioner also submitted month-wise laboratory coal analysis report indicating GCV of coal on received basis.

140. Based on the above, the weighted average GCV of coal as filed and considered in this order is given below:

Table 27: Weighted Average GCV of Coal

Month	Qty of Coal Consumed (MT)	GCV	Weighted average	Weighted Average GCV(Kcal/Kg)
January'19	292859.00	4149.00	1215071991	
February'19	282293.00	4005.86	1130826237	
March' 19	384676.00	3908.00	1503313808	
	959828.00		3849212036	4010.31
Less: 85 kcal/kg for the purpose of Reg 43.2				3925.31

141. Hence, GCV of coal 3925.31 Kcal/Kg is considered for the project for determination of energy charges in this order. The petitioner is directed to ensure the compliance of Regulation 43.4 of the Regulations, 2020.

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

Landed Cost of Coal:

143. The petitioner claimed weighted average landed cost of coal of Rs. 2511.19/MT for FY 2019-20 based on the landed cost of coal purchased from Amelia Mine during preceding three months i.e. November' 2018, February' 2019 and March' 2019.

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

“The landed cost of coal for any month shall consist of base price of coal corresponding to the grade and quality of coal inclusive of statutory charges as applicable/allowed by the Commission, washery charges, if any, transportation cost by rail/ road or any other means, and loading, unloading and handling charges.....”

145. Vide order dated 28th January' 2016 in SMP No. 49 of 2015, the Commission has redetermined Energy Charges for petitioner's power project based on landed price of coal determined in para 97 of the aforesaid order. In para 89 of the said order It is mentioned that the fixed rate of Rs. 100/MT shall be subject to escalation as per clause 9.2 of Coal Mine Development and Production Agreement (CMDPA).
146. In view of the above, vide letter dated 02nd September' 2020, the petitioner was asked to submit the following details:
- a) *The month-wise landed price of coal and GCV of coal considered by the petitioner for claiming Energy Charges from the procurer (MPPMCL) during January, February and March'2020 and weighted average landed price of coal and GCV for these three months.*
 - b) *The copies of bills raised by JPVL to MPPMCL towards Energy Charges during January, 2020 to March, 2020 be submitted.*
 - c) *Detailed break-up of various components for arriving at landed price of coal in excel sheet for January, February and March, 2020 be also submitted.*
 - d) *Based on above, the landed price of coal claimed in the subject petition be submitted with all cost components.*

147. By Affidavit dated 29th October' 2020, the petitioner submitted the following:

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

(a) & (c) Month wise landed price of coal and GCV of coal considered by the Petitioner for claiming Energy Charges from the procurer (MPPMCL) during January'2020 to March' 2020 is as under:-

Month	GCV	Price (Rs. Per Kg)
Jan-20	3,921.08	0.7888
Feb-20	3,989.61	0.7588
Mar-20	4,100.69	0.7828

Detailed break up of various components for arriving at landed price of coal from Amelia (North) Coal Mines for PPA Generation for each month during Jan' 20, Feb'20 & Mar' 20 is attached as Annexure-12.1.

It is further mentioned that the breakup of Coal Cost considered for claiming Energy Charges {Passed through Components only, i.e. (i) Surface Transportation Charges (ii) Sizing/Crushing Charges, (iii) High Capacity Loading Charges, (iv) Bid Price of Rs 100/-per MT (v) Applicable Taxes from time to time (vi) Railway Transportation & Incidental Charges} from Procurer is also given in the same Annexure.Coal Invoice for Jan'20, Feb'20 & March'20 also are attached as Annexure-12.2.

It also is respectfully submitted that w.e.f. 05-03-2020, MP Forest Transit Fees were raised from Rs 7/-PMT to Rs 57/-PMT but Amelia kept raising invoices on JNSTPP by applying MP Forest Transit Fees for which a supplementary invoice in respect of despatches made from 05-03-2020 to 31-03-2020 was also raised which also is attached as Annexure-12.3.

(b) The copies of bills raised from January '20 to March '20 to the Procurer for the supply of electricity is attached as Annexure-12.4.

(d) It is respectfully submitted that the petitioner has arrived at landed cost of coal in the subject Petition by taking into account coal received from Amelia Coal mines for PPA generation during the three months preceding Apr'19 i.e. Nov'18, Feb'19 & Mar'19 since no coal was received during Dec'18 & Jan'19. Hence, the landed price of coal claimed in the subject Petition is being submitted with all cost components as Annexure-12.5.

In the above annexure it is evident that:-

	UOM	Amount
Quantity Purchased during the three months preceding April '2019	MT	4,99,387.18
Invoice Price	Rs	1,10,75,69,813.00
Railway Freight	Rs	12,64,51,004.00
Coal Handling	Rs	1,00,02,243.60
Total Purchase Price	Rs	1,24,40,23,060.60
Purchase Price/Tonne	Rs/Tonne	2,491.10
Purchase Price/Tonne (after Transit Loss of 0.8%)	Rs/Tonne	2,511.19

In the same annexure, detailed Break up of Coal Cost considered for claiming Energy Charges (Passed through Components) from Procurer (MPPMCL) during the three months preceding April '2019 also is submitted.

148. On perusal of the aforesaid details filed by the petitioner, it was observed that the petitioner in its additional submission has filed the month-wise detailed break-up of coal cost purchased from Amelia for the month of November' 2018, February' 2019 and March' 2019. The petitioner also filed the detailed break up of coal cost considered for claiming the energy charges (Passed through Components) from Procurer (MPPMCL) during the three months preceding April '2019 i.e., November' 2018, February' 2019 and March' 2019 which is considered in calculation of energy charges in this order.
149. The petitioner's power station is non-pit head therefore, while determining the landed cost of coal, the petitioner has considered normative transit and handing losses of 0.80%. The Commission has considered the normative transit and handling losses in determining the specific coal consumption for energy charge rate in this order. Therefore, the landed price of coal is considered prior to normative transit and handling losses filed by the petitioner. The weighted average landed cost of coal considered in this order is for preceding three months i.e., Nov'18, February' 2019 and March' 2019 because the petitioner informed that there was no coal supplied from the Amelia Coal Mines in the month of December' 18 and January' 19. The details of the landed price of coal filed by the petitioner is as given below:

Table 28: Weighted Average Price of Coal

Sr. No	Particulars	Unit	Nov.' 18	Feb. '19	March' 19	Total
1	Bill Quantity	Rs./MT	2,83,424.00	1,22,566.00	93,397.00	4,99,387
2	Pit Head ROM Price	Rs./MT				
3	Surface Transportation charges	Rs./MT	57.00	57.00	57.00	
4	Sizing & Crushing Charges	Rs./MT	79.00	79.00	79.00	
5	High Capacity Loading Charges	Rs./MT	29.00	29.00	29.00	
6	Basic price	Rs./MT	165.00	165.00	165.00	

7	Royalty @ 14% of Rs 955/ (G-11 Grade Coal)	Rs./MT	133.70	133.70	133.70	
8	NMET (2% of Royalty)	Rs./MT	2.67	2.67	2.67	
9	DMF @ 10% of Royalty	Rs./MT	13.37	13.37	13.37	
10	Bid Price	Rs./MT	100.00	100.00	100.00	
11	MPGATSVA @ 5% on Rs 955/-	Rs./MT	47.75	47.75	47.75	
12	Reimbursement of GST on Royalty, NMET,DMF	Rs./MT	26.95	26.95	26.95	
13	Reimbursement of GST on Bid Price	Rs./MT	18.00	18.00	18.00	
14	MP Forest Transit Fees	Rs./MT	7.00	7.00	7.00	
15	Invoice Value (For the purpose of Pass through)	Rs.	514.45	514.45	514.45	
16	Total Invoice Value (For the purpose of pass through)	Rs.	14,58,06,862	6,30,53,757	4,80,48,078	25,69,08,696
17	RLY Freight	Rs.	7,21,48,577	3,11,35,104	2,31,67,323	12,64,51,004
18	Coal Handling & other Charges	Rs.	56,76,679	24,54,917	18,70,647	1,00,02,243
19	Total Purchase Cost	Rs./MT	22,36,32,118	9,66,43,778	7,30,86048	39,33,61,943
20	Total purchase cost/Tonne for the purpose of claiming Energy Charges from Procurer		789.04	788.50	782.53	787.69

150. Accordingly, the weighted average price of coal of **Rs. 787.69/ MT** (with out considering transit and handling losses) is worked out by considering the weighted average rate of preceeding three month's in this order.

151. Regulation 38.2 of the Regulations, 2020 provides that while determining the weighted average price of fuel, no fuel price escalation shall be provided during the tariff period. Therefore, the preceding three months weighted average rate of coal of Rs. 787.69/ MT is considered for entire control period in this order.

Landed Cost of secondary fuel oil:

152. The petitioner claimed weighted average landed cost of secondary fuel oil of Rs. 34,924.69/KL for FY 2019-20 based on the landed cost of fuel oil purchased in the month of June'16, May'17 and February'18.

153. Vide letter dated 02nd September' 2020, the Commission asked details regarding wt. average rate of secondary fuel oil which is mentioned as below:

While computing the weighted average rate of Secondary fuel oil, the petitioner has considered the LDO / HFO purchased in the month of June 2016, May, 2017 and February, 2018. However, Regulation 19.1 of the Tariff Regulations, 2020 provides that the landed cost of secondary fuel oil for tariff determination shall be based on actual weighted average cost of secondary fuel of the three preceding months.

In view of the above, the petitioner is required to file the landed price of secondary fuel oil purchased during three preceding months in accordance with the provisions under the MPERC Tariff Regulations, 2020. Supporting documents (Bills / invoices) in respect of price of oil purchased be also filed by the petitioner in this regard.

154. By affidavit dated 29th October' 2020, the petitioner submitted the following:

Before reply to the above, it is respectfully submitted that while preparing the details, the Petitioner inadvertently clubbed the purchases of HFO made during February'18 with that of May'17, although it does not have any impact on the calculation.

Corrected Statement is furnished as under:-

Month	Type of Oil	QTY	LANDED COST (Rs)	Per KL Rate
Jun-16	Light Diesel Oil (LDO)	631.89	2,62,34,094.00	41,516.87
May-17	Light Diesel Oil (LDO)	944.01	4,12,36,311.00	43,682.07
Feb-18	Light Diesel Oil (LDO)	755.65	3,71,05,086.00	49,103.53
Total LDO (A)		2331.55	10,45,75,491.00	44,852.35
Jun-16	Heavy Furnace Oil (HFO)	2292.35	5,99,69,875.00	26,160.87
May-17	Heavy Furnace Oil (HFO)	1997.76	6,26,02,913.00	31,336.55
Feb-18	Heavy Furnace Oil (HFO)	2176.72	8,01,32,374.00	36,813.36
Total HFO (B)		6466.83	20,27,05,162.00	31,345.37
Grand Total (A+B)		8798.38	30,72,80,653.00	34,924.69
Weighted Average Landed Price/KL for ECR Calculation				34,924.69
Wt. Average Landed Price/KL for the purpose of Working Capital (HFO only)				31,345.37

It is respectfully submitted that from the above statement it is quite evident that the Petitioner during FY 2018-19 did not purchase LDO/HFO. Moreover, during 2017-18 only in May'17 & Feb'18 LDO & HFO was purchased. Before that only in the month of June'16 both LDO & HFO was purchased. Due to this very reason, purchases made during June'16, May'17 & Feb'18 was considered to arrive at the weighted average cost of secondary fuel.

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

Table 29:Wt. Average landed rate of secondary fuel oil preceding three months (Rs/KL)

Particulars	Weighted average landed rate of secondary fuel oil preceding three months (Rs/KL)
LDO	44,852.35
HFO	31,345.37
Weighted Average Landed Price/KL for ECR Calculation	34,924.69

156. Regulation 38.2 of the Regulations, 2020 provides that while determining the weighted average price of fuel, no fuel price escalation shall be provided during the tariff period. Therefore, the preceding three months weighted average rate of secondary fuel of Rs 34,924.69 /KL is considered for entire control period in this order.

157. Accordingly, the Energy Charges for the control period of FY 2019-20 to FY 2023-24 are worked out as given below:

Table 30: Energy Charges determined in this order

Particular	Unit	FY 2019-20 to FY 2023-24
Capacity	MW	1320
NAPAF	%	85%
Gross Station Heat Rate	kCal/kWh	2200.00
Sp. Fuel Oil Consumption	ml/kWh	0.50
Aux. Energy Consumption	%	5.75%
Transit Loss	%	0.80
Weighted average GCV of Oil	kCal/ltr.	10000.00
Weighted average GCV of Coal	kCal/kg	3925.31
Weighted Average landed Price of Coal	Rs./MT	787.69
Weighted Average landed Price of Oil	Rs/ KL	34924.69
Heat Contributed from HFO	kCal/kWh	5.00
Heat Contributed from Coal	kCal/kWh	2195.00

Specific Coal Consumption	kg/kWh	0.559
Sp. Coal Consumption including Transit Loss	kg/kWh	0.564
Energy Charge from Coal	Rs Crore	437.61
Total Cost of Oil	Rs Crore	17.21
Total Energy Charges	Rs Crore	454.82
Rate of Energy Charge	Rs./kWh	0.461
Rate of Energy Charge from at ex bus	Rs./kWh	0.490

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

Other Charges

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

160. The petitioner has also prayed for the following charges:

- *Energy Development Cess on energy supplied to MPPMCL and Plant Auxiliary Consumption.*
- *Electricity Duty on Plant Auxiliary Consumption.*
- *Water Charges paid to Water Resources Department, Government of MP .*
- *Other Statutory Charges incidental to billing.*

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

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

- (i) The application filing fee and the expenses incurred on publication of notices in the application for approval of tariff, may in the discretion of the Commission, be allowed to be recovered by the generating company directly from the beneficiaries.*
- (ii) The Commission may, for the reasons to be recorded in writing and after hearing the affected parties, allow reimbursement of any fee or expenses, as may be considered necessary.*

- (iii) *SLDC Charges and Transmission Charges as determined by the Commission shall be considered as expenses, if payable by the generating stations.*
- (iv) *RLDC/NLDC charges as determined by the Central Commission shall also be considered as expenses, if payable by the generating station.”*

162. In view of the above, the petitioner is allowed to recover the fee paid to MPERC and publication expenses as per Regulation 65.1 (i) of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 on submission of documentary evidence.

163. Regarding the Electricity duty, cess and water charges, Regulation 65.2 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020, provides as under:

“65.2 Electricity duty, cess and water charges if payable by the Generating Company for generation of electricity from the power stations to the State Government, shall be considered and allowed by the Commission separately by considering normative parameters specified in these Regulations and shall be trued-up on actuals:

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

164. In view of the above, the petitioner is allowed to recover the electricity duty on plant auxiliary consumption, Energy Development Cess on energy supplied to MPPMCL and water charges paid to Water Resources Department, Government of MP as per Regulation 65.2 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 on submission of documentary evidence.

Implementation of the order

165. The generation tariff under the Multi-Year Tariff framework for the control period from FY 2019-20 to FY 2023-24 is determined under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulation' 2020. The petitioner is directed to file true-up petitions for FY 2019-20 based on the Annual Audited Accounts within 60 days from the date of issue of this order.

166. The Commission directs that the generation tariff determined in this order shall be applicable from 1st April' 2019 and will continue to be operative till 31st March' 2024, under Multi Year Tariff Principles. The difference between the billing done in accordance with Regulation 7.11 of the Tariff Regulations, 2020 for the period starting from 01.04.2019 and the tariff determined in this order shall be done in accordance to second proviso of the Regulation 7.11 of the Regulations, 2020 in six equal monthly installments.
167. The petitioner must take steps to implement this order after giving seven (7) days' public notice in accordance to Regulation 1.30 of MPERC (Details to be furnished and fee payable by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004 and its amendments and must also provide information to the Commission in support of having complied with this order.
168. With the above directions, this Petition No. 43 of 2020 is disposed of.

(Shashi Bhushan Pathak)
Member

(Mukul Dhariwal)
Member

(S.P.S Parihar)
Chairman

Date: 3rd May' 2021

Place: Bhopal

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

MPPMCL Comment:

1. In Sub Para 4.1 (z) of the Petition, the Petitioner has stated that as it reserves right to amend the present Petition on the basis of the judgment passed Hon'ble Appellate Tribunal of Electricity in several Appeals filed/ proposed to be filed.
2. It is most humbly submitted that in view of the above, major claims of Additional Capital Expenditure made by the Petitioner, in the present Petition, are very much uncertain and dependent on the outcome of the Appeals pending before Hon'ble APTEL. Therefore, it is most humbly prayed that the present Petition may kindly be kept pending till the said Appeals are finally decided by the Hon'ble APTEL. Otherwise, the Tariff determination exercise by this Hon'ble Commission will not be conclusive.

Petitioner's Reply:

The contents of these paragraphs are denied and disputed to the extent the same are not specifically affirmed by the Petitioner. It is also respectfully submitted that the instant Petition has been filed in accordance with the provisions of Tariff Regulations. It is submitted that the Respondent No.1 had averred in the Paragraphs under Reply that since the Petitioner has filed multiple Appeals against the orders of the Hon'ble Commission, the present Petition should be kept pending till the disposal of the pending Appeals. It is respectfully submitted that each Petition raises a different cause of action and mere filing of an Appeal before the Hon'ble Appellate Tribunal against a separate and distinct order of the Hon'ble Commission cannot in no way bar/ curtail the jurisdiction to determine the Generation Tariff under Multi Year framework. Further, under the extant statutory framework there is no provision to withhold Generation Tariff under Multi Year framework due to pendency of the appeals against an earlier tariff orders.

Observation:

Under the extant statutory framework, there should not be tariff vacuum and also there is no provision to withhold the Tariff under Multi Year framework due to pendency of the appeals against an earlier tariff orders. Moreover, the Hon'ble APTEL not stayed the process of tariff determination. Hence, the tariff determination and true-up exercise needs to be carried out in accordance with the Regulations, 2020.

MPPMCL Comment:

3. Without prejudice to above, it is humbly submitted that in the present Petition, the petitioner has considered the following Additional Capital Expenditures for working out the Annual Capacity Charges for the Tariff period-

FY 2018-19 – The petitioner under para 6 of the petition, has considered total Additional Capitalization during FY 2018-19 as Rs. 156.37 crores (including Amelia coal mine) as claimed in the Petition no. 44 of 2019. In this regard, it is submitted that this Hon'ble Commission vide order dated 26.11.2020 passed in petition no. 44 of 2019, has admitted the Additional Capital Expenditure as Rs. 1.07 crores only against the petitioners claim of Rs. 156.37 crores and the admitted the capital cost of the project as on 31.03,2019 as Rs.10772.20 Crores only. Accordingly, as per provisions of regulation 6.2 of MPERC Generation Tariff Regulation 2020, this admitted cost has to be considered for the purpose of determination of the Tariff notified.

Petitioner's Reply

The contents of this paragraph are denied and disputed to the extent the same are not specifically affirmed by the Petitioner. It is respectfully submitted that at the time of filing of the instant Petition, i.e. July 2020, the base capital cost as on 31.03.2019 had not been determined by this Hon'ble Commission. In this background, the Petitioner reproduced the capital cost as on 31.03.2019 which was as mentioned in the True Up (FY 2018-19) Petition No. 44 of 2019 as base Capital Cost for the purpose of this Petition. It was only on 26.11.2020 i.e. after a period of four to five months from the date of filing the instant Petition, that the Hon'ble Commission issued the True Up Order and admitted the capital cost as on 31.03.2019. Therefore, the determination of the base capital cost as on 31.03.2019 was a subsequent development and could not have been factored in by the Petitioner while filing the instant Petition.

Moreover, the Petitioner has preferred an appeal to the True Up Order and in these circumstances, the capital cost as admitted by the Hon'ble Commission as on 31.03.2019 cannot be said to have attained finality. Therefore, contention of the Respondent No.1 that the for the purpose of the instant Petition, figures as determined in the True Up (FY 2018-19) Order should be kept as base for the purpose of the instant Petition ought to be rejected.

Observation:

As per the Regulations, Gross Fixed Assets as on 31st March' 2019 admitted by the Commission in the True-up Order for FY 2018-19 dated 26th November' 2020 is considered as the base figures for Gross Fixed Assets as on 01st April' 2019.

MPPMCL Comment:

Additional Capitalization during FY 2019-20 –The petitioner has consider Rs. 0.56 crores as additional capital expenditure in Generating Station & Rs. 147.34 crores as additional capital expenditure towards Amelia coal mines, totaling to Rs. 147.90 crores as additional capital expenditure during FY 2019-20.It is submitted by the petitioner, that the Balance Sheet for FY 2019-20 is not yet approved by the Shareholders and as such this claim is provisional. In this regard, it is submitted that, the financial year 2019-20 has already over long back & therefore, any expenditure during the period can only be considered on actual basis. Further, claim of Rs.147.34 Crore made by the Petitioner towards expenditure on Amelia Coal Mine and Cost of Ownership of Amelia Coal Mine during FY 2019-20 is not admissible under any provision of Tariff Regulations, 2020 and also in light of the Commissions' earlier orders in which all the previous claims of Capital expenditure towards Amelia Coal mines had already rejected.

Additional Capitalization during FY 2020-24 –The petitioner under para 7.5 of the petition has consider Annual Additional Capitalization from FY 2020-21 to FY 2023-24 towards Annual cost of Ownership of the Mining Rights of Amelia coal mines as Rs. 145.66 crores. This claim is not admissible under any provision of Tariff Regulations 2020 and also in light of this Hon'ble Commissions' earlier orders in which all the previous claims of Capital expenditure towards Amelia Coal mines have already been rejected.

Petitioner's Reply

The contents of this paragraph are denied and disputed to the extent the same are not specifically affirmed by the Petitioner. Though it is admitted that all the additional capitalization during FY 2019-20 to FY 2024 both in Generating Station & Amelia Coal Mines have been claimed on the provisional basis in the instant Petition, it is hereby requested to the Hon'ble Commission to determine the Tariff for the Control Period from FY 2019-20 to FY 2023-24 only after taking into account the additional capitalization submitted on the provisional basis.

Observation:

The additional capitalization filed by the petitioner during the control period is required to be scrutinized on several counts specified in the Regulations 2020. Based on the information made available by the petitioner, this exercise will be carried out while undertaking true-up for the respective year based on Annual Audited Accounts and other requisite details in this regard. Also, the claim towards proposed additional capitalisation on account of assets of Amelia Mine and the “Additional Premium” is not considered by the Commission in this order however, this issue is subjudice before Hon’ble APTEL in several Appeals filed by the petitioner.

MPPMCL Comment

4. Despite repeated rejection of the claim towards Amelia Coal Mines by this Hon’ble Commission and no stay/ relief having been granted by Hon’ble APTEL in various appeals filed by the Petitioner against ordered rejecting the claim, the Petitioner has again claimed expenditure on Amelia coal Mine and Cost of Ownership of Amelia Coal Mine in the present petition. Therefore, it is most humbly prayed that the claim of Additional Capital Cost towards expenditure on Amelia Coal Mine may kindly be rejected.

Petitioner’s Reply

The contents of the Reply filed by the Respondent No.1 are untenable, vexatious in nature and are categorically denied. Each and every averment contained in the Paragraphs under Reply are hereby denied. Moreover, as specifically averred by the Respondent No.1 regarding disallowance of Capital Expenditure on Coal Mines in Petition No. 72/2015, it is respectfully submitted that Capital Cost determined by the Hon’ble Commission in Petition No.72/2015 was only up to 31-03-2015 and Provisional Additional Capitalization (including Amelia Capital cost) during FY 2015-16 was not considered at all at that stage. The Petitioner started including Amelia Capital Cost in Additional Capitalization from FY 2015-16 onwards when the ownership of Amelia Mines was vested with the Petitioner. Hence, the averment of the Respondent that the Hon’ble Commission had disallowed the Amelia Capital Cost in Petition No.72/2015 is misconstrued. It is further submitted that the expenditure incurred towards procurement of assets inter alia land and infrastructure for Amelia (North) Coal Mine (hereinafter referred to as “Amelia Mines”) along with the cost of obtaining statutory permits/ approvals with respect to the same is in nature of capital expense. Such

capital expense had been incurred for procuring assets which are necessary for providing coal to generating station of the project and ought to be allowed by the Ld. Hon'ble Commission.

Further, it is respectfully submitted that MPPMCL, has failed to appreciate that the Petitioner has incurred expenditure by way of Additional premium on account of acquiring or bringing into existence an asset of an enduring benefit (coal mine) for the generation business. Therefore, the same ought to be approved by the Hon'ble Commission towards capitalization in Amelia Mine. Further, MPPMCL had stated that the claim regarding capital expenditure been disallowed by this Hon'ble Commission vide Petition No. 41 of 2017, 07/2018, 05/2019, 07/2019 & 44/2019 and no stay/ relief has been granted by Hon'ble APTEL and therefore, the claim of the Petitioner regarding the capitalization in Amelia Mines cannot be allowed and ought to be rejected. It is respectfully submitted that the claim regarding capital expenditure in the Amelia Mines is well within the terms of the Tariff Regulations, 2020. Further, it is noteworthy that the issues regarding expenditure on Amelia Mines on account of Additional Premium on coal supplied is pending adjudication vide Appeal No. 95 of 2016 and Appeal No. 244 of 2017 before the Hon'ble Appellate Tribunal of Electricity. Further, the Petitioner has also preferred an Appeal against the True Up Orders in aforesaid Petitions wherein the issues regarding additional capitalization of the Amelia Mines is being taken up.

It is respectfully submitted that the legal basis for the Petitioner's claim is founded on a well settled principle of law that each tariff order is independent and gives rise to separate cause of action. It was held by the Hon'ble Tribunal in **Appeal No.133 of 2007** that:

*"The Commission has raised a preliminary issue. The Commission says that it has taken this view in its earlier decisions No. of corrections Page 12 of 16 Appeal No. 133 of 2007 SH dated 26th June, 2003, 09th June, 2004 and 07th July, 2005. It is contended that since the appellant has not challenged this view in the earlier years it cannot challenge the view now. On behalf of the appellant it is contended that **each year's tariff fixation exercise is an independent proceeding and therefore this question can be agitated in the present appeal.***

It is not disputed by the counsel appearing before us that each assessment year of a tariff order gives rise to a fresh cause of action and can be

challenged separately. It is also accepted at the bar that the principles of res judicata will not apply to the facts of this case.”

In view of the above the averments of the Respondent in its reply may kindly be rejected and the petition may be allowed.

Observation:

With regard to the claim of the petitioner regarding proposed additional capitalization during FY 2020-21 to FY 2023-24, the claim of petitioner for additional capitalisation towards the assets of Amelia Coal Mine towards the “Additional Premium” is not in accordance with the provisions under Regulations 2020. The Commission has never allowed the additional capitalization in Amelia Coal Mine in earlier tariff/True-up orders till date. Hence, taking the consistence approach, the claim towards proposed additional capitalisation on account of assets of Amelia Mine and the “Additional Premium” is not considered by the Commission in this order.

MPPMCL Comment:

5. It is humbly submitted that, the total Capital Cost approved by this Commission for the Project up to 31.03.2019 is Rs. 10,772.20 Crore, out of which the Hard Cost is Rs. 8,181.52 Crore. Therefore, the Hard Cost approved till 31.03.2018 is approximately Rs. 6.2 Crore per MW, which is 24 % higher than CERC notified Bench Mark Hard Cost of Rs. 5 Crore per MW. Therefore, there is no scope for any further increase in hard cost of the project. Therefore, it is most humbly prayed that the Additional Capital Expenditure claimed in this petition may not be considered.

Petitioner’s Reply

The contents of these paragraphs are denied and disputed to the extent the same are not specifically affirmed by the Petitioner. Each and every averment contained in the instant Paragraph under Reply are hereby denied. It is submitted that the contents of the instant Paragraph under Reply are solely intended to attempt and overreach this Hon’ble Commission or to otherwise influence the administration of justice.

It is respectfully submitted that the Petitioner has already submitted in detail the reasons for incurring capital expenditure under the various heads during the proceedings of earlier True Up Petitions & in the proceeding of the instant Petition and the Hon’ble Commission is kindly requested to refer the same. However, MPPMCL has declared that the capital cost upto 31.03.2019 is higher than the notified

benchmark hard capital cost notified by the Hon'ble Central Electricity Regulatory Commission ("Hon'ble Central Commission") and on this basis, no additional capitalization may be permitted by this Hon'ble Commission.

It is respectfully submitted that the Hon'ble Commission had admitted the capital cost of the Project as on 31.03.2015 vide order dated 24.05.2017 passed in Petition No.72 of 2015 only after having carried out prudence check according to the applicable provisions of the Tariff Regulations. It may be noted that the Respondent had not contested such capital cost approved by the Hon'ble Commission. It may further be acknowledged that the Hon'ble Commission determined Capital Cost of the Project upto 31.03.2016 vide True Up Order dated 20-07-2018 in Petition No.41/2017 and it is noteworthy that the Respondent No. 1 did not raise the issue of benchmark cost during the True Up proceedings. In these circumstances, the Respondent No. 1 cannot be allowed to agitate this issue in the present proceedings.

Though, later on, this issue was raised by the Respondent during the proceedings of the Petition No. 05/2019, Petition No. 07/2019 & Petition No. 44 of 2019, the same were set aside by the Hon'ble Commission and which were not challenged by the Respondent hence, the same issue has attained the finality. Moreover, it is most respectfully submitted that the aforesaid issue has been adjudicated upon by the Hon'ble Commission in Petition No. 72 of 2015 after due diligence and therefore, cannot be re-agitated by the Respondent No.1 since the same issue has achieved finality.

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

Observation:

The Commission has not considered any additional capitalization in this order. The additional capitalization filed by the petitioner during the control period is required to be scrutinized on several counts specified in the Regulations, 2020. Based on the information made available by the petitioner, this exercise shall be carried out while undertaking true-up for the respective year based on Annual Audited Accounts and other requisite details in this regard.

MPPMCL Comment

6. In Para 9.1, in Table M, the Petitioner has given summary of Annual Capacity Charges for the Tariff Period based on addition of capital cost after adjustment of decapitalization of assets. Under Sr. No. 5A of the table, expenditure has been claimed in respect of O & M Expenses (400 KV Transmission Line and Bay). This claim is strongly opposed by the Answering Respondent as there is no provision in 2020 Tariff Regulations for making such a claim and the claims made earlier in respect of O & M Expenses (400 KV Transmission Line and Bay) were already rejected by this Hon'ble several times.
7. The claim of O & M Expenses for 400 KV Transmission Line was rejected in P. No. 72 of 2015. The relevant portion of the order dated 24.05.2017 passed in the said petition is extracted below:

193. With regard to O&M expenses of Transmission Line, it is observed that the Transmission line in the subject petition is a dedicated line and its cost has been appropriately included in the capital cost considered in this order. Further, the petitioner had not claimed the operation and maintenance (O&M) expenses for the said dedicated transmission line in its petition No. 3 of 2014. For the first time in the subject petition, the O&M expenses of dedicated transmission line are claimed by the petitioner.

194. The dedicated transmission line is neither a transmission line in terms of sub-section (72) of Section 2 of the Electricity Act' 2003 nor it is a distribution system connecting the point of a connection to the installation of consumer in terms of sub-section (19) of Section 2 of the Electricity Act, 2003. The O&M expenses of a transmission line are part of the Annual Fixed Cost determined by the Commission under section 62 of the Electricity Act, 2003 for a transmission licensee whereas, the subject petition can not be considered for determination of AFC for the transmission line under section 62 of the Electricity Act, 2003. The cost of dedicated transmission line has been considered in the capital cost of the generating station and the tariff of the said generating station has been determined in terms of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations' 2012 which does not provide for any O&M expenses of dedicated transmission line separately. In view of the aforesaid, the

claim of petitioner for O&M expenses of dedicated transmission line has no merit hence not considered in this order.”

8. Subsequently, the Petitioner has again claimed O & M Expenses for 400 kV Transmission Line and Bay in P.Nos. 41/2017, 07/2018, 05/2019 ,07/2019& 44/2019. However, the said claim was rejected by this Hon'ble Commission by its orders dated 20.07.2018, 29.11.2018, 25.07.2019, 22.10.2019&26.11.2020 passed in the said petitions.
9. On the issue of O & M Expenses for 400 kV Transmission Line and Bay, several Appeals filed by the Petitioner are pending before the Hon'ble APTEL for adjudication. However, no interim or other relief has been granted by the Hon'ble Tribunal. It is therefore most humbly prayed that this Hon'ble Commission may graciously be pleased to reject the claim of O & M Expenses in respect of 400 kV Transmission Line and Bay.

Petitioner's Reply

It is respectfully submitted that the contents of the instant paragraphs filed by the Respondent No. 1 are, untenable, vexatious and is categorically denied. In the instant paragraphs, the contention of the Respondent No. 1 is that the claim in respect of O&M on Transmission Line should be rejected merely on the grounds that the same has been rejected in the earlier Petition In this regard, it is humbly submitted that each tariff year gives rise to separate cause of action to the Petitioner and each claim is required to be determined in light of the extant regulatory and statutory framework. The issue is sub-judice before the Hon'ble Appellate Tribunal and as such has not attained finality and the Petitioner is bona-fide in claiming the O&M related to the Transmission lines.

Observations:

No separate norms are provided in (Terms & Conditions for determination of Generation Tariff) Regulations, 2020 for operation & maintenance expenses on dedicated transmission lines and Bay as claimed in the subject petition. Further, the cost of dedicated transmission lines have been considered in the project capital cost of the petitioner's power plant while determining the final capital cost of the project.

Further, in all earlier tariff/true-up orders since COD of the project, the Commission had taken the consistent approach on this issue and separate O&M expenses for dedicated transmission line and bay had not been considered. Since this case is currently pending

adjudication before the Hon'ble Appellate Tribunal for Electricity under several Appeals filed by the petitioner against the tariff/true-up orders issued by the Commission therefore, the claim of the petitioner for separate Operation and Maintenance expenses of dedicated transmission line and bay is not considered in this order.

MPPMCL Comment

10. In Para 9.1, in Table M, at Sr. No. 12, the Petitioner has claimed capacity charges as 32.43 % of the Net Capacity Charges whereas the contracted capacity of the answering respondent is 30% only. This claim was already rejected by this Hon'ble Commission many times in various petitions filed by the petitioner and is pending adjudication before Hon'ble APTEL. Therefore, it is prayed to the Hon'ble Commission to only consider proportionate capacity charges for 30% capacity only.

Petitioner's Reply

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

It is respectfully submitted that 7.5% of the power is being supplied to the State of Madhya Pradesh on energy charges only. Such supply is in the nature of concession to the State of Madhya Pradesh in which the Appellant has been allowed to setup the thermal power plant and therefore, necessarily forms part of the operational cost of the generating station and must be allowed as capacity charges. It is submitted that MPPMCL has failed to take into account the fact that the State of Madhya Pradesh is being offered 7.5% of contracted capacity under the PPA dated 06.09.2011, to ensure that the host state is given the benefit of electricity generated from the Project, which is operating within its jurisdiction.

It is humbly submitted that MPPMCL has failed to appreciate that the Petitioner is entitled to a complete pass through of the expenses incurred in operating the Project as per Sections 61 and 62 of the Electricity Act, 2003 and various regulations issued by this Hon'ble Commission. Furthermore, the claim of the Petitioner with respect to capacity charges on 32.43% contracted capacity is also in line with the National Electricity Policy and National Tariff Policy.

It is respectfully submitted that the Petitioner is supplying 7.5% of the power generated to the State of Madhya Pradesh only on energy charges. Therefore, the Appellant must recover the expenses on operating the Project from the Procurers obtaining 92.5% of the remaining power. In these circumstances, the Respondent No. 2, being the

beneficiary of the 30% contracted capacity, ought to pay the pro-rated expenses in operating the Project accordingly.

In light of the above, it is respectfully submitted that the Petitioner is entitled to recover the expenses incurred in operating the project under the extant regulatory framework and to this extant the claim of the Petitioner for capacity charges for 32.43% of the contracted capacity is valid and ought to be allowed.

Without prejudice to the foregoing, it is respectfully submitted that the Petitioner has already challenged the issue of non-consideration of capacity charges on 32.43% of contracted capacity before the Hon'ble Tribunal vide Appeal No. 244 of 2017, Appeal No.293/2018, Appeal No. 96/2019, Appeal No.341/2019 & Appeal No.49/2020 and that the same are pending adjudication. Therefore, any outcome in those proceedings will necessary be binding on the present Petition insofar as the issue regarding capacity charges on 32.43% contracted capacity is concerned.

Observation:

The Commission has considered the proportionate capacity charges for 30% capacity only corresponding to contracted capacity under long term PPA with the Respondent No. 1 in accordance to the order issued by the Hon'ble APTEL.

MPPMCL Comment

11. Electricity Duty/ Cess on Auxiliary Energy Consumption -

Regulation 65.2 of the Tariff Regulation 2020 have the provisions regarding applicability of ED/EDC on scheduled Energy & Auxiliary Power Consumption. As per clause 65.2, ED Cess on Auxiliary Consumption is to be trued up by the Hon'ble Commission on actual basis whereas as per proviso under regulation 65.2, Electricity Duty is applied on normative auxiliary consumption and there is no truing up by the Hon'ble Commission.

In this regard, it is submitted that during certain months, the actual auxiliary consumption is less than the normative auxiliary consumption and accordingly the Generator deposits ED to the Government calculated as per actual auxiliary consumption, whereas charge higher amount based on normative auxiliary consumption. It is therefore, prayed to the Hon'ble Commission to limit allowable EDC/ ED on auxiliary consumption to normative/actual whichever is lower.

Petitioner's Reply

The contents of these paragraphs are denied and disputed to the extent the same are not specifically affirmed by the Petitioner. Each and every averment contained in the instant Paragraph under Reply are hereby denied. It is submitted that the contents of the instant Paragraph under Reply are solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice.

The contents of the instant paragraph are untenable and unreasonable. The Respondent No. 1 has requested the Hon'ble Commission to limit allowable ED & ED Cess on actual/normative whichever is less, which is not in conformity of the prevailing MPERC Tariff Regulations, 2020.

Without prejudice to the above and for the sake of utmost satisfaction of the Procurer/Respondent No. 1 this is humbly submitted that the Generator raises bill for re-imburement of ED & ED Cess in line with the prevailing MPERC Tariff Regulations which allows the Generator to claim re-imburement of ED & ED Cess on Normative Auxiliary Consumption whereas deposition of ED & ED Cess to the Govt. is being done by the Generator as per the rules and regulations of the respective Govt. Body/Office.

Observation:

Regulation 65.2 of the MPERC Generation Tariff Regulations, 2020 provides as under:

65.2 Electricity duty, cess and water charges if payable by the Generating Company for generation of electricity from the power stations to the State Government, shall be considered and allowed by the Commission separately by considering normative parameters specified in these Regulations and shall be trued-up on actuals:

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

In view of the above, the petitioner is allowed to recover the electricity duty on plant auxiliary consumption, Energy Development Cess on energy supplied to as per Regulation 65.2 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 on submission of documentary evidence.

Annexure-II

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

Stakeholder Comment:

There has been a delay in filing the instant MYT Petition. Petitioner be directed to provide the audited accounts of the financial year 2019-2020 based on actual income and expenditure, consequent to which the tariff of financial year of 2019-2020 be considered as final order.

Petitioner's Reply:

It is denied and disputed that the captioned MYT Petition for Control Period from FY 2019-20 to FY 2023-24 has been filed with a delay. It is respectfully submitted that the Madhya Pradesh Electricity Regulatory Commission ("MPERC/Commission") issued and notified the Tariff Regulations, 2020 on 28.02.2020. Regulation 6.2 of the Tariff Regulations 2020 specifies that in case of an existing generating station, the application for determination of Multi Year Tariff (MYT) shall be made by the generating company within a period of 60 days from the date of notification of the regulations or as directed by the Commission, whichever is earlier. The relevant portion of the Regulation 6.2 is extracted hereinbelow:

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

Subsequently, Hon'ble Commission vide its order dated 06.05.2020 observed that the generating companies in the state of Madhya Pradesh were unable to file their MYT petitions due to the outbreak of Covid-19 and declaration of nationwide lockdown by the Government of India with effect from 25.03.2020. In the light of the said circumstances caused by Covid-19, the Hon'ble Commission relaxed provisions under Regulation 6.2 of the Tariff Regulations 2020 and permitted the generating companies

to file MYT petitions for the Control Period FY 2019-20 to FY 2023-24 by 30.06.2020
The relevant portion of the order dated 06.05.2020 is set out hereinbelow:

“6. The Commission has observed that on account of outbreak of COVID-19 and as a measure to contain the spread of this pandemic, the Government of India has taken measures to lockdown the country with effect from 25.3.2020. Due to aforesaid reasons, the generating companies in the state and M.P. Power Transmission Company are unable to file their MYT petitions till date.

7. With the above background and keeping in view the difficulties being faced by the Generating Companies and Transmission Licensee in filing tariff petitions during this period, the Commission is of the view that the Generating Companies and Transmission Licensee in the State may be allowed additional time to file the Multi-year tariff petitions for new control period of FY 2019-20 to FY 2023-24. Accordingly, in exercise of the provisions under aforesaid Regulations, the provisions under Regulation 6.2 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020 and Regulation 10.10 of the MPERC (Terms and Conditions for determination of Transmission Tariff) Regulations, 2020 are hereby relaxed by this order and the Generating Companies which are covered under the scope of Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) Regulations, 2020 {RG-26(IV) of 2020} and M.P Power Transmission Company Ltd, Jabalpur are permitted to file the Multi-year tariff petitions for the control period FY 2019-20 to FY 2023-24 by 30th June’ 2020.”

It is respectfully submitted that the Petitioner had filed their MYT Petition for the Control Period FY 2019-20 to FY 2023-24 on 11.06.2020 before this Hon’ble Commission which was numbered as Petition No. 43 of 2020. Thereafter, the Petitioner filed an interlocutory application (“IA”) dated 11.07.2020 for inclusion of additional prayers which was withdrawn and an amended MYT Petition on 25.07.2020 was filed before motion hearing held in the petition.

The original petition having been filed before 30.06.2020 i.e. the time granted by this Hon’ble Commission vide order dated 06.05.2020, has thus been filed within time and there has been no delay as alleged in the third party comment no. 1.

In addition, at the stage of filing the captioned petition before the Hon’ble Commission i.e. 11.06.2020, the final audited accounts of the Petitioner Company for the FY 2019-20 had not been submitted before the shareholders in their annual general meeting (“AGM”) and thus there was no occasion to submit the same along with the tariff petition.

Observation:

The Commission issued MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020 on 20th February' 2020 which were notified in Madhya Pradesh Gazette on 28th February' 2020. In terms of Regulation 6.2 of the Regulations, 2020, a Generating Company has to make an application for determination of Multi-Year Tariff within 60 days from the date of the notification of the Regulations.

Considering the difficulties being faced by the generating companies in filing their MYT Petitions on account of the lockdown imposed across the country due to COVID-19 pandemic, the Commission vide its Order dated 06.05.2020 extended the timeline for filing the MYT Petition till 30.06.2020. The petitioner filed the subject MYT petition on 18th June' 2020, hence, there is no delay in filing the subject petition.

In this order, the Commission has determined the multi-year tariff for the control period FY 2019-20 to FY 2023-24 under the MYT framework in accordance to the provisions under Regulations, 2020. The true-up of tariff shall be carried out on year-to-year basis, based on the Annual Audited Accounts for respective year of the control period.

Stakeholder Comment:

The petitioner has filed the subject MYT petition considering the capital cost and additional capitalization filed in true-up petition for the financial year 2018-19. In absence of any details/proof of actual payment etc. the additional capitalization during FY 2018-19 should not be allowed. Therefore, the capital expenditure considered by the petitioner in the ongoing true-up Petition No. 47 of 2019 may be disapproved in the present Petition. Further, the capital cost of the project under subject petition is already on higher side in comparison to other similar projects and it should be investigated by the AG Audit.

Petitioner's Reply:

It is humbly submitted that the Petitioner had filed a petition bearing no. 72 of 2015 on 07.12.2015 under section 62 and 64 of the Electricity Act, 2003 and the provisions of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012 ("Tariff Regulations, 2012") for determination of final generation tariff in respect of its 1320 MW (2x660 MW) super critical coal based power project for FY 2014-15 based on Annual Audited Accounts and generation tariff for FY 2015-16 on provisional basis subject to true up based on Annual Audited Accounts for FY 2015-16. It is

pertinent to mention that along with the petition, the Petitioner filed record of the capital cost and submitted component wise break-up of the capital cost in compliance with the Regulation 17 of the Tariff Regulations, 2012.

Regulation 17.2 of the Tariff Regulations, 2012 provides that capital cost admitted by the Commission shall be subject to prudent check which may be carried out based on the benchmark norms specified by the Central Commission from time to time and if the benchmark norms have not been specified by the Central Commission, prudent check may include scrutiny of matters or subjects as may be considered appropriate by the Commission for determination of Tariff.

It is humbly submitted that this Hon'ble Commission vide its order dated 24.05.2017 in petition no. 72 of 2015 noted the capital costs as Rs. 10564.80 Crore for Petitioner's project as on 31.03.2015. It is thereby submitted that the capital cost noted by this Hon'ble Commission was subjected to the prudent check and the said prudent check is based on the benchmark norms specified by the Central Commission, as provided under Regulation 17.2 of the Tariff Regulations, 2012.

Further, this Hon'ble Commission in the true-up order for FY 2017-18 passed in petition no. 07 of 2019 admitted the gross fixed asset ("GFA") of Rs. 10,771.13 Cr. on 01.04.2018. A petition bearing no. 44 of 2019 was also filed by the petitioner for true up for FY 2018-19 wherein this Hon'ble Commission approved a cost of Rs. 10,772.20 as closing GFA on 31.03.2019.

Therefore, it is respectfully submitted that the capital cost for the Project was already investigated by this Hon'ble Commission, and thus is not subject to further scrutiny or modification. It is pertinent to note that the Affected Party has neither raised any dispute with respect to capital cost during the course of the abovementioned petitions nor challenged this Hon'ble Commission's orders determining such project cost.

Observation:

In accordance to the Regulations, Gross Fixed Assets as on 31st March' 2019 admitted by the Commission in the True-up Order for FY 2018-19 dated 26th November' 2020 is considered as the base opening figure of capital cost as on 01st April' 2019. No additional capitalization is considered at this stage in this order and same shall be dealt in true-up petitions for the respective year in accordance to the provisions under the Regulations, 2020 based on the Annual Audited Accounts.

Stakeholder Comment:

Additional capitalization claimed due to additional premium paid to the Government of India for acquiring mining rights of Amelia (North) coal block for FY 2019-20 and 2020-21 is illegal since this expenditure is rejected in all previous tariff orders.

Petitioner's Reply:

It is denied that additional capitalization claimed due to additional premium paid to the Government of India for acquiring mining rights of Amelia (North) coal block for FY 2019-20 and 2020-21, is illegal. It is submitted that Petitioner has been paying 'additional premium' as cost of ownership of mining rights of the Amelia (North) coal block. The Petitioner in the captioned petition has sought for approval of annual cost of ownership of the mining rights of Amelia (North) coal block of Rs. 145.66 Cr.

It is submitted that pursuant to the cancellation of Amelia (North) coal block vide, vide Supreme Court Order, a tender process for auction of the cancelled coal blocks was carried out under the Coal Mines (Special Provision s) Ordinance, 2014 ("Ordinance") and Coal Mines (Special Provisions) Rules, 2014 ("Rules"). All bidders were required to follow the 'reverse bidding' method and quote a price below the ceiling price provided by Coal India Limited ("CIL") for the 'run of mine' ("RoM") cost of coal. It was clarified that in case the bid reaches 'zero' then the selection of bidder will be made on the basis of highest quoted rate/value of 'additional premium' in the nature of forward bidding. The second Unit of the Project commissioned in February 2015 and therefore at the time of bidding, the Project was running premised on supply from Amelia (North) coal block. In addition, Petitioner had already invested a sum of about eleven thousand crore on expenses related to the coal block. The Petitioner, thus, in order to ensure the availability of the coal block for the Project, bid a price of 'zero' at the auction for the RoM cost and a value of Rs. 612/tonne as additional premium. Petitioner was declared a successful bidder and a 'vesting order' was issued to the Petitioner on 23.03.2015.

It is submitted that additional premium quoted and paid by the Petitioner to the Central Government, is an expense in the nature of acquiring mining right with respect to Amelia (North) coal block which was under auction.

It is pertinent to note that additional premium based on quantum of coal extracted, payable on monthly basis, is paid to ensure the mining right for the identified coal mine. Therefore, additional premium, being an expense not related to the actual activity of

mining, but merely a payment for acquiring mining right, license and clearance, is a capital expense, which is to be reckoned as part of 'fixed charges'.

It is further clear from the findings of the Hon'ble Delhi High Court in *Monnet Power Company Ltd. vs. Union of India*; (2017) SCC OnLine Del 7399 that the bidding documents for the coal blocks did not provide any restriction in relation to additional premium as far as fixed charges were concerned and that there was only a prohibition in including the additional premium as part of energy charges. The relevant part of the judgment is excerpted below:

“23. From the above, it is evident that insofar as the input to the energy charge component of the tariff for electricity was concerned, the Additional Premium was not to be considered as a pass through item. Once again, we emphasise that the Standard Tender Document, as amended by Corrigendum No. 3, had a reference only to the energy charge component of the power tariff. There was no reference to the fixed charge/capacity charge component of the power tariff.

24. It is with this understanding and state of affairs that the auctions for the coal blocks were held. The petitioners had participated in the auction on the basis of the Tender Document as amended by Corrigendum No. 3. **It was clarified that the Additional Premium could not be passed through as a component of energy charge, but, at the same time, there was no mention with regard to the fixed charge/capacity charge component of the power tariff.”**

It is submitted that in law and trade there exists a clear demarcation between the 'cost of acquiring a mine / mining rights' and the 'cost of mining'. The former being the costs towards acquisition of right to win a mineral while the latter being the expense incurred by the mine owner in carrying out mining operations for winning / extracting the mineral.

The Petitioner, therefore, is justified in seeking determination of tariff based on expenditure as submitted, including the capital expenditure in the form of 'additional premium'. Petitioner in various appeal before the Hon'ble Appellate Authority for Electricity has challenged orders passed by this Commission, which is pending adjudication. It is respectfully submitted that the conclusion in such proceedings shall equally apply to the present proceedings.

Observation:

With regard to the claim of the petitioner regarding proposed additional capitalization during FY 2020-21 to FY 2023-24 towards Amelia Coal Mine in respect of the “Additional Premium” is not in accordance with the provisions under Regulations 2020. The Commission has not considered the additional capitalization in Amelia Coal Mine in earlier tariff/True-up orders also. Hence, taking the consistence approach, the claim towards proposed additional capitalisation on account of assets of Amelia Mine and the “Additional Premium” is not considered by the Commission in this order.

Further, the issue of additional capitalisation on account of assets of Amelia Mine and the “Additional Premium” is subjudice before Hon’ble APTEL in several Appeals filed by the petitioner.

Stakeholder Comment:

MPERC (Terms Conditions for determination of Generation Tariff, 2020 was notified by Hon’ble Commission on 20.02.2020 before the outbreak of novel Coronavirus (“Covid-19”) and the same may be amended by exercising its inherent powers under Regulation 68.2 of the Tariff Regulations, 2020

Petitioner’s Reply

The content of this objection needs no reply as it concerns reconsideration of terms of regulations by this Hon’ble Commission on account of the impact of Covid-19 on power distribution companies.

It is however submitted that this Hon’ble Commission, a statutory authority, is bound by the regulations passed in accordance with the 2003 Act and thus, can not deviate from its regulations.

Observation:

In this order, the Commission has determined the tariff in accordance to the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020.

Stakeholder Comment:

Considering the outbreak of novel Coronavirus (“Covid-19”), the maximum limit of Return on Equity (“RoE”) in the present Petition be set on 10%.

Petitioner’s Reply

The content of this objection is denied and rebutted on the ground that all the government incentives and financial reliefs highlighted by the stakeholders in their comment do not have applicability on the Petitioner. It is humbly submitted before the

Hon'ble Commission that the directions, schemes and letters issued the Government of India, as mentioned by the Affected Party, are with respect to the financial relief provided to distribution licensee by central government enterprises i.e. NTPC and power grid. It is respectfully submitted that such initiatives and policies are provided by government entities which receive state support in the form of subsidies, financial support etc. which are not available to private entities like the Petitioner.

It is pertinent to note that Affected Party has highlighted 'Table M' provided in para 9.1 of the petition, wherein the Petitioner has sought 15.5% standardized return on share capital. It is thereby respectfully submitted before the Hon'ble Commission that Regulation 34.2 of the Tariff Regulations, 2020 provides that the return on equity shall be at the base rate of 15.50% for thermal generating stations. Thus, the Petitioner has rightly demonstrated return on equity in the aforementioned table in accordance with the Tariff Regulations, 2020 and is therefore entitled for the same.

Therefore, it is respectfully submitted before the Hon'ble Commission that corresponding comment is baseless and irrelevant.

Observation:

The Commission has considered the Base Rate of Return on Equity in accordance with the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020.

Stakeholder Comment:

Rate of 9.5% per annum which is paid by the petitioner on actual basis can be considered by the Commission to calculate the interest on the capital loan for the financial year 2019-20 to FY 2023-24.

Petitioner's Reply

The content of this objection is rebutted on the ground that the Regulation 36.4 of the Tariff Regulations of 2020 provides that the rate of interest shall be weighted average rate of interest calculated after providing appropriate accounting adjustment for interest capitalized. It is humbly submitted that this Hon'ble Commission, in the true up petition (Petition No. 44 of 2019) for FY 2018-19, considered the revised weighted average rate of interest 11.46% for FY 2018-19.

The petitioner required resolution of debt for certain reasons and thereby the lenders initiated Resolution Plan from July 2016. Thereafter, a resolution plan was accepted

by the lenders, in April 2019, inter alia including conversion of part debt into CCPS and payment of interest @ 9.5% p.a. till the operations of Petitioner are stabilized and also restating the repayment schedule of outstanding loan inter alia subject to lenders having right to recompense for the sacrifice made by them in accordance with the RBI guidelines. The relevant clause of Framework Agreement dated 18.04.2019 for lender's right to recompense is as under:

“11. RIGHT TO RECOMPENSE

- 11.1 The Borrower acknowledges and admits that the Lenders have made sacrifices in granting reliefs and concessions to the Borrower by, inter alia, reducing the rate of interest, waiver of default and/or penal interest, and agreeing to convert all or part of the Convertible Debt into CCPS.
- 11.2 The Borrower further acknowledges and agrees that if in the opinion of the Lenders, the profitability and cash flows of the Borrower improves, the Lenders shall have the right to receive recompense for the sacrifices made by them in accordance with the IRAC Norms.
Provided that the maximum amount of recompense should be limited to the sum of waivers provided by the Lenders and the present value of future economic loss on account of reduction in interest rate.
- 11.3 Any determination by the Lenders in this relation shall be binding on the Borrower.”

It is thereby respectfully submitted that the CCPS and payment of interest @ 9.5% p.a., as provided in the Resolution Plan, is only till the operation of the Petitioner is stabilized and the lenders shall have the right to receive recompense for the sacrifices in accordance with the abovementioned clause.

Moreover, as elaborated above, the rate of interest of 9.5% is only a part of the Resolution Plan and cash flow mechanism and not the weighted average rate of interest calculated after providing appropriate accounting adjustment for interest capitalized. Thus, the liability of the Petitioner to pay an interest at the prevailing rate of interest during the concerned period, remains intact. Hence, rate of 9.5% per annum therefore cannot be considered by the Commission to calculate the interest on the capital loan for the financial year 2019-20.

Observation:

Since, the petitioner is paying interest @9.5% on actual basis, therefore, the actual weighted average rate of interest @9.5% is provisionally considered in this order. The petitioner is directed to file actual weighted average rate of interest in the true up

petitions for respective year of the control period based on the Annual Audited Accounts.

Stakeholder Comment

In respect to the increment of Operation and Maintenance expenses, the said expenses be considered similar to the State of Chhattisgarh and the Operation and Maintenance expenses be kept at the same level of 2018-2019. The actual expenses for Operation and Maintenance as incurred by the Petitioner in the previous year be approved for the Petitioner.

Petitioner's Reply

In reply to the objection, it is humbly submitted before the Hon'ble Commission that the Petitioner under Table M has demonstrated a summary of head-wise annual capacity charges for the control period 2019-24 along with annual capacity charges as claimed in petition No. 44 of 2019 for FY 2018-19 pending before this Hon'ble Commission. It is further submitted that the operation and maintenance expenses ("O&M expenses") are in compliance with the Tariff Regulations, 2020 as notified by this Hon'ble Commission. The relevant portion of the Regulations is extracted herein below:

"39.3 Thereafter, the O & M expenses for the subsequent years of control period shall be determined by escalating the aforesaid O & M norms of FY 2019-20 with the escalation factor @ 35.1 % as considered by the Central Commission in its tariff Regulations, 2019 for the respective financial years to arrive at permissible O&M expenses for each year of the control period."

The objection of the Affected Party with respect of allowance cuts to the employees by other state government and private companies is baseless and untenable. The Petitioner has filed the present petition as per applicable regulations and therefore valid under law. The Petitioner is entitled to rate of O&M expenses permitted under the extant regulations.

Therefore, it is respectfully submitted that this comment of the Stakeholder has no merit.

Observation:

The Commission has considered the operation and maintenance expenses in accordance to the norms specified under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020.

Stakeholder Comment:

Due date as envisaged under the PPA, i.e. 21 may be suitably taken into account for the calculation of interest on Working capital as per the Tariff regulations, 2020, i.e. 45 days of Receivables and it may be proportionately reduced in public interest

Petitioner's Reply

Objection under the said comment is denied and rebutted on the ground that the interest on working capital is in accordance with the Tariff Regulations, 2020 and the period specified under the said regulations should be complied with even by the Hon'ble Commission. It is humbly submitted that Regulation 36.1 of the Tariff Regulations, 2020 provides that working capital shall cover the receivables equivalent to 45 days of capacity charges and energy charges for sale of electricity.

It is pertinent to note that Hon'ble APTEL in Madhya Pradesh Power Generation Company Ltd v. Madhya Pradesh Electricity Regulatory Commission, 2011 SCC OnLine APTEL 72, held that the regulations framed by the regulatory commissions partake the character of subordinate or delegate legislation under the law and all such subordinate legislations have the force of the statutory law. The relevant portion of the judgment is extracted hereinbelow:

*"24. If we analyze different provisions of this Act, which are relatable to the appropriate Commission it would appear that **the regulatory Commission is a peculiar statutory body having within in itself four functions, (a) Administrative, (b) Legislative and (c) Judicial and (d) Advisory....***

*Under Section 178 of the Electricity Act, 2003, the Central Electricity Regulatory Commission is vested with the power to make regulations and regulations framed by them are required to be laid down before the Parliament under Section 179 which has authority to make any modification. **Similarly, the State Commission has been vested with the power to make regulations to carry out the purpose of the Act under Section 181 and all such regulations made by the State Commission are required to be laid before each House of the State Legislature, Unicameral or bicameral as the case may be. The Regulations framed by the State Commission or the Central Commission do partake the character of subordinate or delegate legislation under the law and all such subordinate legislations have the force of the statutory law.** Therefore, the regulations framed by an appropriate Commission are deemed to be legislative enactments having the approval of Legislature when it is put to use by notification."*

In addition, the Hon'ble Tribunal in Indian Wind Energy Association case (Supra) observed that the SERCs are bound by their own regulations and they must act strictly in terms of their regulations. Thus, it is respectfully submitted before the Hon'ble Commission that the content of the corresponding comment is irrelevant and thereby should not be considered by the Hon'ble Commission.

Observation:

Receivables equivalent to 45 days of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor is considered in accordance with the Regulations, 2020

Stakeholder Comment:

For establishment of Emission Control System (ECS)/Fuel Gas desulphurization ("FGD") direction be issued for verbatim compliance of 0.37 Crore/per megawatt and in absence of the same no amount be approved for additional capitalization.

Petitioner's Reply

With respect to the establishment of emission control system, it is humbly submitted before this Hon'ble Commission that the Central Electricity Authority ("CEA") has estimated the hard cost for construction for implementation at Rs 0.37 Per MW (at Rs 488.4 Crs) as the base cost only and does not include opportunity cost related to interconnection of plant for flue gas desulphurisation ("FGD"), Taxes & Duties and IDC & IEDC. Moreover, it is pertinent to note that the CEA provides for additional operational expenditure to be Rs 57.04 Crore per annum and it further mentioned in its report that:

- i) The cost estimation for FGD is based on the price of equipment, infrastructure and related services discovered during transparent and open bidding being carried out by Central and State undertakings.*
- ii) An indicative base cost estimation is done by CEA in order to facilitate JNSTPP determine the price for installation of FGD on the major heads of CAPEX and OPEX. The cost estimation given is only indicative in nature.*
- iii) The cost of retrofitting FGD for the plant should be discovered through open competitive bidding in consultation with representatives of major PPA stakeholders. The major PPA stakeholders may participate in bidding process (to be invited by JNSTPP) till award of FGD contract.*

It is thereby humbly submitted that the request of the Affected Party to the Hon'ble Commission in the corresponding comment cannot be considered as the cost indicated by the CEA does not involve other components such as opportunity cost and taxes as also submitted before this Hon'ble Commission in the captioned petition (paragraph 8.3 xiii). In addition, it is respectfully submitted that the Petitioner in the present petition has submitted that as and when emission control system (ECS) /FGD is installed, the Petitioner shall file an application/petition for determination of tariff (capacity charges or energy charges or both) after installation of such system based on the actual capital expenditure incurred in accordance with the extant regulations.

Observation:

The petitioner has not claimed any amount towards the installation of FGD system in the instant MYT Petition. The petitioner in its MYT Petition has categorically stated that it shall file the True up in the corresponding/respective year along with the details and supporting of actual Additional Capital Expenditure on account of installation of FGD in line with the prevailing MPERC Regulation

Stakeholder Comment

The petitioner not supplying full concessional power of 7.5% and is functioning contrary to the contract with the state government.

Petitioner's Response

Contents of the comment are wrong, misconstrued and hence denied. It is submitted that tariff is determined as per the existing regulations. Tariff Regulations, 2020 provide for 'plant availability factor' meaning average of daily declared capacities for all days during the period expressed as a percentage of the installed capacity in MW less the normative auxiliary energy consumption.

The Power Purchase Agreement ("PPA"), between the Petitioner and Government of Madhya Pradesh ("GoMP") dated 06.09.2011, provides that "subject to the terms and conditions of this Agreement, the Company undertakes to make available to the GoMP the Contracted Energy". Contracted energy is defined as "energy equivalent to seven point five percent (7.5%) of the electrical output of unit or the power station at all times contracted to be sold by the Company to the GoMP in accordance with the terms of this Agreement.". Further, Clause 6.1.3 of the PPA provides that "the quantum of Contracted Energy will be computed on real time basis based on the actual generation of the Power Station. The quality of such power shall be firm power and at no time the

Company shall be supplying such power less than ninety (90) percent of the Contracted Energy...”.

It is submitted that the Petitioner is supplying the contracted energy to GoMP as per the terms of the PPA dated 06.09.2011 as extracted hereinabove, at the concessional rate i.e. variable cost. It is denied that the Petitioner is functioning contrary to the contract with the state government.

Observation:

The issue is not pertaining to subject petition.

Further, the petitioner confirmed that it is not functioning contrary to the contract with the State Government i.e., the Petitioner is supplying the contracted energy to GoMP as per the terms of the PPA dated 06.09.2011 as extracted hereinabove, at the concessional rate i.e. variable cost. However, it is the responsibility of both the parties who have entered into the PPA to ensure compliance of the same.

Stakeholder Comment

No full power scheduled by the petitioner due to lower rate of energy charges redetermined by the Commission.

Petitioner Response

With respect to the last comment of the Affected Party, it is humbly submitted that Regulation 51 under the Tariff Regulations, 2020 provides that the generating station shall be as specified in the Madhya Pradesh Electricity Grid Code. It is pertinent to note that Regulation 8.3 of the Madhya Pradesh Electricity Grid Code, 2019 (“MP Grid Code”) provides for the General Principles of Scheduling and thereby states that State Load Despatch Centre (“SLDC”) is responsible for coordinating the scheduling of a generating station and generation schedules issued by SLDC shall become effective from designated time block. The relevant portion of the respective Regulation and provisions is extracted hereinbelow:

“51.1 The methodology for scheduling and dispatch for the generating station shall be as specified in the Madhya Pradesh Electricity Grid Code (or any other code or Regulation) approved by the Commission.”

“Madhya Pradesh Electricity Grid Code, 2019

8.3.1 The State Load Despatch Centre is responsible for coordinating the scheduling of a generating station, within the control area, real-time monitoring of the station’s operation, checking that there is no gaming (gaming is an intentional mis-declaration of a parameter related to commercial mechanism

in vogue, in order to make an undue commercial gain) in its availability declaration, or in any other way revision of availability declaration and injection schedule, switching instructions, meter data processing, collections/disbursement of DSM payments, outage planning, etc.

8.3.12 Generation Schedules and Drawal Schedules issued/revised by SLDC shall become effective from designated time block irrespective of communication success.

It is respectfully submitted that in light of the above regulations, any issue or dispute with respect to the scheduling of the electricity should be raised by the SLDC in accordance with the MP Grid Code. Thus, the content of the corresponding comment is baseless and irrelevant.

Observation:

The issue is not pertaining to subject petition. The Petitioner has submitted that any issue or dispute with respect to the scheduling of the electricity arises, it should be raised by the SLDC in accordance with the MP Grid Code.

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