MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

5th Floor, "Metro Plaza", Bittan Market, Bhopal - 462 016

SMP No.49 of 2015

PRESENT:

Dr. Dev Raj Birdi, Chairman

A. B. Bajpai, Member

Alok Gupta, Member

IN THE MATTER OF:

Review and determination of energy charges for supply of electricity to the distribution licensees in the state by M/s Jaiprakash Power Ventures Ltd, from its 2X660 MW Super critical coal based Power Project at Nigrie, District Singrauli, using coal from auctioned or allotted coal mines under Coal Mines (Special Provisions) Second Ordinance, 2014 and Rules framed thereunder

1. **M/s Jaiprakash Power Ventures Ltd.**
2. **M.P. Power Management Company Ltd., Jabalpur**
3. **M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd., Jabalpur**
4. **M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal**
5. **M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd., Indore**

Respondents

ORDER

(Passed on this day of 28th January, 2016)

1. Vide Order dated 26th September, 2014 in Petition No. 03 of 2014, the Commission determined the provisional tariff for Unit No. 1 of 2X660 MW Super critical coal based Power Project at Nigrie, District Singrauli of M/s Jaiprakash Power Ventures Ltd (JPVL) for FY 2014-15 and FY 2015-16 in accordance with the provisions of the Electricity Act, 2003 and MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012. Further, vide order dated 31st March, 2015 in I.A. No. 01 of P-3/2014, the Commission provisionally determined the Annual Fixed Charges and Energy Charges for Unit No. 2 also from its COD till 31st March, 2016. In Para 14 of the aforesaid Order, the following was mentioned by the Commission:

    "14. The rate of energy (variable) charge of `1.171 per unit as considered in the order on main petition for Unit No. 1 of this project is considered for Unit No. 2 also in this order. However, the actual billing of energy charges shall be as per the formula and other provision detailed in Regulation 41 of MPERC (Terms and condition for determination of Generation Tariff) Regulation 2012."

2. Amelia (North) Coal Mine was developed by Madhya Pradesh Jaypee Minerals Ltd. (MPJML), a joint venture company of Jaiprakash Associates Ltd. (JAL) and Madhya Pradesh State Mining Corporation Ltd. (MPSMCL) to meet the partial coal requirement of 2x660 MW supercritical coal based power project of M/s JPVL at Nigrie, District Singrauli (M.P.). M/s JPVL had executed the Fuel Supply Agreement with MPSMCL on 17th December, 2013 for supply of 2.5 MMTPA coal from Amelia (North) Coal Mine to the Power Station. The coal production from Amelia (North) Coal Mine commenced in December 2013.

3. Hon'ble Supreme Court of India, vide its Judgment dated 25th August, 2014 read with its order dated 24th September'2014 in Writ Petition (Criminal) No. 120 of 2012 (Manohar Lal Sharma vs. Principal Secretary & Ors.) had cancelled allotment of 204 coal blocks. Vide its same order dated 24th September, 2014, Hon'ble Supreme Court of India cancelled the allocation of some coal blocks in the state of Madhya

Pradesh. The allocation of Amelia (North) Coal Mine to Madhya Pradesh Jaypee Minerals Ltd also stood cancelled by the said order of the Hon'ble Supreme Court of India. also It was mentioned in the aforesaid order that the cancellation of coal block shall be with effect from 31st March, 2015.

4. Subsequent to the Hon'ble Supreme Court of India's above Judgment, the Coal Mines (Special Provisions) Ordinance, 2014 read with Coal Mines (Special Provisions) Second Ordinance, 2014 were promulgated by the Central Government. The Coal Mines (Special Provisions) Rules, 2014 were framed for auction and allotment of all coal blocks which were subject to cancellation pursuant to the Hon'ble Supreme Court of India Judgment.

5. In the auction of Amelia (North) Coal Mine, M/s JPVL emerged as the successful bidder and was allotted the aforesaid Coal Mine for the end use of power generation at its 2x660 MW supercritical coal based Power Station at Nigrie, District Singrauli (M.P.).

6. Vide its letter dated 16th April, 2015 Ministry of Power, Government of India requested the State Governments to issue directions to respective State Electricity Regulatory Commissions under Section 108 of the Electricity Act, 2003 to ensure that the benefits of coal being sourced by the generating stations from the auctioned or allotted coal mines under Coal Mines (Special Provisions) Second Ordinance, 2014 (Coal Act) and Rules framed thereunder, are passed on to consumers.

7. Vide letter No. F-03-08/2013/13 dated 18th May 2015, Govt. of Madhya Pradesh (GoMP), Energy Department issued the following directions to the Commission (MPERC):

> *"3.1 The Madhya Pradesh Electricity Regulatory Commission, shall review and determine the energy charges for cost plus Power Purchase Agreements under Section 62 or that in tariff bid based Power Purchase Agreements under Section 63, as the case may be, and shall review the components of the fuel price of energy charges including.*
>
> *a. Run of Mine (RoM) price of coal as per auction or allotment of coal mine;*

b. Transportation cost along with distance to the end use power plant (rail, road and other modes separately).
c. Washery charges, if any;
d. Crushing charges;
e. Royalty/duties and levies etc;
f. Other charges.

3.2 The Madhya Pradesh Electricity Commission, while determining the components of energy charges, shall ensure the following:-

a. Run of Mine (RoM) price of coal as quoted for the said coal block during coal block auction on the basis of which the block has been awarded, or Run of Mine cost of the coal as per allotment, as the case may be, shall be allowed for the purpose of determining the fuel cost throughout the tenure of the Power Purchase Agreement. In addition to this, the bidder will be eligible to recover an amount of Rs. 100 per metric tonne, as per clause 3.10.2 of Standard Tender Document for Coal Block Auction / Allotment (for Power Sector). The Standard Tender Document also provides for escalation in Run of Mine price of coal and in the amount of Rs. 100 per metric tonne, which will be factored in while determining the energy charges:

Provided that the quoted Additional Premium, if any, shall not be reckoned for the purpose of determination of tariff of electricity as per corrigendum 3 to clause 3.10.2 issued on 31st January, 2015 of the Standard Tender Document (Power Sector) for coal block auction. The relevant extracts of Standard Tender Document (Power Sector) are enclosed for ready reference.

b. As far as coal transportation, washery charges and crushing charges are concerned, the rates should not exceed the benchmark rates of Coal India Ltd., Railway freight rates, benchmarks determined, if any, by Central Electricity Regulatory Commission or Madhya Pradesh Electricity Regulatory Commission or by any other appropriate authority. Where there are multiple benchmarks available, the Madhya Pradesh Electricity Regulatory Commission will be free to adopt the most appropriate benchmark;

c. Gross Calorific Value (GCV) as quoted in coal auction would in *normal circumstances be used as reference Gross Calorific Value for the purpose of determining the quantum of coal required for power generation. However, in the event of variation in actual value of Gross Calorific Value of mined coal, if any, such variation may be allowed based on joint sampling and testing of mined coal in accordance with the provisions of Power Purchase Agreement;*

d. Further, for power generation capacity already contracted through tariff bid based Power Purchase Agreements under Case-1/Design Build Finance, Own & Operate bids, the allocation of coal block under the provisions of the Coal Mines (Special Provisions), Ordinance 2014 shall be treated as "Change in Law" to enable the revision in tariff downwards in accordance with provisions of Power Purchase Agreement; and

e. The revision of tariff undertaken by the Madhya Pradesh Regulatory Commission as above shall not lead to higher energy charges and total tariff throughout the tenure of Power Purchase Agreement than that which would have been obtained as per terms and conditions of the existing Power Purchase Agreement."

8. Vide letter dated 27th May, 2015, M.P. Power Management Co. Ltd., Jabalpur (MPPMCL) also submitted certain information in this matter and requested the Commission for conducting an exercise as advised by GoMP for downward revision in tariff in respect of IPPs having PPAs with MPPMCL.

9. On 20th August, 2015, the Commission registered the subject Suo-Motu Petition to review and determine the energy charges provisionally determined by this Commission in Petition No. 03/2014 for 2x660 MW Super critical coal based Power Station of M/s JPVL at Nigrie, District Singrauli (M.P.).

10. Notices were issued to M/s Jaiprakash Power Ventures Ltd., Nigrie and all other respondents in the matter. In response, M/s. Jaiprakash Power Ventures Ltd . filed its reply on 19th September 2015. M.P. Power Management Co. Ltd. also filed its response by affidavit dated 23rd September, 2015.

11. The case was heard on 13th October, 2015, 24th November, 2015, and 15th December, 2015. The information sought from JPVL and its responses to the same

are detailed in the following sections of this order.

12. The submissions made by Respondent No. 2, i.e., MPPMCL, and JPVL's replies on the same are summarized in **Annexure-1** of this Order. The list of abbreviations used in the Order with full form is enclosed at **Annexure-2** of the Order.

PROCEDURAL HISTORY

13. In response to the notice issued by the Commission, JPVL made its submissions on 19^{th} September, 2015 and by affidavit dated 23^{rd} September, 2015, MPPMCL also filed its submissions .

14. The summary of submissions made by JPVL is as under:

    i. Unit 1 of the generating station was commissioned on 3^{rd} September, 2014. The annual coal requirement of the Power Station is projected at 5.11 MMTPA calculated at 85% PLF. The coal requirement for the generating station had been planned to be sourced from two dedicated coal mines at Amelia (North) and Dongri Tal II. Amelia (North) had been allocated to MPSMCL. Vide the Commission’s Order dated 26^{th} September, 2014, Energy charges was allowed to be recovered as per Regulation 41.4 of the Tariff Regulations, based on landed cost of coal comprising price of coal corresponding to the grade and quality of coal inclusive of royalty, taxes and duties as applicable, transportation cost, and normative transit and handling losses.

    ii. The issue of validity of coal blocks allotted by the Screening Committee of the Central Government, as also the allotments made through Government dispensation route was examined by the Hon’ble Supreme Court in a batch of proceedings [W.P. (Criminal) No. 120 of 2012], wherein, the Hon’ble Supreme Court declared all allocation of coal blocks made by the Central Government since 1993 as arbitrary and illegal in its Judgment dated 25^{th} August, 2014 and therefore, cancelled all such allocations. By subsequent Judgment dated 24^{th} September, 2014, the Hon’ble Supreme Court allowed mining activities to be carried out by the prior allottee of the mine till 31^{st} March, 2015.

    iii. Pursuant to tender and e-auction process conducted in accordance with the Coal Mines (Special Provisions) Rules, 2014, JPVL was declared as the successful bidder for Amelia (North) Coal Mine. Accordingly, the Coal Mine Development and Production Agreement (CMPDA) was executed on 2nd March, 2015 and subsequently Vesting Order was issued to JPVL on 23rd March, 2015.

iv. As per the bidding process, JPVL was required to quote lower than the CIL Price on Run-of-Mine (RoM) basis of the G8 grade of coal. JPVL won the bid by quoting RoM price as zero and further ₹ 612/MT as Additional Premium. As per the auction, Amelia (North) mine was classified as having G8 grade of coal (GCV of 5050 kcal/kg), whereas the actual GCV of coal is lower, and the Coal Controller has classified Amelia (North) Mine as G11 (GCV of 4000-4300 kcal/kg).

v. JPVL submitted that the Commission is not bound by the directions issued by the State Government u/s 108 of the Electricity Act, 2003 vide Notification No. F-03-08/2013/13 dated 18th May, 2015 in so far as they relate to matters of tariff fixation. JPVL, referring to the Judgment of the Hon’ble Appellate Tribunal for Electricity (APTEL) in Appeal No. 41, 42 and 43 of 2010, submitted that the directions issued under Section 108 of the Electricity Act, 2003 relating to fixation of tariff are not binding on the State Commission and the powers of the State Commission in the matter of determination of tariff cannot be curtailed. Further, the directions issued by the State Government under Section 108 of the Electricity Act, 2003 are contradictory to the express provisions of the Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) (Revision-II) Regulations, 2012, regarding treatment of energy charges.

vi. JPVL submitted the detailed break up of cost of ₹ 1863.10 per tonne, out of which, JPVL is mandated not to pass-through the component of ROM price of ₹ 582.38 per tonne and balance other components of the costs are liable to be passed-through. JPVL submitted the pass through cost of coal under PPA as ₹ 966.45 per tonne after adjustment of 0.8% transit loss. JPVL also submitted the copy of sample invoice.

vii. JPVL submitted that while the Commission may independently consider the issue of treatment of energy charges vis-à-vis the directions of the State Government under Section 108 of the Electricity Act, 2003, such directions cannot be extended to costs not falling within the definition of energy charges.

viii. In case of auction of coal blocks for power generation, there are two possible scenarios for bidding. Firstly, when the Final Price Offer Ceiling is more than zero and all the qualified bidders submit a Final Price Offer, which is more than zero. Secondly, when the Final price Offer Ceiling is zero or any bidder has submitted a Final Price Offer which is equal to zero, in which case the bidders have to quote Additional Premium on per tonne of coal extracted from the coal mine. The first scenario is case of Reverse Bidding where the bidder offering lowest Final Price Offer (i.e., maximum discount on market price of fuel represented by CIL Notified Price) is declared successful. The second scenario is case of Forward Bidding, wherein the bidder, over and above completely forgoing fuel cost and in addition to all other payments, offers an extra/premium amount for the coal block and the bidder offering the highest premium is the winner. In Reverse Bidding, the bidders are required to quote the lowest bid price qua the RoM price of equivalent grade of coal notified by CIL for the subject coal block so as to be successful. The criteria and purpose for auctioning of coal blocks for generation capacity linked to cost plus PPAs or those having tariff based PPAs through a Reverse Bidding process from CIL Notified Price is to identify the bidder with maximum efficiency in terms of lowest cost of mining. The CIL Notified Price represents the market price of fuel determined by CIL on the basis of quality and cost of mining for the subject coal block. As per the Reverse Price Methodology Order, this lowest bid price has to be treated as the transfer price of coal and would be taken as the fuel cost (with permissible escalation, allowable expenses and levies) for determining the energy charges. Therefore, the Reverse Bidding ensures that the benefit of coal is passed on to the consumers by way of reduced energy charge.

ix. The lowest possible bid price for coal through Reverse Bidding process can only be zero since in reverse auction of coal block, the bidders are required to bid the lowest price for RoM coal based on the bidder’s expected level of efficiency in extracting coal. Such cost at the most may be reduced to zero but cannot be a negative value. The benefit of coal can only be reflected in terms of fuel cost and resultant energy charge. Therefore, the maximum benefit of coal is achieved when the fuel cost becomes zero.

x. The Additional Premium is however in the nature of Forward Bidding where the bidder has to quote the highest price to secure the right to mining under the bidding process. It does not relate to and/or reflect the benefit of coal. It does not inure the consumers and instead goes to the government in consonance with the object of Forward Bidding, which is to maximize revenue to the government.

xi. Hence, Additional Premium, not being a benefit of coal, is in the nature of expense incurred towards acquiring the mining right with respect to the coal mine under auction. The Additional Premium does not accrue to the benefit of the consumers. It is collected by the Government and it is not reckoned for the purposes of computing energy charge. While the Additional Premium is based on the quantum of coal extracted and is payable on a monthly basis, the real nature of such expenditure is to secure the mining right for the identified coal mine. It has no relation to the actual activity of mining, but has been quoted as a value payable to the Central Government to be selected for vesting of mining rights, licenses and clearances in favour of the Successful Bidder. Therefore, the same is entitled to be reckoned as part of fixed charges in the nature of capital cost and not part of energy charges.

xii. After considering railway transportation cost of ₹ 290/MT, the total cost comes out to ₹ 2153.10/MT. The cost liable to be passed through is ₹ 958.72/MT and for the purpose of computation of Energy Charges cost liable to be passed through is arrived at ₹ 966.45/MT after considering normative transit and handling losses.

15. Vide letter dated 23rd September, 2015, MPPMCL (Respondent No.2)broadly submitted the following:

> " *Now, upon reallocation, the landed price of coal shall be calculated at base price Rs. 100/- per MT plus taxes, duties and transportation.*
>
> *That, in view of the above factual position, wef. 1st April, 2015 wherever in the earlier tariff order dated 26th September, 2014, the sale price of Coal has been considered as Rs. 1883.43/MT plus transportation cost, the same should now be revised at the auction price being paid by the generator (if any) plus taxes and duties. This will affect in revising the*

Variable tariff.

That, upon the revision of the Landed Cost of Coal, the other elements of the Tariff , viz, the Energy Charges and components of fixed charges etc. will also need to be reviewed accordingly.

That, the answering respondent has written to Respondent No. 1 seeking facts and data regarding aspects of coal cost and upon receipt of information, shall submit its comments.

That for the present, the answering respondent is not in better possession of the facts relating to the cost of coal on re-allocation and the exact date on which the mines were actually de-allocated and thereafter re-allocated to the Generator. The same are in better possession of the Generator and awaited to be brought on record in its instance."

16. The hearing in the matter was held on 13th October, 2015. During the course of hearing, Counsel appearing on behalf of JPVL referred to some Judgments issued by Hon'ble Appellate Tribunal for Electricity regarding implications of the directions under Section 108 related to the tariff. He also mentioned that the tariff petition for approval of final tariff for JPVL's Power Station at Nigrie is expected to be filed shortly and requested the Commission to take up the exercise of revision of energy charges along with the tariff petition. Vide Order dated 15th October, 2015, the Commission directed JPVL to file the following information/documents by 5th November, 2015:

a. Information with respect to the de-allocated Coal Mines 'Amelia (North)' and 'Dongri Tal II' vide order dated 24th September, 2014 passed by Hon'ble Supreme Court of India:
    - Copy of Fuel Supply Agreements with respect to the de-allocated Coal Mines.
    - Detailed computations of Landed Coal price (₹/MT) along with detailed write up on the assumptions therein for the de-allocated Coal Mines.
    - Statement of Landed Coal price for the coal procured from the Mine

(₹/MT) during each month from COD of Unit 1 till de-allocation of the Coal Mines.

- Copies of sample coal bills for the coal procured from the Mines.

b. Technical details of the generating station in the format prescribed in Form A of the MPERC (Furnishing of Technical Details by Generating Companies) Regulations, 2011.

c. Documentary evidence for the guaranteed performance parameters of the generating station.

d. With respect to the allotted Coal Mine under the Coal Mines (Special Provisions) Second Ordinance, 2014:

- Copy of the Tender Document floated by the Nominated Agency for auction of the allotted Coal Mine.
- Copy of Mine Dossier.
- Copy of Allotment Order issued.
- Copy of Coal Mine Development and Production Agreement.
- Detailed write up on the current status of Mine Development and year-wise phasing of coal production.
- Detailed write up on crushing facilities at the Coal Mine.
- Detailed write up on washery facilities for improving the coal quality, if any proposed, along with cost benefit analysis.
- Detailed write up on transportation infrastructure for transporting coal from the Mine to the generating station.
- Detailed write up on statutory levies and duties payable from the coal extraction stage till coal arrival at the generating station.
- Detailed break up of computations of Landed Coal Price (₹/MT) from the coal mine allotted to M/s JPVL along with detailed write-up on the assumptions therein for each year from FY 2015-16 onwards for entire life of the Project considering the provisions of bidding documents including corrigendum for Coal Auctioning (for Power Sector).

17. M/s JPVL was also directed to serve the copies of all its submissions made to the Commission till date (under this Suo-Motu petition) along with all above-mentioned details/documents on all Respondents in this matter at the earliest but not later than

5th November, 2015.

18. MPPMCL was also directed to file its response by 18th November, 2015 on all above submissions of JPVL.

19. By affidavit dated 5th November, 2015, JPVL filed information/documents as sought by the Commission.

20. With respect to the de-allocated Coal Mine Amelia (North) coal block, JPVL submitted the following information:

    a. Copy of FSA executed between MPSMCL and JPVL for supply of coal from Amelia (North) Coal Block for consumption in Jaypee Nigrie Super Thermal Power Station.

    b. Computation of landed coal price based on the actual expenses incurred on account of wages, stores & spares, and maintenance, including project financing cost for FY 2014-15. JPVL submitted that prior to commencement of coal dispatch, cost has been estimated on provisional basis by engaging the services of E&Y and Singareni Colleries Company Limited. However, final cost for the full year is being calculated by MECON, Ranchi (a Public Sector Undertaking). This cost will be approved by a Cost Fixation Committee drawing persons from MPSMCL, Government of Madhya Pradesh and experts and representatives of JAL. Thereafter, suitable adjustment in the form of additional payments/refund will be made.

    c. Statement of landed coal price for the coal procured from de-allocated coal mine during each month from September, 2014 to March, 2015.

    d. Sample coal bills for the months of February, 2015 and March, 2015.

    e. Technical details of the generation station in Form A of the MPERC (Furnishing of Technical Details by Generating Companies) Regulations, 2011. JPVL submitted the supporting document for the guaranteed performance parameters of steam turbine generator and auxiliaries package.

21. With respect to the allotted Coal Mine under the Coal Mines (Special Provisions) Second Ordinance, 2014, JPVL broadly submitted the following information pertaining to Amelia (North) Coal Mine:
    a. Copy of Tender Document
    b. Mine Dossier
    c. Copy of vesting order dated 23rd March, 2015 issued by the Ministry of Coal, Government of India in favour of JPVL for utilization in the specified end use plant, viz., Jaypee Nigrie Super Thermal Power Station with total coal entitlement of 203.09 MMT.
    d. Copy of Coal Mine Development and Production Agreement.
    e. JPVL also submitted that the mine is fully developed. During FY 2014-15, 1.5 MMT of coal and 9.05 million mm^3 of Over Burden had been mined. In FY 2015-16, the mine would attain peak rated capacity of 2.8 MMT. No major development work is required. For enhancing the coal production from 2.8 MMTPA to 4.2 MMTPA with matching Over Burden removal capacity, the job would be outsourced to get additional Heavy Earthmoving and Mining Equipment (HEMM) for the mine. JPVL submitted the phasing of coal production from FY 2015-16 to FY 2037-38 as shown below:

Table 1: Year-wise phasing of coal production submitted by JPVL

Year	Production (MMT)
FY 2015-16	3.50
FY 2016-17	4.20
FY 2017-18	4.20
FY 2018-19	4.20
FY 2019-20	3.90
FY 2020-21	2.80
FY 2021-22	2.80
FY 2022-23	2.80
FY 2023-24	2.80
FY 2024-25	2.80
FY 2025-26	2.80
FY 2026-27	2.80
FY 2027-28	2.80
FY 2028-29	2.80

Year	Production (MMT)
FY 2029-30	2.80
FY 2030-31	2.80
FY 2031-32	2.80
FY 2032-33	2.80
FY 2033-34	2.80
FY 2034-35	2.80
FY 2035-36	2.80
FY 2036-37	2.50
FY 2037-38	1.48
Total	**68.78**

f. **Crushing facilities at the Coal Mine:** JPVL submitted that the coal from the mine is generally extracted using Surface Miner of 500 TPH capacity, which crushes the coal to -100 mm size before discharge. This coal is then transported and fed directly to Apron Feeder at Coal Handling Plant. A feeder breaker of 500 TPH capacity is also installed at site, which is used for crushing of coal extracted by drilling and blasting process and not covered by Surface Miner. With the above two systems, the total crushing and coal handling capacity at the mine is 1000 TPH.

g. **Washery Facility:** As per the guidelines of MoEF, the end use Power Station is located well within the distance of 750 km, hence, no washery had been required/envisaged at planning stage. The RoM coal quality of Amelia (North) Coal Mine is G11. After vesting of this mine by Nominated Authority, Ministry of Coal to JPVL, it is proposed to set up a coal washery at the plant to enhance the present GCV of 4000 kcal/kg to 4500 kcal/kg after washing. The separation of clean coal and rejects will be done in a liquid having specific gravity of 1.6-1.7. The setup would be two washeries of 1 MMT each raw coal capacity within the space available in the Coal Handling Plant area of Amelia (North) Coal Mine. The capex for purchase and commissioning of these washeries will be approximately ₹ 60 Crore and the operation cost for the above process is estimated to be ₹ 130/MT.

h. **Transportation Infrastructure:** The coal from the pithead is transported using dumpers to the apron feeder and feeder breaker. Thereafter, coal is conveyed to the coal silo and stacker and stacker reclaimer area using a network of belt conveyors. A rapid loading system is installed in the silo, which is used for loading the coal on to the railway wagons at the rate of 3600 TPH to 6000 TPH at rack speed of 0.8 kmph to 1 kmph for dispatch to the generating station. The capacity of the silo is 6000 MT. When the silo is full, the coal is diverted to Stacker Reclaimer Area and later coal is reclaimed to silo. Loaded coal rakes are then transported by Rail to the generating station at Nigrie.

i. **Statutory Levies and Duties payable:** The details of statutory levies and duties payable are given below:

- Royalty @14% of the CIL notified price of G11 grade (i.e., 14% of ₹ 700)
- Stowing Excise Duty @ ₹ 10/MT
- MPGATSVA @ 5% on basic price
- MP Forest Transit Fee @ ₹ 7/MT
- Clean Energy Cess @ ₹ 200/MT
- Fixed amount of ₹ 100/MT of coal under the bid conditions.
- Additional Premium of ₹ 612/MT. This amount represents a recurring capital expenditure incurred towards acquiring the right of mining of Amelia (North) and therefore, would not form part of fuel charges.

j. **Estimated Production Cost:** JPVL submitted the estimated coal price from FY 2015-16 to FY 2019-20.

22. In addition to the information sought by the Commission, JPVL broadly made the following additional submissions:

a. JPVL submitted that Additional Premium is collected by the Government and it is not reckoned for the purpose of computing energy charge. While the Additional Premium is based on the quantum of coal extracted and is payable on a monthly basis, the real nature of such expenditure is to secure the mining right for the identified coal mine. It has no relation to the actual activity of mining, but has been quoted as a value payable to the Central Government to be selected for vesting of mining rights, licenses and clearances in favour of the successful bidder.

b. The term 'tariff' as used in Clause 3.10.2 of the Tender Document has to be construed in the context in which it is used in the clause, and from the words preceding it and following it in the clause, it is clear that it refers to 'energy charge'. The directions issued by the Central Government under Section 107 of the Electricity Act, 2003 on 16th April, 2015 deals with review and re-determination of 'energy charges' as clearly indicated in the subject line of such directions and re-determination procedure prescribed therein. The directions have reiterated the position that Additional Premium shall not be reckoned for the purpose of energy charges. JPVL submitted that the computation in relation to the additional capital cost of the mines/Project on account of expenses towards Additional Premium is included in its tariff petition, and hence, the same may be examined at the time of determination of tariff for the Power Station.

c. JPVL submitted that excepting the Final Price Offer, which is relatable to the cost of mining/extracting the coal and hence represents the fuel cost, and the Fixed Rate, both of which are expressly allowed to be claimed as part of energy charges, it is clear that all other payments made by the successful bidder under the Coal Act, including the Additional Premium, can be treated as expenses or costs for acquiring a fresh right of mining for winning coal. These expenses are, therefore, in the nature of capital outlay. There is no embargo in the Coal Act, Coal Rules, Tender Document and/or the CMPDA on capitalizing these expenses, which have been incurred by the successful bidder in acquiring the coal block and thereupon recovering the same as part of its fixed cost in tariff.

23. The next hearing in the matter was held on 24th November, 2015. During the hearing, Counsel appearing on behalf of MPPMCL sought one week's time to file its response on the submissions made by M/s JPVL. The Commission expressed its displeasure on the delay in filing the response by MPPMCL and directed MPPMCL to file its response on the submissions made by M/s JPVL.

24. Based on preliminary scrutiny of the information/documents filed by JPVL by affidavit dated 5th November, 2015, the Commission sought following additional

information/documents from JPVL and directed it to submit the same by 5th December, 2015 and also to serve a copy of the same to other parties in the matter:

a. Basis of surface transportation charges along with supporting documents.
b. Basis of sizing and crushing charges along with supporting documents.
c. Basis of high capacity loading charges with supporting documents.
d. Basis of RoM price.
e. Basis of estimated Rail Freight and Incidental Charges along with supporting documents.
f. Comparison of Landed Coal price for FY 2014-15 and FY 2015-16 and reasons for variation along with supporting documents.
g. With respect to the washery facilities proposed to be set up to enhance GCV of coal:
    - Execution plan for the proposed washery facilities.
    - Cost Benefit Analysis showing cost of coal in terms of ₹/kcal for raw coal and washed coal.
    - Basis and supporting documents for arriving at the price of washed coal in ₹/MT along with details of washery yield.
    - Likely revenue from sale of washery rejects indicating the quantum of washery rejects, price of washery rejects, and total value.
h. Justification for considering 10% margin in Excise Duty for FY 2015-16 to FY 2018-19.

25. MPPMCL was also directed to file its response on the submissions of JPVL at the earliest but not later than 5th December, 2015.

26. Vide its letter dated 4th December, 2015, MPPMCL submitted its response on the submissions of JPVL. JPVL submitted its replies to issues raised by MPPMCL vide its affidavit dated 10th December 2015. The issues raised by MPPMCL on JPVL's submissions and JPVL replies are summarized in **Annexure-1**.

27. By affidavit dated 10th December, 2015 (received on 15th December, 2015), JPVL filed information/documents as sought by the Commission as follows

    a. **Basis of Surface Transportation Cost:** JPVL submitted that the coal is being transported from mine face to Coal Handling Plant (CHP) directly unlike other mines where coal is transported from mine to pithead and from there to CHP/Silo. In such a situation, part of the transportation cost is up to pithead within the leasehold area, and remaining is outside the leasehold area. In the case of Amelia (North) Coal Mine, distance from mine face to loading point is around 5 km, out of which 3/4th distance falls beyond the pit head. Total transportation cost from Mine face to the loading point is ₹ 29.50/MT. Apart from transportation cost, additional cost of ₹ 8.90/MT has to be incurred towards charges for loading onto trucks of the contractor. Accordingly, the surface transportation cost has been apportioned in proportion to respective distances, and chargeable amount works out to ₹ 31.03/MT while the upper limit is fixed at ₹ 57/MT as per Price Notification No. CIL:S&M:GM(F):Pricing/2340 dated 13th November, 2013. JPVL submitted the copy of Letter of Intent (LOI) issued to Contractor for transportation from Mine face to loading point and loading charges and copy of Price Notification No. CIL:S&M:GM(F):Pricing/2340 dated 13th November, 2013.

b. **Basis of Sizing & Crushing Charges:** JPVL submitted that coal mining is done within pit head area and crushing takes place at Feeder Breaker situated in CHP area. Coal India has been levying crushing / sizing charges up to ₹ 79/MT as per Price Notification No. CIL:S&M:GM(F):Pricing/2784 dated 16th December, 2013. The sizing & crushing charges claimed are to be treated as additional cost on similar lines. JPVL submitted the copy of Price Notification No. CIL:S&M:GM(F):Pricing/2784 dated 16th December, 2013 and computation of sizing and crushing charges.

c. **Basis of high capacity loading charges:** JPVL submitted that as per the Price Notification No. CIL:S&M:GM(F):Pricing/2784 dated 16th December, 2013, an additional cost up to ₹ 26/MT is allowed to be charged in addition to RoM price. In case of Amelia (North) Coal Mine, this charge works out to ₹ 22.50/MT. JPVL submitted the computation of high capacity loading charges.

d. **Basis of RoM Price:** JPVL submitted that for preparation of invoice/stock transfer note, the base price has been estimated based on parameters/ assumptions/past experience, which includes Mining (Coal & OB removal) expenses, salaries of mine workers and administrative staff, HSD and lubricants used for mining equipment, explosives, power consumption in base camp, spares, repairs and maintenance, miscellaneous and general administration charges, and depreciation/amortization. The estimated RoM price is lower than the CIL notified price.

e. JPVL submitted that the surface transportation charges, sizing and crushing charges, high capacity loading charges and RoM price have been arrived at on the basis of past experience and after averaging out the two months' actual expenses and the final figures would be arrived at after closure, finalisation and audit of final accounts for FY 2015-16, and the differential amount shall be billed/refunded.

f. JPVL submitted the sample copies of Railway receipts.

g. **Basis of Rail Freight:** JPVL submitted that the Rail Freight per MT has been taken on the basis of total coal quantity received and total Rail Freight. JPVL submitted the computations of Rail Freight per MT for the month of October, 2015.

h. **Basis of Incidental Charges:** Incidental charges mainly pertain to coal unloading charge, which vary according to the quantity of coal unloaded. The actual coal unloading charges for the month of October, 2015 have been claimed, and this may go up to ₹ 30/MT. JPVL submitted the sample copy of Coal Handling Bill for the month of October, 2015.

i. JPVL submitted the comparison of Landed Coal price for FY 2014-15 and FY 2015-16 and reasons for variation.

j. **Washery facilities:** JPVL submitted that the sample of RoM coal sample drawn from Amelia (North) Coal Mine has been sent to Central Institute of Mining and Fuel Research, Dhanbad to determine the washability characteristics of coal and the report is awaited. Various parameters of washing operation like density of medium, proportion of clean coal and rejects, cost of washing per ton of coal, ash % in both clean coal and rejects will be planned in detail, based on the lab sample results. The other details regarding the washery facilities would be firmed up after the DPR and other technical parameters are frozen.

k. JPVL submitted that the valuation for calculation of Excise Duty on Coal is governed by Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, which provides for 10% addition, i.e., 110% of the cost of production, in case the excisable goods are used for self-consumption. JPVL submitted the extract of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

28. Apart from the information/documents sought by the Commission, JPVL by its affidavit dated 10th December, 2015 submitted that the following aspects may be considered by the Commission with regard to the instant Suo-Motu Petition:

a. The Order dated 26th December, 2014 issued by the Ministry of Coal to the extent it seeks to issue directions/guidance to appropriate Commissions under the Electricity Act, 2003 on the manner of treatment of bid price for the purpose of determining of fuel charges under cost plus PPA, is clearly outside the scope of Rule 8(3) of the Coal Mines (Special Provisions) Rules, 2014 and Section 8(5) of the Coal Mines (Special Provisions) Ordinance, 2014.

b. Section 8(5) of the Coal Ordinance provides that the nominated authority shall, in consultation with the Central Government, determine the floor price or reserve price in accordance with such rules as may be prescribed. Further Rule 8(3) of the Coal Mines (Special Provisions) Rules, 2014 provides that the Central Government may recommend the methodology for determination of the Floor Price or Reserve Price, as the case may be, to the nominated authority, which shall make the determination of the same in accordance with the Ordinance and these Rules. Therefore, the Central Government has been empowered to recommend the methodology for determination of the Floor Price or Reserve Price, as the case may be, to the nominated authority for the purposes of bidding. It nowhere empowers or authorizes the Central Government to issue directions/recommendations/guidance to the Electricity Regulatory Commissions regarding the treatment of bid prices for determination of fuel charges for the purpose of determination of tariff. Any such direction/recommendation/guidance is ultra vires to the provisions of the Coal Ordinance and Coal Rules and therefore, void ab initio to such extent.

c. Since the Order dated 26th December, 2014 has been issued by the Ministry of Coal in purported exercise of its powers under Rule 8(3) of the Coal Mines (Special Provisions) Rules, 2014 and Section 8(5) of the Coal Ordinance, it cannot be claimed to have been issued in exercise of Central Government's powers under Section 107 of the Electricity Act, 2003. In any case and without prejudice to the earlier contentions, it is pointed out that the Central Government does not have the power to issue directions to the Commission under Section 107 of the Electricity Act, 2003.

d. The directions issued by the State Government of Madhya Pradesh under Section 108 of the Electricity Act, 2003 being formulated on the basis of the Central Government's Order dated 26th December, 2014 and for implementation of the directions therein, is bad in law since it is premised on an Order that is ultra vires and void in law.

e. In any case and without prejudice to the submissions above, it is submitted that the Commission is not bound by the directions issued by the State Government in matters relating to tariff determination.

f. JPVL submitted that in this regard, the Tariff Regulations framed by the Commission clearly specify the manner in which the fuel charges have to be worked out for any generating station. The directions issued by the State Government cannot over-ride the express provisions of the Tariff Regulations, which are in the nature of law.

g. JPVL submitted that the tender documents or CMPDA signed by it does not in any manner restrict the Commission's right to consider a fair cost towards fuel charges de-hors the amounts indicated in the bidding. The law is well settled that there can be no estoppel against law and parties cannot contract to de-bar the exercise of power by a statutory authority.

29. The next hearing in the matter was held on 15th December, 2015. During the hearing, the Commission observed that MPPMCL filed its reply to the submission

made by JPVL and JPVL has also submitted the information sought by the Commission vide the daily order dated 27th November, 2015. Counsel on behalf of JPVL and MPPMCL presented their arguments in support of their written submissions. After perusal of the information/documents filed by JPVL by its affidavit dated 10th December, 2015, the Commission sought following additional information/documents from JPVL by 28th December, 2015:

a. Reconciliation of landed coal price for FY 2015-16 as submitted vide the replies dated 27th November, 2015 in Para 7(iv) and Annexure 10.
b. Break up of combined cost of ₹ 1674.03/MT submitted for FY 2014-15 under the heads of Pit Head RoM Price, Surface Transportation Charges, Sizing and Crushing Charges, and High Capacity Loading Charges.
c. Copy of contract with detailed scope of work awarded to Mine Development Operator (MDO) appointed under competitive bidding process.
d. With respect to sizing and crushing charges submitted for FY 2015-16:
    - Basis and computations of depreciation given in the break-up of sizing and crushing charges.
    - Nature of 'other' charges given in the break-up of sizing and crushing charges.

30. By Affidavit dated 2nd January, 2016, JPVL broadly submitted the following:

a. The Landed Price of ₹ 2153.10/MT submitted in Para 7(iv) of the reply is the invoice value of ₹ 1863.10/MT plus the estimated railway transportation cost of ₹ 290/MT, whereas the Landed Price of ₹ 2175.15/MT submitted in Annexure 10 is the invoice value of ₹ ₹ 1863.10/MT plus the average railway freight of ₹ 282.05/MT for the month of October, 2015 plus the incidental charge of ₹ 30/MT. JPVL submitted that the incidental charges mainly pertain to Coal Unloading charges.

b. JPVL submitted that in FY 2014-15, the mine was owned by MPSMCL and the sale of coal to JPVL was on Cost plus basis. Under the earlier dispensation, there was no requirement of activity based process costing. With effect from 1st April, 2015, post auction process, the activity based process costing was aligned with the requirements under the CMPDA.

c. JPVL submitted that the term "MDO" was inadvertently used instead of the term "Contractor". JPVL submitted that out of all components of RoM Price, only the activity of "Overburden Removal" has been outsourced and the cost of this activity works out to ₹ 104.29/MT. The Work Order for "Overburden Removal" has been awarded pursuant to a competitive bidding process. JPVL submitted that the same activity was being carried out during FY 2014-15 at ₹ 146.67/MT.

d. JPVL submitted that the depreciation amount has been calculated by dividing the depreciable amount of sizing and crushing facility over its useful life.

e. JPVL submitted that the 'other' charges pertain to manpower supply for coal cleaning, breaking at different stages of sizing and crushing at Apron Feeder, Feeder Breaker, Bucket Wheel Stacker Reclaimer and Conveyor Belt. The approximate amount of such manpower supply for this activity works out to be around ₹ 5 Lakh per month.

31. JPVL submitted that the figures for FY 2015-16 have been arrived at on the basis of past experience and average estimates and the final figures would be arrived at after the closure, finalization and audit of accounts for FY 2015-16.

COMMISSION'S ANALYSIS

32. Based on the submissions made by both Respondents in the matter i.e, JPVL and MPPMCL, the key issues which need to be discussed in this order are as given below:

a. Directions issued by GoMP under section 108 of the Electricity Act, 2003 and need for re-determination of Energy Charges
b. JPVL's request for clubbing the re-determination of Energy Charges with final Tariff Petition
c. Recovery of Additional Premium related costs through Fixed Charges
d. Impact of Re-determination of Energy Charges on Fixed Charges
e. Need for Washery Facilities and pass through of related costs

33. Before analysing the key issues framed above, it is important to note that the

Commission vide its Order dated 26th September, 2014 in Petition No. 03 of 2014 had determined the provisional tariff for Unit No. 1 for FY 2014-15 and FY 2015-16, in accordance with the provisions of the Electricity Act, 2003 and the provisions of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012. As a part of provisional tariff, the Commission has approved the provisional energy charges for supply of power from JPVL to MPPMCL.

34. With regard to Energy Charges (Variable charges) of thermal Power Station, Regulation 41 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2012 provides as follows :

- The energy (variable) charges shall cover main fuel costs and shall be payable for the total energy scheduled to be supplied to such Beneficiary during the calendar month on ex-power plant basis at the specified variable charge rate (with fuel price adjustment).

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

  For coal fired stations

  ECR = (GHR – SFC x CVSF) x LPPF x 100 / {CVPF x (100 – AUX)}

  Where,

  AUX= Normative Auxiliary Energy Consumption in percentage.

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

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

  SFC = Specific Fuel Oil Consumption, in ml/kWh

  CVSF = Calorific Value of Secondary Fuel, in kcal/ml.

  LPPF =Weighted average Landed Price of Primary Fuel, in Rupees per kg, per litre or per standard cubic meter, as applicable, during the month.

  CVPF = Gross Calorific Value of Primary Fuel as fired, in kcal per kg, per litre or per standard cubic meter.

  Variable charge for the month shall be worked out on the basis of ex-bus energy scheduled to be sent out from the generating station in accordance with the following formula:

Monthly Energy Charge (₹) =

Variable Charge Rate in ₹/kWh X Scheduled Energy (ex-bus) for the month in kWh corresponding to Scheduled Generation.

35. The Commission in its Order dated 26th September, 2014 in Petition No. 03 of 2014 approved the performance parameters, i.e., Station Heat Rate, Auxiliary Consumption, Secondary Fuel Oil Consumption and Transit Losses in accordance with the provisions of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012.

36. During the proceedings in Petition No. 03 of 2014, JPVL had submitted as follows as regards the sourcing of coal for its Power Station:

"The annual coal requirement for the Power Project is estimated to be approx. 5.11 MTPA, calculated at 85% PLF. The Coal will be sourced from two dedicated coal mines at Amelia (North) and Dongri Tal II. Amelia (North) has been allocated to Madhya Pradesh Jaypee Minerals Ltd. (MPJML), a joint venture of JAL (49% holding) and Madhya Pradesh State Mining Corporation Ltd. (51% holding). Dongri Tal II has been allocated to Madhya Pradesh Jaypee Coal Ltd. (MPJCL), a joint venture of JAL (49% holding) and Madhya Pradesh State Mining Corporation Ltd. (51% holding). The expected GCV of coal is 4200 kcal/ kg for the Coal supply from Amelia and 4800 kcal/kg for the Coal supply from Dongri Tal II.

The coal supply agreement with MPSMCL (Madhya Pradesh State Mining Corporation Limited) has been executed on 17.12.2013 for supply of 2.5 MTPA coal from Amelia North coal block. The Coal Supply agreement for supply of 2.7 MTPA coal from Dongri Tal II coal block is expected shortly.

The Amelia (North) has commenced production in Dec-2013 and Dongri Tal (II) is expected to commence production by July-2014."

37. Thus, the Commission while issuing the Order in Petition No. 03 of 2014 based on JPVL's submissions, had considered the supply of coal to JPVL's Power Station at Nigrie from two coal mines, i.e., Amelia (North) and Dongri Tal II allocated for the

Power Station and being developed by joint ventures of Madhya Pradesh State Mining Corporation Ltd. and Jaiprakash Associates Limited.

38. In its Order dated 26th September, 2014, the Commission has considered the coal price of ₹ 1883.43/MT for Amelia (North) on the submissions of MPSMCL considering the pit-head cost of coal as per CIL's notification for supply of coal by MPSMCL to JPVL and railway transportation. The following was mentioned in the Commission's Order in this regard:

"The Commission has observed that the aforesaid sale price of coal for Rs 1883.43 / MT is based on the pit head base price of Rs 700 / MT as per CIL's notification dated 27th May, 2013 and certified by the Cost Accountant as per the certificate filed by M.P. State Mining Corporation Ltd. Based on the latest invoices/bills for railway freight filed by the petitioner, the average Railway freight/coal transportation cost of Rs 210.60/MT is considered over and above the aforesaid sale price of coal to arrive at the landed cost of coal in this order. Therefore, the Landed cost of Rs 2094.03 per MT of coal is considered in this order."

39. With this background, the Commission has examined the key issues framed in para 32 as below:.

Directions issued by GoMP and need for re-determination of Energy Charges

40. As regards the directions issued by Govt. of Madhya Pradesh under Section 108 of the Electricity Act, 2003 to review and determine energy charges for supply of electricity by a Generating Company to a Distribution Licensee under already concluded PPAs, where the coal is being sourced from coal mines auctioned or allotted under Coal Mines (Special Provisions), Second Ordinance, 2014 and rules framed thereunder, JPVL argued that the directions issued by GoMP in matters relating to tariff determination are not binding on the Commission.

41. JPVL, in support of its argument, referred to Hon'ble APTEL's Judgment in Appeal No. 41, 42 and 43 of 2010, and submitted that the directions issued under Section 108 of the Electricity Act, 2003 relating to fixation of tariff are not binding on the State Commission and the powers of the State Commission in the matter of determination of tariff cannot be curtailed. JPVL also submitted that the directions issued by the State Government under Section 108 of the Electricity Act, 2003 are

contradictory to the express provisions of the Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) (Revision-II) Regulations, 2012, regarding treatment of energy charges.

42. Section 108 of the Electricity Act , 2003 stipulates as follows:

"108. Directions by State Government.

(1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.
(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final".

43. On perusal of the above-mentioned APTEL's Judgment mentioned by JPVL in support of its argument that the directions issued under Section 108 of the Electricity Act, 2003 relating to fixation of tariff are not binding on the State Commission, it is observed that the issues involved in these Appeals are different from the present matter of re-determination of energy charges. In the present case, the State Government has only issued directions to review and determine energy charges for supply of electricity by a Generating Company to a Distribution Licensee under already concluded PPAs, where the coal is being sourced from coal mines auctioned or allotted under Coal Mines (Special Provisions), Second Ordinance, 2014 and rules framed thereunder. The directions issued by Govt. of Madhya Pradesh in this case are pursuant to the recent developments in the sector and are not inconsistent with or contradictory to the provisions of Electricity Act, 2003 or Regulations framed by the Commission. The State Government has not directed the Commission to determine the tariff in a particular manner or to do so in a manner contravening its Regulations. The State Government has not curtailed the powers of the State Commission in any manner.

44. When the Commission issued its Order on 26th September, 2014 in Petition No. 03 of 2014 and determined the provisional tariff for FY 2014-15 and FY 2015-16 in accordance with the provisions of the Electricity Act, 2003 and the provisions of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations,

2012, the Amelia (North) coal mine was being developed and operated by Madhya Pradesh Jaypee Minerals Ltd. (MPJML), a joint venture of JAL (49% holding) and Madhya Pradesh State Mining Corporation Ltd. (51% holding). Subsequent to the Hon'ble Supreme Court Judgment, the coal mine has been allotted under Coal Mines (Special Provisions), Second Ordinance, 2014 and rules framed thereunder to JPVL and thus, the basic premise on which the provisional energy charges were determined has changed. Under such circumstances, the fuel supply agreement executed between JPVL with MPSMCL on 17.12.2013 for supply of 2.5 MTPA coal from Amelia (North) coal block to the Power Station has become invalid and instead of the mine being operated by Madhya Pradesh Jaypee Minerals Ltd. (MPJML), the mine is being operated by JPVL itself. Once the basic premise for supply of coal to the Power Station has changed and the basis on which the Commission considered the price of coal, i.e., supply of coal to JPVL by MPSMCL under Coal Supply Agreement does not exist, it becomes essential to re-determine the energy charges and the Commission has to take into consideration the changed circumstances for re-determination of energy charges.

45. As per Regulation 41 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2012, for determining the energy charges, the weighted average landed price of primary fuel is the key parameter. The Commission while provisionally determining the energy charges has considered the weighted average landed coal price of ₹ 1883.43/MT as filed by MPSMCL considering the pit-head cost of coal as per CIL's notification for supply of coal by MPSMCL to JPVL and railway transportation. As supply of coal is no longer being made by MSPSMCL to JPVL, the Commission has to re-assess the landed price of coal being supplied to the Plant and accordingly re-determine the energy charges.

46. Further, JPVL has itself sought revision of the fixed charges, on account of the Additional Premium quoted by JPVL, which in the opinion of JPVL, is in the nature of capital cost.

47. In view of all the above, the Commission is satisfied that there is a need for re-determination of the Energy Charges in the larger interest of the electricity consumers of the state, on account of the changed circumstances in the matter. Accordingly, the Commission has re-determined the Energy Charges in this Order for FY 2015-16.

JPVL's request for clubbing the re-determination of Energy Charges with final Tariff Petition

48. During the hearing held on 13th October, 2015, JPVL mentioned that the tariff petition for approval of final tariff for JPVL's Power Station at Nigrie is expected to be filed shortly and requested the Commission to take up the exercise of revision of energy charges along with the tariff petition. Subsequently, JPVL has filed its Petition for approval of final tariff on which the Motion Hearing was held on 19th January, 2016.

49. The petition for approval of final tariff also includes the complex issue of prudence check of actual Capital Cost which will take some time for the Commission to complete the regulatory process on the petition filed by JPVL for approval of final tariff including public consultation process.

50. It is important to note that the Commission while approving the provisional energy charges for FY 2015-16 has considered the landed coal price of ₹ 2094.03 per MT. Subsequent to re-allocation of coal block to JPVL under Coal Mines (Special Provisions), Second Ordinance, 2014 and rules framed thereunder, JPVL vide its submission dated 19th September, 2015 has itself submitted the pass through cost of coal under PPA as ₹ 966.45 per tonne, which is less than 50% of coal cost considered by the Commission while approving the provisional energy charge for FY 2015-16.

51. As submitted by JPVL itself, the landed price of coal to be considered for determination of energy charges is less than 50% of coal cost considered by the Commission while approving the provisional energy charges for FY 2015-16, it will have substantial impact on energy charges to be borne by MPPMCL and in turn the consumers and hence, to protect the consumers' interest, it becomes important to re-determine the energy charges provisionally determined by the Commission for FY 2015-16 at the earliest.

52. Further, as discussed earlier, the basic premise on the basis of which the provisional energy charges were determined, i.e, supply of coal to the Power Station by MPSMCL, itself has changed as the FSA for supply of coal has become

null and void with effect from 1st April 2015, and hence, it is not appropriate to postpone the re-determination of energy charges. Hence, the Commission has decided not to club the issue of re-determination of energy charges with the Petition filed by JPVL for approval of final tariff and has decided to re-determine the energy charges through disposal of this Petition as discussed in detail in the next section.

Recovery of Additional Premium related costs through Fixed Charges

53. JPVL submitted that the Additional Premium to be paid to Central Government is in the nature of expense incurred towards acquiring the mining right with respect to the coal mine under auction. The Additional Premium does not accrue to the benefit of the consumers. It is collected by the Government and it is not reckoned for the purposes of computing energy charge. JPVL also submitted that while the Additional Premium is based on the quantum of coal extracted and is payable on a monthly basis, the real nature of such expenditure is to secure the mining right for the identified coal mine. It is not related to the actual activity of mining, but has been quoted as a value payable to the Central Government to be selected for vesting of mining rights, licenses and clearances in favour of the Successful Bidder. JPVL submitted that the Additional Premium is to be reckoned as part of fixed charges in the nature of capital cost and not part of energy charges.

54. For analyzing this issue of recovery of Additional Premium as part of fixed charges in the nature of Capital Cost, it is important to examine the provisions of Coal Mines (Special Provisions) Ordinance, 2014, Coal Mines (Special Provisions) Rules, 2014, and tender documents issued for carrying out the auction of coal blocks under which JPVL has won the Amelia (North) Coal Block.

55. Under Chapter III AUCTION AND ALLOTMENT PROCESS, Clause 8(4) of Coal Mines (Special Provisions) Rules, 2014 stipulates as follows:

"4) The sum for auction or allotment shall, inter-alia, include-

(a) a fixed amount for the value of land and mine infrastructure,

(b) the floor price or reserve price, as the case may be,

(c) a variable amount of bid, in case of auction,

to be paid in such manner as may be specified by the Central Government."

56. Clause 3.10.1 and 3.10.2 of the original Tender Document issued by the Nominated

Authority for auction and allotment of coal block stipulates as follows:

"3.10.1 In addition to the payments specified in Clause 3.3.2(g), the Successful Bidder shall be required to make monthly payments with respect to the coal extracted from the Coal Mine on the basis of INR 100/Tonne……

3.10.2 However the aggregate of (i) the Price Offer pursuant to which the Successful Bidder has received the Vesting Order; and (ii) the aforementioned amount of INR 100/Tonne, will be used for computation of energy charge for the purposes of determination of tariff for electricity."

57. Clause 3.10.2 of the Tender Document issued for auction and allocation of coal block for power sector was amended in the Corrigendum 3 issued on 31st January 2015. Accordingly, amended Clause 3.10.2 of the tender document on the basis of which JPVL has won the auction for Amelia (North) Coal block stipulates as follows:

"However the aggregate of (i) the Final Price Offer pursuant to which the Successful Bidder has received the Vesting Order; and (ii) the aforementioned Fixed Rate, will be the input for computation of energy charge for the purposes of determination of tariff for electricity. It is clarified that in the event that an ascending forward auction is conducted in accordance with Clause 3.3.2 (c)(iv), only the aforementioned Fixed Rate of INR 100/Tonne, will be the input for computation of energy charge for the purposes of determination of tariff for electricity and the Additional Premium shall not be reckoned for the purposes of determination of tariff for electricity."

58. In accordance with the provisions of Coal Mines (Special Provisions) Rules, 2014, and tender documents issued for carrying out the auction of coal blocks, there were two possible scenarios for bidding. Firstly, when the Final Price Offer Ceiling is more than zero and all the qualified bidders submit a Final Price Offer, which is more than zero. Secondly, when the Final price Offer Ceiling is zero or any bidder has submitted a Final Price Offer which is equal to zero, in which case the bidders were to quote Additional Premium on per tonne of coal extracted from the coal mine. The first scenario was case of Reverse Bidding where the bidder offering lowest Final Price Offer (i.e., maximum discount on market price of fuel represented by CIL Notified Price) is declared successful. The second scenario is case of Forward Bidding, wherein the bidder, over and above completely forgoing fuel cost

and in addition to all other payments, offers an extra/premium amount for the coal block and the bidder offering the highest premium is the winner. JPVL's case clearly falls under the second scenario.

59. From the provisions of the tender documents issued by the Nominated Authority, it was amply clear that the additional premium quoted by the bidders shall not be considered for determination of tariff for electricity. This fact was very well known to all the bidders including JPVL at the time of bidding. JPVL's argument that the Additional Premium is sort of the nature of cost towards acquisition of mining right and to be reckoned as part of fixed charges in the nature of capital cost and not part of energy charges is totally misplaced with respect to the spirit of auctioning of coal blocks. In case the additional premium is allowed to be recovered through fixed charges in the nature of Capital Cost, the entire sanctity of the coal auctioning process will be lost. If it would have been the intention of the coal auctioning process to pass through the additional premium to the consumers in tariff through fixed charges, any amount of additional premium could and would have been quoted by the bidders to win the coal block.

60. Further, the contention of JPVL that Additional Premium is entitled to be reckoned as part of fixed charges and not part of energy charges, is devoid of any merit. It is articulated in MPERC (Terms and Conditions for determination of generation tariff) Regulations that Tariff for sale of electricity from a thermal power generating station shall comprise of two parts, namely, the recovery of annual Capacity (fixed) charges and Energy (Variable) charges. It is clearly mentioned in the bidding documents that the Additional Premium shall not be reckoned for the purpose of determination of tariff for electricity..

61. Further, the entire objective of the coal auctioning process was to optimise the cost of coal to be passed on to consumers. JPVL in its submissions has mentioned that considering the fact that coal is a scarce resource and that the Ministry of Coal is the sole repository of the Central Government in terms of allocation of coal blocks, JPVL was constrained to bid aggressively for the Amelia (North) Coal Mine. The cost of bidding aggressively for any particular coal block by any bidder cannot be passed on to consumers, and if allowed to be done, will defeat the entire objective of coal auctioning process.

62. In view of the above, the Commission does not find any merit in the contention of JPVL that Additional Premium is to be reckoned as part of fixed charges being in the nature of capital cost.

Impact of Re-determination of Energy Charges on Fixed Charges

63. The Commission appreciates the point raised by MPPMCL that re-determination of energy charges will also have impact on fixed charges, as MPERC (Terms & Conditions for Determination of Generation Tariff) (Revision-II) Regulations, 2012 provides that the Working Capital for coal based non-pit head generating station shall cover cost of coal for two months normative Availability.

64. The Commission is of the view that re-determination of energy charges will not only affect the cost of coal component of working capital, but receivables to be considered as part of working capital will also undergo change.

65. The Commission has initiated this Suo-Motu petition for re-determination of energy charges, and hence, the scope of this petition is limited to energy charges. However, the impact of the energy charges re-determined in this order if any, on the Annual Fixed Cost provisionally determined by the Commission in its past tariff orders may be considered while disposing of the other petition recently filed by M/s JPVL for determination of final tariff for the power station in the subject matter.

Need for Washery Facilities and pass through of related costs

66. As regards washery facilities, JPVL submitted that the sample of RoM coal sample drawn from Amelia (North) Coal Mine has been sent to Central Institute of Mining and Fuel Research, Dhanbad to determine the washability characteristics of coal and the report is awaited. Various parameters of washing operation like density of medium, proportion of clean coal and rejects, cost of washing per ton of coal, ash % in both clean coal and rejects will be planned in detail, based on the lab sample results. The other details regarding the washery facilities would be firmed up after the DPR and other technical parameters are frozen.

67. MPPMCL in its replies to submissions made by JPVL submitted that the plant is located at a short distance from the mine and as per MoEF guidelines, washery is not required. The technical standards of the plant require coal GCV in the range of 4000 kcal/kg to 4300 kcal/kg, which corresponds to G11 category coal, which is

available in the mine. The advantage of washery either in reduction of cost or increasing the efficiency of the Power Station has not been substantiated and the effect of unwashed coal as against washed coal on the Energy Charge Rate is demonstrated to be disadvantageous.

68. In response to MPPMCL observations on washery facilities, JPVL replied that to meet the annual coal requirement of the Power Station, it had been envisaged to supply 2.8 MMTPA from Amelia (North) Coal Mine and 2.9 MMTPA from Dongri Tal II Coal Mine. The coal to be produced from Amelia (North) Coal Mine was estimated to have GCV of 4200 kcal/kg and the coal to be produced from Dongri Tal II Coal Mine was estimated to have 4800 kcal/kg and hence, the average GCV for design of boilers was considered as 4500 kcal/kg. Subsequent to the cancellation of coal blocks and completion of e-auction by Ministry of Coal, JPVL could secure only Amelia (North) Coal Mine. Dongri Tal II Coal Mine was put in Non-Regulated Sector for auction and as such the full requirement of Power Station is to be met from Amelia (North) Mine only. JPVL further submitted that in the initial phase of opencast mine operation, the upper seams contain weathered coal and GCV is lower than average for the life of the mine. When the lower seams of coal are extracted, the GCV is expected to be higher. Due to these reasons, the present GCV of coal from Amelia (North) Coal Mine is around 3800 kcal/kg only. Since the entire requirement of the Power Station is met from Amelia (North) Coal Mine, the GCV of 4200 kcal/kg falls short of boiler design GCV and the efficiency of Power Station is affected considerably. GCV of design fuel specified for the power plant is 4200 kcal/kg to 5100 kcal/kg. The washery is being planned to upgrade the GCV of mined coal from 3800 kcal/kg to 4500 kcal/kg so that the Power Station operates at its optimum efficiency. The computations of Energy Charge Rate by MPPMCL is based on the GCV of 4000 kcal/kg of unwashed coal while the as fired GCV in actual is around 3700 kcal/kg.

69. JPVL has not claimed any costs towards coal washing in the claimed coal price. Further, JPVL has submitted that the details/ information regarding washery facilities would be firmed up as and when the DPR and other technical parameters are frozen. Hence, the Commission has not dealt with this issue in this order.

Re-Determination of Energy Charges for FY 2015-16 including approved Energy Charges for FY 2015-16 and Mechanism for Adjustment on Energy Charges

70. The Landed Price of Coal broadly comprises of:
    a. Run of Mine (RoM) price of coal as per auction or allotment of coal mine;
    b. Transportation cost along with distance to the end use power plant (rail, road and other modes separately).
    c. Washery charges, if any;
    d. Crushing charges;
    e. Royalty/duties and levies etc;

71. The price of coal at dispatch point claimed by JPVL for FY 2015-16 is as given below:

Table 2: Price of coal at dispatch point claimed by JPVL (₹/MT)

S. No.	Particulars	Incurred basis	Pass through cost
1	Pit Head ROM Price	582.37	0.00
2	Surface Transportation Charges	31.03	31.03
3	Sizing & Crushing Charges	62.72	62.72
4	High Capacity Loading Charges	22.50	22.50
5	**Total**	**698.62**	**116.25**
	Taxes & Duties		
6	Royalty	98.00	98.00
7	Stowing Excise Duty	10.00	10.00
9	Fixed Rate and Additional Premium as per the Tender Documents	712.00	100.00*
10	MPGATSVA @ 5% on Basic Price	34.93	34.93
11	**Assessable Value**	**1553.55**	**359.18**
8	MP Forest Transit Fees	7.00	7.00
12	Excise Duty	102.53	102.53
13	Clean Energy Cess	200.00	200.00
14	**Invoice Value**	**1863.09**	**668.70**

**Fixed Rate only*

72. In accordance with the tender documents issued for auctioning and allocation of coal blocks, in case of forward bidding, the RoM price is to be considered as nil and additional premium is not to be reckoned for computation of tariff. All other components of Landed Price of Coal including transportation charges, sizing and

crushing charges, taxes, duties, levies, etc needs to be considered for arriving at the landed price of coal.

73. JPVL in its submissions dated 19th September 2015 provided the detailed break up of cost of ₹ 1863.10 per tonne, out of which, JPVL is mandated not to pass-through the component of ROM price of ₹ 582.38 per tonne and balance other components of the costs are liable to be passed-through. JPVL has considered the following components of coal price for arriving at the landed price of coal cost to be considered as part of energy charges:
    a. Surface Transportation Charges
    b. Sizing and Crushing Charge
    c. High Capacity Loading Charges
    d. Statutory Levies, Taxes and Duties
    e. Railway Transportation Charges

74. As discussed earlier, the Commission obtained the details of each component of cost considered by JPVL for arriving at the Landed Price of coal, along with the basis and assumptions for the same. The Commission has analysed the same in this section.

<u>Surface Transportation Charges</u>

JPVL's submissions:

75. As regards Surface Transportation Charges, JPVL submitted that the coal is being transported from mine face to Coal Handling Plant (CHP) directly, unlike other mines where coal is transported from mine to pithead and from there to CHP/Silo. In such a situation, part of the transportation cost is up to pithead within the leasehold area, and remaining is outside the leasehold area. In the case of Amelia (North) Coal Mine, distance from mine face to loading point is around 5 km, out of which 3/4th distance falls beyond the pit head. Total transportation cost from Mine face to the loading point is ₹ 29.50/MT. Apart from transportation cost, additional cost of ₹ 8.90/MT has to be incurred towards charges for loading onto trucks of the contractor. Accordingly, the surface transportation cost has been apportioned in proportion to respective distances, and chargeable amount works out to ₹ 31.03/MT. JPVL also submitted the copy of Letter of Intent (LoI) issued to Contractor for transportation from Mine face to loading point and loading charges.

Commission's Analysis:

76. The Commission has examined the details/information of surface transportation charges submitted by JPVL. It is observed that Coal India Limited also levies the surface transportation charges separately in addition to the ROM Price and hence, surface transportation charges need to be considered while arriving at landed coal price for computation of energy charges. As per Price Notification No. CIL:S&M:GM(F):Pricing/2340 dated 13th November, 2013, the upper limit of surface transportation charges is fixed at ₹ 57/MT.

77. As the amount claimed by JPVL towards surface transportation charges is within the limit specified by Coal India Limited, the Commission has considered the surface transportation charges of ₹ 31.03/MT as claimed by JPVL for re-determination of energy charges in this Order.

<u>**Sizing and Crushing Charges**</u>

JPVL's submissions:

78. As regards sizing and crushing charges, JPVL submitted that coal mining is done within pit head area and crushing takes place at Feeder Breaker situated in CHP area. JPVL further submitted that Coal India Limited has been levying sizing and crushing charges separately and hence, the same are to be treated as additional cost on similar lines. JPVL claimed the sizing and crushing charges of ₹ 62.72/MT

Commission's Analysis:

79. The Commission asked JPVL to submit the detailed basis, assumptions and computations of sizing and crushing charges and the same were submitted by JPVL as given below:

Table 3: Computations of sizing and crushing charges submitted by JPVL

S. No.	Head	Unit	JPVL's submission
1	Category-wise Manpower		
	GM & DGM	₹/annum	1994722
	CE & RE	₹/annum	556642
	Engineers (Elect. & Mech.)	₹/annum	3254432
	Foreman & Supervisors	₹/annum	1633661
	Tradesman (Elect & Mech.)	₹/annum	2315265
	Labours (CS, CH, MZ)	₹/annum	8373738

S. No.	Head	Unit	JPVL's submission
	Total Manpower	₹/annum	18128460
2	Power Consumption		
	Power Cost	₹/annum	30004838
3	Liner Consumption		
	Quantity (in MT)	MT/annum	5
	Rate	₹/MT	55000
	Total Liner Consumption	₹/annum	275000
4	Other Consumables		
	Rollers & Pulleys	₹/annum	3142050
	Oil & Lubricants	₹/annum	1037207
	Mech. Spares	₹/annum	10000000
	Elect Spares	₹/annum	5000000
	HSD	₹/annum	9000000
	Welding Accessories/Electrodes	₹/annum	728253
	Safety Items	₹/annum	100000
	Total	₹/annum	29007510
5	Repair & Maintenance Cost		
	Belt Joining & Pulley Lagging	₹/annum	400000
	Repairing of Motors	₹/annum	900000
	Total	₹/annum	1300000
6	Depreciation		
	Gross Block	₹	765407211
	Residual Value	%	5%
	Depreciable Value	₹	727136850.5
	Useful life	Years	8
	Depreciation	₹/annum	90892106.31
7	Other Costs	₹/annum	6000000
	Total	₹/annum	175607914.3
	Coal Quantity	MT/annum	2800000
	Sizing and Crushing charges per annum	₹/MT	62.72

80. It is observed that Coal India Limited also levies the sizing and crushing charges

separately in addition to the ROM Price and hence, sizing and crushing charges needs to be considered while arriving at landed coal price for computation of energy charges. As per Price Notification No. CIL:S&M:GM(F):Pricing/2784 dated 16th December, 2013, the additional cost of ₹ 79/MT is allowed to be charged towards sizing and crushing charges.

81. Based on the detailed analysis of various components of sizing and crushing charges, the Commission observed that JPVL while computing the depreciation component of sizing and crushing charges, has considered the residual value of 5%. The Commission observed that the residual value of 5% is in line with the provisions of Companies, Act, however, as per regulatory principles, the residual value is considered as 10%. Hence, the Commission has considered the residual value of 10% for computing the depreciation component of sizing and crushing charges. Accordingly, the sizing and crushing charges works out to ₹ 61.01/MT and the same has been considered by the Commission for re-determining the energy charges in this Order.

<u>High Capacity Loading Charges</u>

JPVL's submissions:

82. As regards high capacity loading charges, JPVL submitted that as per the Price Notification No. CIL:S&M:GM(F):Pricing/2784 dated 16th December, 2013, an additional cost up to ₹ 26/MT is allowed to be charged in addition to RoM price as high capacity loading charges. In case of Amelia (North) Coal Mine, this charge works out to ₹ 22.50/MT. JPVL submitted the computation of high capacity loading charges.

Commission's Analysis:

83. The Commission asked JPVL to submit the detailed basis, assumptions and computations of high capacity loading charges and the same were submitted by JPVL as given below:

Table 4: Computations of High Capacity Loading Charges submitted by JPVL

S. No.	Head	Unit	JPVL's submissions
1	Total Manpower cost	₹/annum	6015048
2	Power Consumption		

S. No.	Head	Unit	JPVL's submissions
	Power Cost	₹/annum	2268041
3	Other Consumables		
	Rollers & Pulleys	₹/annum	
	Oil & Lubricants	₹/annum	365000
	Mech. Spares	₹/annum	3000000
	Elect Spares	₹/annum	900000
	HSD	₹/annum	
	Welding Accessories/Electrodes	₹/annum	50000
	Vehicles deputed for coal loading	₹/annum	864000
	Total	₹/annum	5179000
5	Repair & Maintenance Cost		
	AMC for SILO	₹/annum	8892000
	AMC for IMWB	₹/annum	200000
	Total	₹/annum	9092000
6	Depreciation		
	Gross Block	₹	333237543
	Residual Value	%	5%
	Depreciable Value	₹	316575665.9
	Useful life	Years	8
	Depreciation	₹/annum	39571958.23
7	Other Costs	₹/annum	864000
	Total	₹/annum	62990047.23
	Coal Quantity	MT/annum	2800000
	High Capacity Loading Charges per annum	₹/MT	22.50

84. It is observed that Coal India Limited also levies the high capacity loading charges in addition to the ROM Price and hence, the same needs to be considered while arriving at landed coal price for computation of energy charges. As per Price Notification No. CIL:S&M:GM(F):Pricing/2784 dated 16th December, 2013, the

additional cost upto ₹ 26/MT is allowed to be charged towards high capacity loading charges.

85. Based on the detailed analysis of various components of high capacity loading charges, the Commission observed that JPVL while computing the depreciation component of high capacity loading charges, has considered the residual value of 5%. The Commission noted that the residual value of 5% is in accordance with the provisions of Companies Act, however, as per regulatory principles, the residual value is considered as 10%. Hence, the Commission has considered the residual value of 10% for computing the depreciation component of high capacity loading charges. Accordingly, the high capacity loading charges works out to ₹ 21.75/MT and the same has been considered by the Commission for re-determining the energy charges in this Order.

<u>Statutory Levies, Taxes and Duties</u>

Petitioner's submissions:

86. JPVL has considered the following statutory levies, taxes and duties while arriving at the landed price of coal for determination of energy charges:
   a. Amount of ₹ 100/MT payable as per tender document for auction and allocation of coal block
   b. Royalty of ₹ 98/MT (@14% of the CIL notified price of G11 grade (i.e., 14% of ₹ 700)
   c. Clean Energy Cess of ₹ 200/MT
   d. Stowing Excise Duty of ₹ 10/MT
   e. MP Forest Transit Fee of ₹ 7/MT
   f. Excise Duty@ 6% of 110% of the cost of production
   g. MPGATSVA @ 5% on basic price

87. The statutory levies, taxes and duties claimed by JPVL are as given below:

Table 5: Statutory Levies, Taxes and Duties claimed by JPVL

Particulars	JPVL's submission (₹/MT)
Royalty	98.00
Stowing Excise Duty	10.00
Fixed Rate	100.00

Particulars	JPVL's submission (₹/MT)
MPGATSVA	34.93
Excise Duty	102.53
MP Forest Transit Fees	7.00
Clean Energy Cess	200.00
Total	**552.47**

Commission's Analysis:

88. The Commission has considered the following:

  a. Amount of ₹ 100/MT payable as per tender document,
  b. Royalty of ₹ 98/MT i.e., 14% of 700 i.e., the price of coal as notified by Coal India Limited for similar GCV of coal for the mines, nearest to the captive mine as per the Second Schedule to Mines and Minerals (Development and Regulation) Act, 1957.
  c. Clean energy cess of ₹ 200/MT.
  d. Stowing Excise Duty of ₹ 10/MT and
  e. MP Forest Transit Fee of ₹ 7/MT as applicable.

89. The Fixed Rate of ₹ 100/MT shall be subject to escalation as per Clause 9.2 of the Coal Mine Development and Production Agreement executed by M/s JPVL in respect of Amelia (North) Coal Mine.

90. Regarding the excise duty and MPGATSVA, the issue of applicable percentages on basic price and cost of production are discussed below:

91. In accordance with the tender documents issued for auctioning and allocation of coal blocks, in case of forward bidding, the RoM price is to be considered as nil and additional premium is not to be reckoned for computation of tariff. Accordingly, any other cost related to ROM price and additional premium is not pass through to the electricity consumers for arriving at the landed cost of coal in this order.

92. The amount of Excise Duty and MPGATSVA considered by the Commission for the purpose of re-determination of energy charges in this order is as given below:

Table 6: Excise Duty and MPGATSVA considered by the Commission as against the claim by JPVL ₹/MT

Particulars	Legend	JPVL's submission	Considered by the Commission
Pit Head ROM Price	A	582.38	0.00
Surface Transportation Charges	B	31.03	31.03
Sizing & Crushing Charges	C	62.72	61.01
High Capacity Loading Charges	D	22.50	21.75
Total	E=A+B+C+D	698.62	113.79
Taxes & Duties			
Royalty	F	98.00	98.00
Stowing Excise Duty	G	10.00	10.00
Fixed Rate and Additional Premium as per the Tender Documents	H	712.00	100.00*
MPGATSVA	**I=5% of E**	**34.93**	**5.69**
Assessable Value	J=E+F+G+H+I	1553.55	327.48
Excise Duty	**K=6% of (1.10xJ)**	**102.53**	**21.61**

**Fixed Rate only*

<u>Railway Transportation Charges</u>

JPVL's submissions:

93. JPVL submitted that the Rail Freight per MT has been taken on the basis of total coal quantity received and total Rail Freight. JPVL submitted the computations of actual Rail Freight per MT for the month of October, 2015.

Commission's Analysis:

94. The Commission at this stage has considered the railway transportation charges equivalent to the actual charges for the month of October 2015 and JPVL shall be allowed to claim the variation in the same through month to month adjustment of fuel price.

<u>Incidental Charges</u>

JPVL's submissions:

95. JPVL submitted that the incidental charges mainly pertain to coal unloading, which varies according to the quantity of coal unloaded. The actual coal unloading charges for the month of October, 2015 have been claimed, and this may go up to ₹ 30/MT. JPVL submitted the sample copy of Coal Handling Bill for the month of

October, 2015.

Commission's Analysis:

96. The Commission has considered the coal unloading charges of ₹ 21.32/MT based on actual coal unloading charges for the month of October 2015.

Landed Price of Coal

97. Based on above components of coal price, the total landed price of coal considered in this order is given in the following table:

Table 7: Landed Price of Coal approved by the Commission

S. No.	Particulars	₹ / MT
1	Surface Transportation Charges	31.03
2	Sizing & Crushing Charges	61.01
3	High Capacity Loading Charges	21.75
4	**Sub-total (1 to 3)**	**113.79**
	Taxes & Duties	
5	Royalty	98.00
6	Stowing Excise Duty	10.00
8	Fixed Rate as per the Tender Documents	100.00
9	MPGATSVA	5.69
10	**Assessable Value**	**327.48**
7	MP Forest Transit Fees	7.00
11	Excise Duty	21.61
12	Clean Energy Cess	200.00
13	**Total Price excluding Railway Freight**	**556.09**
14	Rail Freight	282.05
15	Incidental Charges (unloading Charges)	21.32
16	**Landed Price for JPVL**	**859.46**

Operating Parameters

98. While calculating the energy (variable) charges, the following norms of operation for 660 MW Units and above have been considered as per MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012:

Table 8: Operating Parameters approved by the Commission

Target Availability	85%
Station Heat Rate	2200 kCal/kWh
Auxiliary Energy Consumption	6%
Sp. Oil Consumption	1 ml/kWh
Transit Loss	0.80%

Gross Calorific Value

In its Order dated 26th September 2014 for determination of provisional tariff, the Commission has considered the Gross Calorific Value of 4200 kcal/kg based on the copies of joint coal analysis report of Amelia (North) coal block filed by M/s JPVL. The exercise in the instant petition is to re-determine the energy charges provisionally determined in the afore-mentioned order passed by the Commission and the Gross Calorific Value considered in the aforesaid order was based on the joint coal analysis report of Amelia (North) coal block filed by M/s JPVL. Therefore, the Commission has considered the same GCV of 4200 kcal/kg in this order also for computation of energy charges.

Energy Charges Re-determined for FY 2015-16

99. Based on landed price of coal, operating parameters and GCV as discussed above, the energy charges which were determined in Para 103 of the Commission's Order dated 26th September, 2014 and Para 14 of the Commission's Order dated 31st March, 2015 in Petition No. 03 of 2014 and IA No. 01 of P-3/2014 respectively, are re-determined in this order for **FY 2015-16** for JPVL's Nigrie 2x660 MW Power Station as detailed in the following table:

Table 9: Energy Charges re-determined for FY 2015-16 for both the units of M/s JPVL's Nigrie 2x660 MW Power Station

Sl. No.	Parameter	Units	Energy Charges provisionally determined in Commission's Order dated 26th September' 2014	Energy Charges re-determined in this Order
1	Capacity	MW	660	660
2	NAPAF	%	85.00	85.00
3	Gross Station Heat Rate	kcal/kWh	2200	2200
4	Sp. Fuel Oil Consumption	ml/kWh	1.00	1.00
5	Aux. Energy Consumption	%	6.00	6.00
6	Transit Loss	%	0.80	0.80
7	Weighted average GCV of Oil	kcal/ltr.	10000	10000
8	Weighted average GCV of Coal	kcal/kg	4200	4200
9	Weighted average price of Coal	₹/MT	2094.03	859.46
10	Heat Contributed from HFO	kcal/kWh	10	10
11	Heat Contributed from Coal	kcal/kWh	2190	2190
12	Specific Coal Consumption	kg/kWh	0.5214	0.5214
13	Sp. Coal Consumption including Transit Loss	kg/kWh	0.5256	0.5256
14	Rate of Energy Charge	₹/kWh	1.101	0.452
15	**Rate of Energy Charge ex bus**	**₹/kWh**	**1.171**	**0.481**

100. The base rate of the energy charges shall however, be subject to month-to-month adjustment of fuel price and GCV of main fuel. However, the actual billing of energy charges shall be as per the formula and all relevant provisions detailed in Regulation 41 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012.

101. The Commission has re-determined the energy charges only in this order however, the impact of the above- mentioned energy charges if any, on the Annual Fixed Cost provisionally determined by the Commission in its past tariff orders may be considered while disposing of the other petition recently filed by M/s JPVL for determination of final tariff for the power station in the subject matter.

102. The energy charges as determined above are applicable with effective from 01st April 2015. All other terms and conditions in the Commission's Orders dated 26th September, 2014 and 31st March, 2015 in Petition No. 03 of 2014 and IA No. 01 of P-3/2014 respectively, shall remain unchanged.

With the above directions, the subject Suo-Motu petition is disposed of.

(Alok Gupta)	**(A. B. Bajpai)**	**(Dr. Dev Raj Birdi)**
Member	**Member**	**Chairman**

Date : 28th January, 2016
Place : Bhopal

Annexure -1

Comments/suggestions by MPPMCL and the responses of JPVL

Comments of MPPMCL:

1. MPPMCL submitted that the Commission vide Order dated 26th September, 2014 in Petition No. 3 of 2014 considered the Landed Price of coal as ₹ 2094.03/MT and in the interest of financial exigencies, it cannot continue to pay tariff at provisional rates for a long period.

JPVL's response:

2. The submission of MPPMCL that it cannot pay the provisional tariff worked out by the Commission for Nigrie TPP for financial exigencies cannot be countenanced in law. The provisional tariff had been worked out by the Commission in terms of applicable Tariff Regulations and would be applicable till the determination of Final Tariff. The fuel charges, being part of overall Tariff has to be considered as part of the Tariff determination process after taking into account the costs/ details provided by JPVL. In this regard, the following may be considered:

   a. JPVL has made a Final Price Offer of Nil in the bidding process and quoted Additional Premium of ₹ 612/MT of coal for winning the Amelia (North) Coal Mine. The Commission while referring to the bids made by the Petitioner should take into consideration the circumstances under which JPVL was constrained to quote Nil as Final Price Offer and whether an adoption of Final Price Offer as the RoM cost of coal would satisfy the principles of Tariff determination. Coal is a scarce commodity and the right to mine coal is regulated by the Ministry of Coal. Further, the initial number of bidders for the Amelia (North) Coal Mine was 10, of whom 5 qualified for final bidding and the starting price for reverse bidding was ₹ 1250/MT. Therefore, the conditions under which coal mines have been bid out from time to time may not be conducive to reflect the most efficient, optimum and realistic cost of mining of coal.

   b. The investment made for the Nigrie Power Station is more than ₹ 11,000 Crore with funding by means of debt and equity. The Power Station had been planned, designed and set up having regard to the quality and availability of coal from Amelia (North) and Dongri Tal II Coal Mines.

c. The total coal requirement for PLF of 90%, GCV of 4200 kcal/kWh and station heat rate of 2200 kcal/kWh is 5.43 MMTPA. Unless Amelia (North) Coal Mine had been secured, the alternate options to procure coal would be through coal linkage, coal imports or procuring coal from open market. The alternate options would not have sufficed to carry on generation of power with the same levels of economic and operational efficiency and would have resulted not only in higher tariff for consumers, but exposed JPVL to further financial distress, ultimately resulting in the scrapping of a world class project and non-recovery of the investments both in terms of debt and equity. The steady availability of quality coal had to be considered given the fact that the entire plant/boiler design and the option to go for Super Critical Technology was based on earlier allotted coal blocks. In such circumstances and considering the fact that coal is a scarce resource and that the Ministry of Coal is the sole repository of the Central Government in terms of allocation of coal blocks, JPVL was constrained to bid aggressively for the Amelia (North) Coal Mine.

d. JPVL submitted that significant time would have been lost towards grant of linkage during which time, there would be complete uncertainty about availability of fuel. Further, idling of the Power Station would result in mounting of interest liability. Under the present dispensation, the ACQ for fuel under the Fuel Supply Agreements is worked out for 80% of coal required for meeting 80% PLF towards capacity tied up under long-term PPA, which effectively works out to fuel for generation at 64% of the capacity tied up under long-term PPA. Therefore, the balance quantum of fuel would have to be secured through import/open market purchase that would ultimately convert into higher tariff for consumers. JPVL also submitted that the Competition Commission of India in a recent Judgment has observed about the supply of sub-standard quality of coal by CIL.

e. JPVL submitted that import of coal for meeting the entire requirement of the Power Station would not have been feasible since the boiler is designed for indigenous coal and would not allow use of 100% imported coal. JPVL submitted that while working out the energy charge for the Power Station, due regard has to be given to the benefit that has been secured for the consumers by winning Amelia (North) Coal Mine. JPVL further submitted that it has brought about efficiency gains in the cost and these factors would be relevant in considering the benefit of coal that has been passed on to consumers under the bidding process.

3. JPVL submitted that the price of Landed Coal for March, 2015 was ₹ 3061.16/MT with an Energy Charge Rate of ₹ 2.07/kWh while the Landed Coal Price for September, 2015 was ₹ 2153.10/MT with a pass-through cost of ₹ 958.72/MT with an Energy Charge Rate of ₹ 0.648/kWh.

Comments of MPPMCL:

4. MPPMCL submitted that the Notification dated 18th May, 2015 has been issued by the State Government in exercise of powers under Section 108 of the Electricity Act, 2003 and the instant suo-motu proceedings germinate from the said Notification. The said Notification is not in contravention to the National Electricity Policy and Tariff Policy. The Notification is intended to give effect to the 'change in law' position on account of the changed scenario in view of the newly enacted Coal Mines (Special Provisions) Act. It is intended to safeguard the consumer's interest in the State and to ensure recovery of cost of electricity in a reasonable manner. Therefore, the present Notification needs to be considered in letter and in spirit.

JPVL's response:

5. JPVL submitted that the response of MPPMCL contending that the directions issued by the Government are binding on the Commission even in relation to determination of tariff is ignorant of the settled position of law in this regard as set out in Hon'ble APTEL's Judgment dated 31st January, 2011 in Appeal No. 41, 42 and 43 of 2011. Section 61 of the Act enumerates the principles to be considered for determination of tariff. The Electricity Act, 2003 envisages a balance to be achieved amongst the interest of consumers and the utilities. Working out tariff detrimental to the interest of the generating company would ultimately prove to be detrimental to the consumers ultimately since consumers would suffer equally if the generating station has to discontinue operations due to financial unviability. Moreover, Clause 5.3(h)(4) of the Tariff Policy recognizes fuel cost as an uncontrollable cost.

6. The contention of MPPMCL that the directions have been issued to give effect to 'change in law' position is clearly presumptive and misconceived. It is submitted that no change in law has been brought under the Coal Mines (Special Provisions)

Ordinance, 2014 or Coal Mines (Special Provisions) Rules, 2014 qua the treatment of fuel charges for determination of tariff under the Electricity Act, 2003. If at all, such change would have to be reflected through necessary amendment to the Tariff Regulations.

Comments of MPPMCL:

7. MPPMCL submitted that Regulation 37.1(i) of the MPERC (Terms & Conditions for Determination of Generation Tariff) (Revision-II) Regulations, 2012 provides that the Working Capital for coal based non-pit head generating station shall cover cost of coal for two months normative Availability. In view of the variation in cost of coal, the working capital would also get affected and would need to be revised.

8. MPPMCL submitted that the scope of present Petition is restricted to revision of variable charges on account of downward revision in price of coal due to re-allocation of mines. Save the price of coal and its impact on other components, consideration of other new facts may tend to vitiate the scope of present Petition. JPVL, in the instant case has referred to expenses like washery expenses, Additional Premium, etc., which were never in existence before and are in the nature of capital expenditure and may have bearing on the fixed cost and nevertheless on variable cost.

JPVL's response:

9. JPVL submitted that the issues raised in this Paras are beyond the purview of the present Petition and hence, shall be replied and dealt with separately during proceedings of main Final Tariff Petition.

Comments of MPPMCL:

10. MPPMCL submitted that the surface transportation charges, sizing and crushing charges, high capacity loading charges and railway transportation charges have not been substantiated and are not supported by supporting documents. While the railway freight has been claimed as ₹ 290/MT, it is observed from the official website of the Indian Railways that the rail freight is only ₹ 205.60/MT. The high capacity loading charges appear to be higher than loading charges as per conventional technology. The need of a high capacity loading technique has not been justified by JPVL. Furthermore, the high capacity and advance technology does not tend to be cost effective. MPPMCL requested the Commission to carry out prudence check on the costs claimed and/or call for a cost audit report from an

independent and reliable agency.

JPVL's response:

11. As regards the justification for surface transportation charges, sizing and crushing charges, and high capacity loading charges, JPVL reiterated its submissions in reply to the Commission's queries recorded in the preceding sections. Further, JPVL submitted that MPPMCL has relied on the official website of the Indian Railways regarding Railway Freight, wherein freight incidence per MT has been admitted to be ₹ 248.26/MT as per the submissions. The same after factoring in Service Tax of 4.35% goes up to ₹ 259.06/MT. JPVL submitted that the freight incidence occurs on full load basis whereas coal being a heterogeneous commodity, its loading in a wagon to its permissible carrying capacity is not possible in actual scenario. In the case of Amelia (North) Coal Mine, railway freight corresponding to CC+8 Route charged by the Railways is on the basis of Permissible Carrying Capacity of 65 MT or 64 MT, which is the chargeable weight (BOBR/BOBRN/BOBRNHS type wagons) irrespective of the actual weight loaded.

12. JPVL submitted that at the time of mine planning and in the process of seeking approval from Railways for transporting coal from Amelia (North) Coal Mine to Power Station, it has been calculated that one rake will make two and a half cycle per day to transport about 9000 MT of coal on daily basis, i.e., 2.8 MMTPA. For achieving the above cycle time, the high capacity loading (i.e., capacity to load a rake of 58 boxes in less than one and half hour time) was a prerequisite and has been planned in consultation with Railways to complete the rake loading within allotted time by the Railways. Provision for similar arrangement is being made in the recently planned coal mines. Besides, MoEF at the time of grant of Environmental Clearance insists on providing for wagon loading through silo and discourages manual loading completely to minimize the fugitive dust emission. During manual loading of coal into wagons, lot of air borne dust is generated and is considered as detrimental to environmental requirements, whereas silo with high capacity loading and hopper chutes are used to reduce the coal mass fall height from belt to hopper and from hopper to wagons, to effectively reduce generation of dust at these points.

Comments of MPPMCL:

13. MPPMCL submitted that the expenditure towards capital expense and operation/variable cost claimed on account of washery is out of the scope of

consideration in the present Petition. This expenditure is in the nature of additional capitalisation, which was not envisaged in the original scope of work. MPPMCL submitted that the plant is located at a short distance from the mine and as per MoEF guidelines, washery is not required. The technical standards of the plant require coal GCV in the range of 4000 kcal/kg to 4300 kcal/kg, which corresponds to G11 category coal, which is available in the mine. The advantage of washery either in reduction of cost or increasing the efficiency of the Power Station has not been substantiated. The effect of unwashed coal as against washed coal on the Energy Charge Rate is demonstrated to be disadvantageous.

JPVL's Response:

14. JPVL submitted that to meet the annual coal requirement of the Power Station, it had been envisaged to supply 2.8 MMTPA from Amelia (North) Coal Mine and 2.9 MMTPA from Dongri Tal II Coal Mine. The coal to be produced from Amelia (North) Coal Mine was estimated to have GCV of 4200 kcal/kg and the coal to be produced from Dongri Tal II Coal Mine was estimated to have 4800 kcal/kg and hence, the average GCV for design of boilers was considered as 4500 kcal/kg. Subsequent to the cancellation of coal blocks and completion of e-auction by Ministry of Coal, JPVL could secure only Amelia (North) Coal Mine. Dongri Tal II Coal Mine was put in Non-Regulated Sector for auction and as such the full requirement of Power Station is to be met from Amelia (North) Mine only.

15. JPVL submitted that in the initial phase of opencast mine operation, the upper seams contain weathered coal and GCV is lower than average for the life of the mine. When the lower seams of coal are extracted, the GCV is expected to be higher. Due to these reasons, the present GCV of coal from Amelia (North) Coal Mine is around 3800 kcal/kg only. Since the entire requirement of the Power Station is met from Amelia (North) Coal Mine, the GCV of 4200 kcal/kg falls short of boiler design GCV and the efficiency of power plant is affected considerably. GCV of design fuel specified for the power plant is 4200 kcal/kg to 5100 kcal/kg. The washery is being planned to upgrade the GCV of mined coal from 3800 kcal/kg to 4500 kcal/kg so that the Power Station operates at its optimum efficiency. The computations of Energy Charge Rate by MPPMCL is based on the GCV of 4000 kcal/kg of unwashed coal while the as fired GCV in actual is around 3700 kcal/kg.

Comments of MPPMCL

16. MPPCL submitted that no taxes and duties are liable to be paid on the Additional

Premium.

JPVL's Response:

17. JPVL submitted that the submission of MPPMCL that no taxes and duties are payable on Additional Premium is not correct. Coal is an excisable product and leviable to excise duty as per the Central Excise Tariff Act, 1985. The value for the purpose of calculation of Excise Duty is governed by the provisions of Central Excise Act, 1944 and Rules framed thereunder. As the coal is used for captive consumption, it is governed by Rule 8 of the Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000. Thus, excise duty is chargeable on 110% of the cost of production or manufacture of goods. CMPDA of Amelia (North) Coal Mine states that JPVL is required to make monthly payment of ₹ 712/MT (₹ 100/MT Fixed Reserve Price + ₹ 612/MT Additional Premium) for extraction of coal from the coal mine. While the Additional Premium may be in the nature of cost towards acquisition of mining right, it is nonetheless a cost related to coal. Therefore, Additional Premium becomes excisable and makes tax incidence thereon liable to be pass-through. JPVL submitted that excise duty is being deposited with the excise department.

Comments of MPPMCL:

18. MPPMCL submitted that Clause 3.10.2 of the tender document refers to the terms 'energy charges' and 'tariff'. The tender documents and conditions were the outcome keeping in view the peculiar needs of the power sector and requisites of the Electricity Act, 2003 and related laws. These terms are well defined and understood in the Electricity Laws. A different interpretation may tend to vitiate the laws applicable. The tender document clarifies that the fixed rate of ₹ 100/MT is the input for computation of energy charge for the purposes of determination of tariff for electricity. It also clarifies that Additional Premium shall not be reckoned for the purposes of determination of tariff for electricity. Therefore, Additional Premium should not be considered as expenses or costs for acquiring a fresh right of mining.

JPVL's Response:

19. JPVL submitted that the issues raised in this Paras are beyond the purview of the present Petition.

Annexure -2

Abbreviations

CIL	Coal India Limited
DPR	Detailed Project Report
FSA	Fuel Supply Agreement
GCV	Gross Calorific Value
GoMP	Government of Madhya Pradesh
HEMM	Heavy Earthmoving and Mining Equipment
HSD	High Speed Diesel
JAL	Jaiprakash Associates Limited
JPVL	Jaiprakash Power Ventures Limited
kCal	Kilo Calories
kg	Kilo Gram
kWh	Kilo Watt Hour
LoI	Letter of Intent
MDO	Mine Development Operator
MPERC	Madhya Pradesh Electricity Regulatory Commission
MoEF	Ministry of Environment, Forest and Climate Change
MPGATSVA	Madhya Pradesh Gramin Avsanrachna Tatha Sarak Vikas Adhiniyam
MPJMCL	Madhya Pradesh Jaypee Minerals Ltd.
MPPMCL	Madhya Pradesh Power Management Company Ltd.
MPSMCL	Madhya Pradesh State Mining Corporation Ltd.
MT	Metric Tonne
MTPA/MMTPA	Million Metric Tonne per Annum
NAPAF	Normative Annual Plant Availability Factor
OB	Overburden
PPA	Power Purchase Agreement
TPH	Tonnes per Hour
RoM	Run of Mine