

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
5thFloor, "Metro Plaza", Bittan Market, Bhopal (M.P.) - 462 016



Petition No. 61 of 2023

PRESENT:

S. P. S Parihar, Chairman
Gopal Srivastava, Member (Law)
Prashant Chaturvedi, Member

IN THE MATTER OF:

True-up of Generation Tariff for 1x600 MW (Phase-1) Coal Based Thermal Power Project at Barela-Gorakhpur, Dist. Seoni, (M.P.) for FY 2022-23 determined by Madhya Pradesh Electricity Regulatory Commission vide MYT Order dated 8th May, 2021 in Petition No 47 of 2020.

M/s. Jhabua Power Limited:

PETITIONER

Vs.

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

RESPONDENTS

ORDER

(Passed on this day of 5th March, 2024)

1. M/s. Jhabua Power Limited (hereinafter called “the petitioner”) filed the subject petition for Truing-up of Generation Tariff for FY 2022-23 for its 1x600 MW coal based thermal power project (herein after referred to as “project”) at District Seoni, Madhya Pradesh, determined by the Madhya Pradesh Electricity Regulatory Commission (hereinafter called “the Commission” or ‘MPERC”) vide Multi Year Tariff (MYT) Order dated 8th May, 2021 in Petition No. 47 of 2020.
2. The subject true-up petition has been filed under Sections 62 and 86(1)(a) of the Electricity Act, 2003 and based on the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 {RG- (IV) of 2020} (herein after referred to as “Regulations, 2020”) for the control period FY 2019-20 to FY 2023-24 notified on 28th February, 2020.
3. Jhabua Power Project under the subject petition comprises of one generating unit of 600 MW capacity. The generating unit achieved Date of Commercial Operation (CoD) on 3rd May, 2016.
4. The petitioner executed long term Power Purchase Agreement (PPA) on 5th January, 2011 with MP Power Management Company Ltd., (hereinafter called “MPPMCL” or “Respondent No. 1”) for supply of 30% power from the project at the tariff determined by the Commission. The petitioner executed another PPA with GoMP on 27th June, 2011 for sale of 5% net power on variable charges only determined by the Commission.
5. The petitioner had earlier filed Petition No. 47 of 2020 for determination of Multi Year Tariff for its generating station for the control period from FY 2019-20 to FY 2023-24 based on the Regulations, 2020. Vide Order dated 08th May, 2021 in the aforesaid petition, the Commission determined the multi-year tariff for the aforesaid generating unit subject to true-up based on the Annual Audited Accounts for the respective financial year.
6. In the aforesaid MYT order dated 8th May, 2021, the following Annual Capacity (fixed) Charges for FY 2022-23 were determined by the Commission:

Table 1: Annual Capacity (Fixed) Charges determined in MYT Order for FY 2022-23

Sr. No.	Particulars	Unit	Amount
1	Return on Equity	Rs. Crore	153.14
2	Interest on Loan Capital	Rs. Crore	237.02
3	Depreciation	Rs. Crore	202.37

4	Interest on Working Capital	Rs. Crore	48.31
5	O & M Expenses	Rs. Crore	134.82
6	Annual Capacity (fixed) Charges	Rs. Crore	775.66
7	Less: Non-Tariff Income	Rs. Crore	(-)0.11
8	Net Annual Capacity (Fixed) Charges	Rs. Crore	775.55
9	Annual Capacity Charges corresponding to 30% of the installed capacity of the Project	Rs. Crore	232.67

7. In the subject petition, the petitioner has sought true-up of Annual Capacity (fixed) Charges for FY 2022-23 prior to acquisition of the project by the NTPC Ltd, i.e., till 4th September, 2022 considering actual Additional Capital Expenditure incurred during FY 2022-23 till 4th September, 2022 in accordance with Regulation 9.4 of the Regulations, 2020, which provides as under:

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

8. The petitioner in the subject petition has submitted that, its company has been taken over by NTPC Limited as a Joint Venture with Secured Financial Creditors (50:50) through CIRP (Corporate Insolvency Resolution Process) vide NCLT Order dated 6th July 2022. The petitioner also mentioned that the Management control lies with NTPC post-acquisition w.e.f. 5th September, 2022. Thus, amounts claimed in the subject petition are based on the Annual Audited Accounts for FY 2022-23 prepared till the date prior to the takeover of plant by NTPC Ltd for 157 days i.e. till 4th September, 2022. Since NTPC Limited is a Central Sector Generating Company, effective 05.09.2022, petitioner submitted that Jhabua Power intends to file the tariff for remaining period (post NTPC takeover) with Hon'ble CERC under Section 79 (1) (a) of Electricity Act 2003.
9. In the subject petition, the petitioner filed the additional capitalization of Rs 3.23 Crore on accrual basis and Rs. 4.62 Crore on cash basis during FY 2022-23 till 4th September, 2022. Based on the aforesaid additional capitalization of Rs. 4.62 Crore on cash basis, the petitioner claimed the following Annual Capacity (fixed) Charges for the project:

Table 2: Annual Capacity Charges claimed in the petition for FY 2022-23 till 4th September, 2022:

S. No.	Particulars	Unit	Amount
1	Return on Equity	Rs. Crore	156.73
2	Interest on Loan Capital	Rs. Crore	251.29
3	Depreciation	Rs. Crore	206.50
4	Interest on Working Capital	Rs. Crore	45.34
5	O & M Expenses	Rs. Crore	134.82
6	Less: Non-Tariff Income	Rs. Crore	0.00
7	Total Annual Capacity (Fixed) Charges	Rs. Crore	794.68
8	Total Amount proportionate to 4th September, 2022	Rs. Crore	341.82
9	Un-recovered Depreciation	Rs. Crore	0.29
10	Total	Rs. Crore	342.11

10. With the above submission, the petitioner prayed the following:
- Carry out the truing-up of tariff for Unit-1 of the Project for the period from 01.04.2022 to 04.09.2022 and allow to recover the gap amount along with carrying cost.*
 - Extend the Cut-Off date on account of uncontrollable factors till two (02) years after the resolution of the asset (Date of order of the National Company Law Tribunal, NCLT) i.e., till 05.07.2024, keeping in view the extraordinary circumstances engulfing the Petitioner and the execution time required for completion & discharging of all the liabilities of the balance works.*
 - Approve the Additional Capital Expenditure of Rs. 4.62 Cr (Cash Basis) for FY 2022-23 till 4th September, 2022 in accordance with the Regulations, 2020.*
 - Allow to recover E.D., Water Charges, WRLDC Fees & Charges and Cess on auxiliary power consumption and other taxes, if any, levied by the Statutory Authorities from the beneficiaries on submission of documentary evidence;*
 - To allow the expenditure incurred on Ash utilisation & transportation in FY 2022-23 till 4th September'22 to be directly recovered from the Respondent No. 1.*
 - Allow recovery of Carrying Cost of an amount of Rs. 11.62 Crore which was deducted from monthly bills against GST of Rs. 15.25 Crore (as per the order of Hon'ble NCLT, Kolkata). The deducted amount of Rs. 15.25 Crore has been paid by MPPMCL on 14.07.2023.*

(g) Allow the un-recovered depreciation of Rs. 0.29 Crore towards the Depreciation of Lease Land pertaining to the period from CoD to FY 2022-23.

(h) Allow to recover the fees paid to the Commission and publication expenses from the beneficiaries on submission of documentary evidence.

11. The subject petition has been examined by the Commission in accordance with the principles, methodology and norms specified in the Regulations, 2020, Annual Audited Accounts and other supplementary submissions filed by the petitioner in response to the additional information / details sought by the Commission along with all other documents placed on record by the petitioner. The Commission also examined the subject petition in light of the comments / suggestions offered by the Respondent No.1 and other stakeholder and response of the petitioner on the same.
12. In this true-up order, the Commission has considered opening figures of Gross Fixed Assets (GFA), Equity, Loan and Accumulated Depreciation as per the closing figures considered by the Commission in last true-up Order for FY 2021-22 in Petition No. 87 of 2022 issued on 29th March, 2023.

Procedural History

13. Motion hearing in the subject matter was held on 13th December, 2023, wherein representatives of M/s Jhabua Power Limited (A joint venture of NTPC Limited) was also present and submitted that from 5th September, 2022 onwards, after taking over the ownership by NTPC Limited, the Jhabua Power Limited became Central Generating Station. As such for the balance period, i.e., from 5th September, 2022 to 31st March, 2023, true-up petition shall be filed before Hon'ble CERC under Section 79(1) (a) of the Electricity Act, 2003.
14. Vide daily order dated 13th December, 2023, the petition was admitted and the petitioner was directed to serve copies of petition to all Respondents in the matter. Respondents were also asked to file their response on the petition within 15 days. The petitioner was asked to file rejoinder within one week, thereafter.
15. Vide Commission's letter dated 19th December, 2023, information gaps and requirement of additional information on scrutiny of the petition were communicated to the petitioner seeking comprehensive response by 10th January, 2024.
16. By affidavit dated 11th January, 2024, Respondent No. 1 (M.P. Power Management Co. Ltd.) filed its response/ comments on the subject petition.

17. The public notice for inviting comments/ objections/ suggestions from stakeholders was published on 12th January, 2024 in the following newspapers:
 - i. Nayi Duniya (Hindi), Bhopal,
 - ii. Nayi Duniya (Hindi), Gwalior,
 - iii. Nayi Duniya (Hindi), Indore
 - iv. Nayi Duniya (Hindi), Jabalpur
 - v. Business Standards (English), Bhopal.
18. The above public notice along with copy of the petition was uploaded on Commission's website also for inviting comments/objections/suggestions from stakeholders.
19. In response to Public Notice, the Commission received comments from one stakeholder, Shri Rajendra Agarwal on 17th January, 2024. By affidavit dated 9th February, 2024, the petitioner filed its response on aforesaid comments of the stakeholder. The response of the petitioner on the comments/suggestions filed by the stakeholder along with observations is mentioned in Annexure- II of this Order.
20. By affidavit dated 31st January, 2024, petitioner filed reply to the issues communicated to it by the Commission.
21. By affidavit dated 9th February, 2024, petitioner filed its rejoinder to the response/ comments filed by Respondent No.1. The petitioner's responses on each comment offered by the Respondent No.1 are mentioned in Annexure-I of this Order.
22. The public hearing in the subject petition was held on 13th February, 2024 through video conferencing, wherein the representatives of petitioner, Respondent No. 1 and stakeholder appeared.
23. During the course of the Public Hearing, the petitioner requested the Commission for submission of legal opinion on the issue of jurisdiction of the Electricity Regulatory Commission after takeover of the project by NTPC. Considering the request of petitioner, the Commission allowed the petitioner to file copy of a legal opinion by 14th February, 2024. Petitioner was also directed to serve copy of the same to Respondent No.1 and other stakeholder. By affidavit dated 13th February, 2024, the petitioner filed copy of legal opinion in the subject matter. Vide submission dated 19.2.2024, Respondent No.1 (MPPMCL) filed its reply on the legal opinion submitted by the petitioner.
24. On 5.09.2022 (Transfer date), Jhabua Power Limited (JPL) has become a Joint Venture (JV) of NTPC Limited, wherein, NTPC Limited is responsible for managing

and controlling the Petitioner's Company with 50% shareholding in JPL. The issue before Commission for this true up was whether Commission can undertake part true-up only upto the transfer date of 5.9.2022. Commission has noted that from the transfer date, Jhabua Power Limited has acquired the status of Company owned and controlled by the Central Government. As per Section 79(1) (a) of the Electricity Act, 2003, Central Electricity Regulatory Commission (CERC) has powers to regulate tariff of such Company. Since these powers are vested with CERC **exclusively**, the Commission is of the opinion that it has powers to true up the tariff before the transfer date in this case, i.e., 5.9.2022. The petitioner has already bifurcated its accounts in two parts during the Financial Year, i.e., before and after the transfer date. The Commission has therefore decided to undertake part true-up till 4.9.2022 for the FY 2022-23.

Disclaimer for Rounding

25. In this Order, certain numbers as a whole, upto several decimal places have been rounded up or down. Therefore, there may be discrepancies between the totals of the individual numbers shown in the tables upto 2 decimal places and numbers given in the corresponding analysis in the text of this order.

Capital Cost as on 1st April, 2022

Petitioner's Submission:

26. Regarding the capital cost of the project, the petitioner submitted that the Commission in last true-up order dated 29th March, 2023 has considered closing capital cost of Rs. 4025.30 Crore as on the 31st March, 2022. The same capital cost has been considered by the petitioner as opening capital cost as on the 01st April, 2022 for the purpose of true-up of tariff for FY 2022-23 (till 4th September, 2022) in the subject petition.

Provisions of Regulations:

27. With regard to capital cost of the existing power project, Regulation 21.3 of the Regulations, 2020 provides as under:

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

- (i) the capital cost admitted by the Commission prior to 1.4.2019 duly true up by excluding liability, if any, up to last true-up order issued by the Commission;*
- (ii) additional capitalization and de-capitalization for the respective year of tariff as determined in accordance with these Regulations;*
- (iii) capital expenditure on account of renovation and modernization as admitted by the Commission in accordance with these Regulations;*
- (iv) capital expenditure on account of ash disposal including handling and transportation facility;*
- (v) capital expenditure incurred towards railway infrastructure and its augmentation for*

transportation of coal upto the receiving end of generating station but does not include the transportation cost and any other appurtenant cost paid to the railway; and

(vi) capital cost incurred or projected to be incurred by a thermal generating station, on account of implementation of the norms under Perform, Achieve and Trade (PAT) scheme of Government of India shall be considered by the Commission subject to sharing of benefits accrued under the PAT scheme with the beneficiaries”

Commission’s Analysis:

28. The petitioner has considered the opening capital cost as on the 1st April, 2022 as considered in Commission’s tariff order dated 29th March, 2023 in true-up petition No. 87 of 2022 for FY 2021-22. The breakup of the capital cost determined by the Commission as on 31st March, 2022 in aforesaid true-up order dated 29th March, 2023 is as given below:

Table 3: Capital Cost considered in last true up Order as on the 31.03.2022

(Rs. in Crore)

Sr. No	Particulars	Amount
1	Land and Site Development	55.48
2	Civil Works	203.72
3	Plant & Machinery	3750.95
4	Furniture & Fixtures	7.10
5	IT Equipments (Computers)	4.04
6	Office Equipments	3.80
7	Vehicles	0.21
	Total	4025.30

29. The Commission has considered the opening Gross Fixed Assets (GFA) as on 01.04.2022 of Rs. 4025.30 Crore, same as considered in the last true-up order for FY 2021-22 as closing GFA as on 31st March, 2022, in this Order.

Additional Capitalization

Petitioner’s Submission

30. In the subject true-up petition, the petitioner has claimed the additional capitalization of Rs 4.62 Crore on cash basis out of which, Rs 3.23 Crore is on accrual basis during FY 2022-23 till 4th September, 2022. The break-up of additional capitalization claimed on accrual basis and cash basis by the petitioner is as given below:

Table 4: Additional Capitalization claimed by the petitioner for FY 2022-23 till 4.9.2022

S. No	Particulars	Amount on (Accrual Basis) (Rs. Crore)	Amount on (Cash Basis) (Rs. Crore)
1	Railway Related Works	-	0.94

2	Capital Spares	3.19	3.27
3	Coal Handling Plant	-	0.16
4	Ash Handling Plant/Ash Disposal	-	0.01*
5	Others	0.04	0.24
	Total	3.23	4.62

(*Petitioner has wrongly mentioned Rs 0.01 Crore towards Ash Handling System/Ash Disposal Works. Actual figure of Rs 0.02 Crore against this expenditure head is mentioned subsequently in para 6.65 of the subject petition.)

31. With regard to the additional capitalization claimed in the subject petition, the petitioner submitted the following:

Railway Related Works:

- i. *It is submitted that the dedicated railway line has been operational from 21.08.2020 and is utmost essential for the everyday operation of the Plant. Furthermore, the Commission in its True-up Orders dated 18.08.2022 & 29.03.2023 has also recognized the importance of the work and has allowed Rs. 79.43 Crore & additional capitalisation of Rs. 2.07 Crore respectively towards railway related works.*
- ii. *It is submitted that the Commission has already approved the scheme to allow Capex in its orders dated 18.08.2022 & 20.03.2023 and therefore, the Commission is requested to allow the discharge of liability of Rs. 0.94 Crore for the work already been carried out in FY 2022-23 till 4th September, 2022 as admitted by the Commission as per Regulation 27.1 (vi) of the Regulations, 2020. It is further submitted that the cost incurred on account of the balance works amounting to Rs. 3.69 Crore (cash basis) incurred in FY 2022-23 till 4th September, 2022 may also be kindly allowed under Regulation 26.1(ii).*

Capital spares:

The petitioner has filed list of capital spares amounting to Rs. 3.19 Crore were capitalised in FY 2022-23 till 4th September, 2022.

- iii. *It is submitted that the Petitioner had barely allowed to incur additional capital expenditure during CIRP process and therefore capital spares could not be procured in one go and therefore could not be procured before the cut-off date. Like Railways, Capital Spares is also an integral part for running the plant smoothly. Considering the fact that the Commission has allowed expenditure incurred for Railways, as the delays are not completely attributable to the Petitioner, the same principle lies with the Capital Spares as well. It is therefore requested that Commission may please approve the same, because even after allowing capital spares, the ceiling limit of 4% of the Plant & Machinery cost is not violated in accordance with the Regulations, 2020.*

- iv. *Further, liability of Rs. 3.19 Crore towards spares procured in the FY 2021-22 till 4th September, 2022 has been discharged by the Petitioner related to capital spares. Therefore, the Commission is requested to allow the total cost of Rs. 3.19 Crore related to the capital spares. It is further submitted that even after allowing the same the amount of spare will be well within the limits specified in the Regulations, 2020.*
- v. *An extension of cut-off date is therefore being sought in the above regard and the same has been claimed under Regulation 26.1 (iii) of Regulations, 2020. The Petitioner requests the Commission to approve the same. .*

Other Works

- vi. *It is submitted that some of the works, which are essential for efficient operation of the Plant pertaining to Misc. Electrical works could not be completed before the cut-off date of the project owing to the uncontrollable factors as detailed in the earlier Paras. Therefore, the petitioner requests the Commission to approve the same in FY 2022-23 till 4th September, 2022 under Regulation 26.1(ii) of Regulations, 2020.*
- vii. *It is submitted that during the year, Rs. 0.04 Crore is claimed towards Misc. BoP Electrical/Mechanical Works.*
- viii. *It is further submitted that the petitioner has discharged the liability of Rs. 0.19 Crore for the previous year (FY 21-22 & FY 20-21) out of which Rs. 0.13 Crore pertains to AoH carried out in FY 2021-22, Rs. 0.01 Crore pertains to Ventilation and Rs. 0.05 Crore pertains to Misc. Civil works. These balance works were part of original scope of works and are essential for safe & smooth operation of the Power Plant.*
- ix. *In view of the above, it is submitted that the above works were essential works that is required for safe and efficient operation of the plant and could not be completed within the cut-off date for the reasons discussed in detail in the Petition and hence the Petitioner requests the Commission to approve the same under Regulation 26.1 (ii) of the Regulations, 2019.*

Ash Handling System / Ash Disposal

- x. *It is submitted that an amount of Rs. 0.02 Crore pertain to liability discharged during the year for works which were previously carried out and is now being claimed under Regulation 26.1(i) of the Regulations, 2020. These works were required for safe and reliable operations of the plant.*

Coal Handling Plant

- xi. It is submitted that an amount of Rs. 0.16 Crore corresponds to CHP works which pertains to the liability discharged during the year for works which were previously carried out and is now being claimed under Regulation 26.1(i) of the Regulations, 2020. These works were required for safe and reliable operations of the plant.*
- xii. It is submitted that the Petitioner was barely allowed to incur additional capital expenditure during CIRP process and therefore assets could not be procured in one go and could not be procured before the cut-off date. It is therefore requested that Commission approves the same.*
- xiii. Since the above works were deferred for execution and the Petitioner seeks extension of cut-off date in view of the uncontrollable nature of the reasons which restricted the Petitioner from completing the works within the Original Cut-off date. Accordingly, they have been claimed under Regulation 26.1 (ii) of the Regulations, 2020.*
- xiv. With the above background, it is prayed that the additional capitalization of Rs. 3.23 Crore (accrual basis) and Rs. 4.62 Crore (cash basis) claimed for FY 2022-23 may be allowed.*

Provisions in Regulations

32. Regarding additional capitalization within the original scope of work after the cut-off date, Regulation 27.1 of the Regulations, 2020 provides as under:

27.1 The additional capital expenditure incurred or projected to be incurred in respect of an existing project or a new project on the following counts within the original scope of work and after the cut-off date may be admitted by the Commission, subject to prudence check:

- (i) Liabilities to meet award of arbitration or for compliance of the directions or order of any statutory authority, or order or decree of any court of law;*
- (ii) Change in law or compliance of any existing law;*
- (iii) Deferred works relating to ash pond or ash handling system including ash transportation facility in the original scope of work;*
- (iv) Liability for works executed prior to the cut-off date;*
- (v) Force majeure events;*
- (vi) Liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payment; and*
- (vii) Additional capitalization on account of raising of ash dyke as a part of ash disposal system.*

- 27.2 In case of replacement of assets deployed under the original scope of the existing project after cut-off date, the additional capitalization may be admitted by the Commission, after making necessary adjustments in the gross fixed assets and the cumulative depreciation, subject to prudence check on the following grounds:
- (a) The useful life of the assets is not commensurate with the useful life of the project and such assets have been fully depreciated in accordance with the provisions of these Regulations;
 - (b) The replacement of the asset or equipment if necessary, on account of change in law or Force Majeure conditions;
 - (c) The replacement of such asset or equipment is necessary on account of obsolescence of technology; and
 - (d) The replacement of such asset or equipment has otherwise been allowed by the Commission.

Commission's Analysis

33. The petitioner has filed the additional capitalization of Rs. 4.62 Crore on cash basis however, the additional capitalization claimed in the subject petition on accrual basis is Rs. 3.23 Crore. The petitioner submitted that the additional capitalization claimed during FY 2022-23 till 4th September, 2022 is entirely for the works covered under original scope of works but were deferred for execution due to uncontrollable factors. Out of the total additional capitalization on accrual basis, assets of Rs. 3.19 Crore pertain to Capital Spares and Rs 0.04 Crore pertains to Other misc. BoP Electricity / Mechanical Works.
34. Vide Commission's letter dated 19th December, 2023, certain necessary details/documents related to additional capitalization claimed in the subject petition were sought from the petitioner and the petitioner was asked to file a comprehensive reply on various issues related to additional capitalization. By affidavit dated 31st January, 2024, the petitioner filed its response on the issues raised by the Commission. The response of the petitioner on all such issues is mentioned below:

Issues

- i) **Whether additional capitalization claimed are under original scope of work. If so, the claim of additional capitalization be justified in light of the Regulation 27.1 of the Regulations, 2020. All supporting documents was asked to be filed in this regard.**

Petitioner's Response:

The Petitioner submitted that the assets capitalized during the year FY 2022-23 till 4th September, 2022 are under original scope of work. It is submitted that the works

for the additional capital expenditure claimed were already envisaged in the DPR, however, the same could not be completed within cut-off date owing to the uncontrollable reasons which is explained in detail in the Petition. With regard to the supporting documents, the Petitioner submits that the works proposed under the Original Scope of Works are reflected in the DPR along with cost estimates and the same is submitted.

With regard to the justification of addition of assets in light of Regulations, 2020, the Petitioner submits that it has claimed the additional capitalization for FY 2022-23 till 4th September, 2022 under Regulation 26.1 and Regulation 27.1 as referred by the Commission. The Petitioner has submitted justification in the Petition as to why the Petitioner has claimed the additional capitalization under Regulation 26.1 and Regulation 27.1 of the Regulations, 2020. The Petitioner is not repeating the same for the sake of brevity.

- ii) If additional capitalization is claimed beyond Original Scope of work, the petitioner was asked to clarify whether the addition of asset was as per Regulation 28.1.

Petitioner's Response

The petitioner submitted that all the works which are claimed under additional capitalization for FY 2022-23 till 4th September, 2022 are under Original Scope of Works as already submitted in the Petition and in this reply and no asset addition has been proposed on account of works, which are new or beyond Original Scope of Works.

- iii) The petitioner was asked to file list of assets capitalized under additional capitalization with detailed reasons in the following format:

Details of Additional Capitalization:

S. No.	Particulars	Asset Additions (Rs. Crore)	Reasons of Asset Additions	Provisions of Regulations under which Add. Cap. filed	Reference supporting doc. Enclosed
1					

Petitioner's Response:

The petitioner submitted the information as follows:

Table 5 Information regarding the additional capitalization claimed in FY 2022-23

S No	Particular	Asset Addition (Rs. Crore)	Detailed reasons of Asset Additions	Provision of Regulations under which Add. Cap is Filed	Reference of supporting documents
1.	Capital Spares	3.19	In line with the Regulation 25 of the Regulations, 2020 which allows initial spares to be claimed at 4% of Plant & Machinery Cost of the Project.	26.1 (iii)	Copies of the invoices are submitted. And Copies of Orders are provided to this Submission.
2.	Others	0.04	Deferred works under original scope of works which are essential are Safety, reliability and smooth running of the Plant.	26.1 (ii)	
	Total	3.23			

- iv) The petitioner was asked to file copy of work orders/ purchase orders placed to different vendors for additional capitalization claimed in the petition along with a statement indicating date of order and price at which contracts were awarded. If there was any delay in completion of works on account of contractor, the details of penalty, if any, imposed on contractor(s) be also informed.

Petitioner's Response:

The Petitioner submitted that the copy of work orders / purchase orders placed to different vendors for additional capitalization claimed in the petition are submitted. As regards to the details of penalty, the Petitioner submits that no penalty has been imposed by the Petitioner on any of the Contractors who were involved in the works claimed under the additional capitalization.

- v) Copy of the bills/invoices of all such assets under additional capitalization was asked to be filed.

Petitioner's Response:

The petitioner submitted that copies of Bills/Invoices of the assets (covering almost 96% of capitalisation claim) have been submitted. The Petitioner further submits that all the invoices against the total additional capitalization claimed in the Petition are available with the Petitioner and the same can be provided in case the same are required by the Commission. Accordingly, petitioner requests the Commission

to consider the same and approve the additional capitalization as claimed in the Petition.

- vi) **Actual Loan drawn and Equity infused towards additional capitalization during FY 2022-23 till 4th September, 2022 claimed in the subject petition was asked to be filed.**

Petitioner's Response:

The Petitioner submitted that the assets during FY 2022-23 till 4th September'22 are capitalized through cash inflow of the Petitioner. Therefore, no actual loan and equity was infused towards the additional capitalization during FY 2022-23.

35. On perusal of the aforesaid petitioner's response on additional capitalization claimed in the subject petition, the Commission has observed the following:

- i. The petitioner has claimed additional capitalization on accrual basis under Regulation 26.1 of the Regulations, 2020, which is applicable for the additional capitalization within the original scope of work and upto cut-off date. However, the assets under additional capitalization claimed in the subject petition have been capitalized after the cut-off date of the project. The petitioner has also claimed capitalization of asset related to railway related works under Regulation 27.1 of the Regulations, 2020.
- ii. The petitioner submitted that the additional capitalization claimed is within the original scope of work of the project and no asset addition has been proposed on account of works which are new or beyond Original Scope of Works.
- iii. The petitioner has filed the copies of the bills/invoices, purchase orders placed on various suppliers/contractors. The Petitioner also submitted that the asset additions during FY 2022-23 till 4th September, 2022 were funded through cash inflow of the petitioner. Therefore, no actual loan was infused towards the additional capitalization during FY 2022-23.
- iv. The petitioner mentioned that the above works are deferred for execution and the petitioner seeks extension of cut-off date due to uncontrollable reasons, which were beyond the control of the petitioner.

36. By affidavit dated 11th January, 2024, Respondent No. 1 (MPPMCL) filed its response on the additional capitalization claimed in the subject petition. The response filed by Respondent No. 1 (MPPMCL) is as follows:

- i. In the subject petition, it is clear that the cut-off date for the plant is 31.03.2019 and the additional capital expenditure claim is incurred post cut-off date that can be allowed only if they are in accordance with Regulation 27.2. Since the additional capitalisation claimed have been incurred after the cut-off date and is not in accordance with Regulation 27.2 of the extant Regulations, the claims are untenable as per the Regulations, 2020.*
- ii. It is submitted that all the terms i.e. “Cut-off Date” “controllable factors” and “uncontrollable factors” are defined in the extant tariff regulations. It is settled law that the Regulations once notified are binding on all stakeholders including the Commission. Therefore, “Cut-off Date” cannot be extended as a matter of routine and such extension is only possible if the project is impacted by “uncontrollable factors”. While the definition of “uncontrollable factors” is an inclusive definition, what would constitute “uncontrollable factors” shall have to be guided by the illustrated heads in the definition which are Force Majeure Events, Change in Law, Time and cost over-runs on account of land acquisition except where the delay is attributable to the generating company. It is submitted that ‘includes’ in the definition of the “uncontrollable factors” would have to be interpreted ejusdem generis and financial difficulty of the generating company cannot be termed as an “uncontrollable factor”. The MPERC has previously time and again rightly held that events relied on by the Petitioner to extend the cut-off date were not entirely beyond the control of the Petitioner. As a result, the prayer for extension of cut-off date ought not to be allowed by the Commission.*
- iii. It is pertinent to note that the petitioner has not put any evidence on record suggesting that the difficulties faced by the Petitioner would qualify as such. In fact it is pertinent to submit that the ‘uncontrollable factors’ as alleged by the Petitioner pertains to financial difficulties faced by the Petitioner and such financial difficulties were solely attributable to the Petitioner. The Petitioner having practiced poor financial prudence had to go through the IBC proceedings and resolution thereunder. The liability of such poor financial handling cannot be put on the beneficiaries in the form of additional capitalisation expended past the cut-off date.*
- iv. Further, it is also pertinent to state that this Commission has consistently disallowed the Petitioner’s claim for extension of cut-off date and grant of additional capitalisation in lieu of the same. Grant of the same would not only lead to inconsistency but would open a pandora’s box of revision of all previous and further claims on the part of the petitioner and similarly placed entities. Further, the matter of whether cut-off date for commissioning the petitioner’s project should be extended is already sub-judice*

before the Hon'ble APTEL and any decision contrary to the same would lead to severe prejudice to the Answering Respondent before the Hon'ble APTEL.

- v. *It is the case of the Petitioner in the present Petition that certain railway related works had been accepted by this Commission vide its order dated 18.08.2022 & 29.03.2023. Towards such capitalization in terms of Regulation 27.1 (vi) of the Regulations, cost of Rs. 0.94 Crore has been incurred. The same is unchallenged in line with the previous decisions of this Commission.*
 - vi. *However, the petitioner seeks to approve Rs. 3.69 crore on account of balance works incurred in FY 2022-23 till 04.09.2022 in terms of Regulation 26.1 (ii) of the Regulations. It is reiterated that as averred hereinabove, such cost of balance works took place after the cut-off date and financial hardships clearly do not attract force majeure or change in law provisions. Therefore, there is no grounds in terms of the MPERC Tariff Regulations basis by which the cost of balance works amounting to Rs. 3.69 Crore can be allowed to be passed through in true up.*
 - vii. *Similarly as above, the Petitioner seeks to pass through liability of Rs. 3.19 crore on account of expenditure done on capital spares. Further other misc. electric works to the tune of Rs. 0.04 Crore is also sought to be passed through in true up. It is the case of the Petitioner that such expenditures were taken after the cut-off date on account of the inability of the Petitioner to invest money during the CIRP process. However, it is reiterated herein that financial hardships that were brought upon itself by the Petitioner cannot be passed on to the beneficiaries. In that regard the averments made hereinabove are reiterated.*
 - viii. *Further, additional expenditure towards ash handling system amounting to Rs. 0.02 Crore and additional expenditure towards coal handling plant amounting to Rs. 0.16 crore are also sought for similar reasons as above. It is reiterated that the present case as held by this Commission before, is not a fit case for extension of cut-off date and therefore, such claims on additional capitalization ought to be disallowed.*
 - ix. *In sum, the additional capitalization amount of Rs. 3.23 Crore (on accrual basis) and Rs. 4.62 Crore (on cash basis) claimed by the Petitioner is untenable under the scheme of the MPERC Tariff Regulations and ought to be disallowed by this Commission.*
37. The Commission has examined additional capitalization claimed by the petitioner in light of the Annual Audited Accounts, Asset-cum-Depreciation Register for the project, original scope of work of the project and provisions for additional capitalisation under

the Regulations, 2020. The Commission has also examined the claim of additional capitalization in light of the response filed by the Respondent No. 1 and reasons for delay in completion /capitalization of assets along with other details and documents submitted by the petitioner.

A. Annual Audited Accounts and Asset-cum-Depreciation Register

38. On perusal of the Annual Audited Accounts for FY 2022-23 (till 4th September, 2022) filed by the petitioner, it was observed that the additional capitalisation of Rs 3.23 Crore on accrual basis filed by the petitioner has been capitalized in Schedule 3 of the Annual Audited Accounts. These assets have also been recorded in Asset-cum Depreciation Register of the project.
39. However, for the purpose of claiming Annual Capacity (Fixed) Charges for FY 2022-23 till 4th September, 2022, the petitioner has considered additional capitalization of Rs. 4.62 Crore on cash basis with the contention that some undischarged liability of previous years is discharged during the year. The details of the additional capital expenditure (ACE) claimed on accrual basis and cash basis in the subject petition along with undischarged liability for FY 2022-23 till 4th September, 2022 and discharge of previous year liability as filed by the petitioner are given below:

Table 6: Summary of Additional Capitalization on Accrual Basis and Cash Basis filed by the petitioner during FY 2022-23 (till 4th September, 2022) (Rs. Crore)

Head of Work / Equipment	ACE Claimed on Accrual basis	Un-discharged Liability	Discharge of previous years Liability	ACE Claimed on Cash basis
	A	B	C	D=A-B+C
Railway Related Works	-	-	0.94	0.94
Capital Spares	3.19	0.19	0.27	3.27
Coal Handling Plant	-	-	0.16	0.16
Ash Handling System/Ash Disposal	-	-	0.02	0.01*
Others	0.04	-	0.19	0.24
Total	3.23	0.19	1.58	4.62

(*Petitioner has wrongly mentioned Rs 0.01 Crore in Column D towards Ash Handling System/Ash Disposal Works, since, actual figure of discharge of previous year liability is Rs 0.02 Crore in Column C and is also mentioned subsequently in para 6.65 of the subject petition.)

40. In view of the above, the Commission has observed that the additional capitalization on cash basis has been capitalized in Annual Audited Accounts and recorded in Asset-cum-Depreciation register. Therefore, the additional capitalization of Rs. 4.62 Crore filed on cash basis has been examined in light of the relevant provisions under the Regulations, 2020 and summarized as follows:

- i. Additional Capitalization on accrual basis (A) – Rs. 3.23 Crore
- ii. Less: undischarged liability during the year (B) – Rs. 0.19 Crore
- iii. Add: discharged of previous year liability (C) – Rs. 1.58 Crore
- iv. **Additional Capitalization on cash basis (A-B+C) - Rs. 4.62 Crore**

B. Capital Cost under Original Scope of Work and BoD Approval

41. Regarding the original scope of works of the project, the petitioner submitted that the assets capitalized during FY 2022-23 were within the original scope of works of the project and were envisaged in the DPR of the project.
42. It is observed that the petitioner in its final tariff Petition No 28 of 2018 had submitted the Investment approval of Rs. 2909.89 Crore for 1 x 600 MW of the project initially accorded by its Board of Directors of the Jhabua Power Ltd on 01.07.2008.
43. Subsequently, on 10th March, 2016, Board of Directors of the petitioner's company approved the revised estimated cost of Rs 4950 Crore. Break-up of the revised capital cost approved by the Board of Director of Company are as under:

Table 7: Approval of petitioner's BOD dated 10th March, 2016 (Rs Crore)

Sr No	Description	Revised Project Cost approved by BOD
1	Land & Site Development	70.00
2	Plant & Equipment-BTG, BOP & Civil Works	2,965.00
3	Initial spares	100.00
4	Total Overheads & pre-commissioning expenses	100.00
5	IDC, FC, FERV & Hedging Cost	1,435.00
6	Total Overheads	280.00
	TOTAL	4,950.00

44. Details of the capital cost as on 31.03.2022 considered by the Commission, additional capitalization claimed by the petitioner during FY 2022-23 and total actual expenditure as on 31.03.2023 filed by the petitioner are as given below:

Table 8: Actual Expenditure as on 04.09.2022 filed by the petitioner: (Rs. Crore)

Sr No	Capital Cost Components	GFA as on 31.03.2022 considered by the Commission	Additions claimed by the petitioner during FY 2022-23 till 4 th Sept, 2022	Total actual expenditure as on 04.09.2022 filed by the petitioner
1	Land and site development	55.48	-	55.48

2	Civil Works	203.72	-	203.72
3	Plant & Machinery	3750.95	4.58	3755.53
4	Furniture & Fixture	7.10	-	7.10
5	IT Equipment	4.04	0.04	4.08
6	Office Equipments	3.80	-	3.80
7	Vehicles	0.21	-	0.21
	Total Capital Cost	4025.30	4.62	4029.92

45. In view of the above and details submitted by the petitioner, the Commission has observed that the total capital expenditure as on 31st March, 2023 filed by the petitioner is within the revised project cost of Rs. 4950 Crore approved by the BoD of petitioner's company.

C. Cut-off Date

46. Regarding the Cut-off date of the project, Regulation 4.1 (I) of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:
'Cut-off Date' means 31st March of the year closing after two years of the year of commercial operation of whole or part of the project, and in case the whole or part of the project is declared under commercial operation in the last quarter of a year, the cut-off date shall be 31st March of the year closing after three years of the year of commercial operation:
47. The generating unit of Jhabua Thermal Power Project under subject petition achieved CoD on 3rd May, 2016, therefore, the cut of date of the project was 31st March, 2019 in accordance with the above provision under the Regulations, 2015. Accordingly, the additional capitalization claimed by the petitioner in the subject petition is beyond the cut-off date.
48. In the subject true-up petition, the petitioner claimed additional capitalization under Regulation 26.1 of the Regulations, 2020, which is applicable on asset additions within the original scope of works and up to cut-off date. The petitioner has also requested to extend the cut-off date of the project exercising inherent Power to Relax under Regulation 66 of the Regulations, 2020. The petitioner has submitted several reasons and uncontrollable factors for delay in capitalization of assets after the cut-off date.
49. The Commission has observed that the issue of extension of cut-off date has already been addressed by the Commission in earlier tariff/true up orders of the Petitioner's Project. Further, there is no provision under the Regulations, 2020 for extension of cut-off date of the project. Moreover, the petitioner has filed Appeal No 547/2023 against the Commission's Order dated 29th March, 2023 in P No 87 of 2022 regarding issue of

non-extension of the cut-off date of the project which is sub-judice before the Hon'ble Appellate Tribunal for Electricity (APTEL). Therefore, the request of the petitioner for extension of cut-off date is not considered in this Order.

50. Since, the additional capitalization claimed by the petitioner is beyond the cut-off date of the project and within the original scope of work, therefore, same has been examined and analysed under Regulation 27 of the Regulations, 2020.

D. Analysis of additional capitalization in light of the provisions under Regulations

51. The petitioner filed the additional capitalization of Rs 3.23 Crore on accrual basis and Rs 4.62 Crore on cash basis under major heads, i.e., Railway Related Works, Mandatory Spares, Coal handling Plant, Ash Handling Plant and other miscellaneous works. The additional capitalization under each of the aforesaid heads is discussed below in light of the provisions under the Regulations, 2020:

a) Railway Related Works:

52. The petitioner filed additional capitalization of Rs. 0.94 Crore on cash basis towards Railway Related works. The petitioner submitted that the aforesaid additional capitalization is deferred works under original scope of works, which are essential for safety, reliability and smooth running of the Plant and covered under Regulation 26.1 (ii) of the Regulations, 2020.
53. The petitioner submitted that the Commission in its True-up Orders dated 18.08.2022 & 29.03.2023 has considered the work towards railway siding and had allowed Rs. 79.43 Crore & additional capitalisation of Rs. 2.07 Crore respectively towards railway related works.
54. Petitioner has informed that discharge of liability of Rs. 0.94 Crore is considered in expenditure towards initial spares of railway related works in FY 2022-23 till 4th September, 2022. By affidavit dated 31st January, 2024, the petitioner submitted the breakup of initial spares on railway siding related works which are as follows:

Table 9: Break-up of initial spares claimed under head of Railway related Works

Head	Amount (Rs. Crore)	Reason
Railway related Works	0.85	Supply of ROTHE ERDE/ LIEBHERR make slew bearing along with set of two slew pinions and fasteners.
Railway related Works	0.08	Balance payment towards Supply of ballast.
Railway related Works	0.01	Payment for procurement of reinforcement steel.
Total	0.94	

55. Regarding the discharge of previous year liability, the Commission had observed in last true up order dated 25th August, 2022, that the petitioner incurred Rs 84.47 Crore on an accrual basis and Rs. 81.89 Crore on cash basis in FY 2020–21 towards railway siding works. As a result, there was a liability of Rs 2.58 Crore for railway-related works in FY 2020–21, out of which the petitioner discharged its liability of Rs 0.63 Crore in FY 2021–22 and Rs.1.85 Crore incurred on cash basis during FY 2021-22 which amounts to Rs. 2.48 Crore claimed in FY 2021-22. Vide Order dated 29th March, 2023, the Commission allowed the said expenditure by adopting the consistent approach of applying escalation factor towards railway works. Presently, in FY 2022-23, the petitioner has claimed Rs. 0.94 Crore on cash basis, which is towards procurement of initial spares for railway related works.

56. Regarding Railway Related Works, the petitioner in the subject petition has submitted the following:

It is submitted that the dedicated railway line has been operational from 21.08.2020 and is utmost essential for the everyday operation of the Plant. Furthermore, the Commission in its True-up Order dated 18.08.2022 & 29.03.2203 has also recognized the importance of the work and has allowed Rs. 79.43 Crore & additional capitalisation of Rs. 2.07 Crore respectively towards railway related works.

It is submitted that the Commission has already approved the scheme to allow Capex in its orders dated 18.08.2022 & 29.03.2023 and therefore the Commission is requested to allow the discharge of liability of Rs. 0.94 Crore for the work already been carried out in FY 2022-23 till 4th September, 2022 as admitted by the Commission as per Regulation 27.1 (vi) of the Regulations, 2020. It is further submitted that the cost incurred on account of the balance works amounting to Rs. 3.69 Crore (cash basis) incurred in FY 2022-23 till 4th September, 2022 may also be kindly allowed under Regulation 26.1(ii).

57. In the last true-up orders dated 18th August, 2022 and 29th March, 2023, the works related to railway siding were examined by the Commission in details and after considering the reasons for delay in completion of these works, it was observed that the reasons for delay in execution of these works were not entirely attributable to the petitioner. Therefore, aforesaid railway related works were considered under Regulation 27.1(vi) of the Regulations, 2020. Further, in the aforesaid Orders dated 18th August, 2022 and 29th March, 2023, the Commission also mentioned that “The relaxation granted in the present case will not be quoted as precedent in any of the future cases, as each case is to be considered and decided on its own merits.”

58. It is observed that the petitioner failed to capitalise initial spares for railway siding works during FY 2020-21, when railway siding works were capitalised. Further, while claiming the additional capital expenditure towards deferred railway siding for FY 2020-21 in P No 13 of 2022, the petitioner did not mention anywhere in its submission that any balance capitalization towards initial spares of railway siding works would be capitalized and/or claimed in subsequent true-ups.
59. The Commission is of the opinion that the procurement of spares related to railway works of Rs 0.94 Crore claimed during FY 2022-23 does not fall under proviso 27.1 (vi) of the Regulations, 2020 which provides for “considering liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments”. At the time of claiming additional capital expenditure for railway siding, neither the petitioner proposed capitalisation of initial spares for this work nor was this allowed or admitted at that time by the Commission.
60. The initial spares towards railway related works of Rs. 0.94 Crore claimed by the petitioner during FY 2022-23 is not covered under the Regulations, 2020. Hence, this amount is not allowed in this Order.
61. It is also observed that the approach adopted by the Commission while allowing railway related works in previous year tariff orders has been challenged by the petitioner which is sub-judice before the before the Hon’ble Appellate Tribunal for Electricity (APTEL).
- b) AHP/Ash Disposal**
62. The petitioner has claimed Rs. 0.02 Crore on cash basis towards of Ash Handling Plant/Ash Disposal under additional capitalization. The petitioner submitted that the aforesaid works completed and claimed were deferred works under original scope of works which were essential for safety, reliability and smooth running of the Plant. The petitioner has claimed the aforesaid additional capitalization under Regulation 26.1 (i) of the Regulations 2020. The petitioner has submitted that discharge of previous year liability of Rs 0.02 Crore is considered in claiming expenditure in FY 2022-23.
63. The Commission observed that in last true up order dated 29th March, 2023, the petitioner had incurred expenses of Rs 0.68 Crore on an accrual basis and Rs 0.77 Crore on cash basis in FY 2021-22. As a result, there was a shortfall/deficit of Rs 0.09 Crore for ash handling plant/disposal works in FY 2021-22. Liability of Rs. 0.02 Crore towards ash handling plant and related works has also been discharged by the petitioner during FY 2021-22 and is claimed in the subject petition.

64. On examination of the aforesaid claim of Rs. 0.02 Crore towards Ash Disposal, it is observed that the aforesaid works related to Ash Handling Plant are deferred works under the original scope of works of the project, but discharged the liability after the cut-off date of the Project. The aforesaid additional capitalization work is covered under Regulation 27.1 (iii) of the Regulations, 2020, which provides that the deferred works relating to ash pond or ash handling system including ash transportation facility in the original scope of work and beyond the cut-off date may be considered by the Commission, subject to prudence check. Looking to the necessity of the work, the additional capitalization of Rs. 0.02 Crore towards AHP Works is allowed under Regulation 27.1 (iii) in this Order.

c) Capital Spares

65. The petitioner filed additional capitalization of Rs. 3.27 Crore on cash basis and Rs 3.19 Crore on accrual basis towards mandatory spares of the project. Vide letter dated 19th December, 2023, the petitioner was asked to justify its claim towards mandatory spares in light of the Regulation 25 of the Regulations, 2020.

66. By affidavit dated 31st January, 2024, the petitioner submitted following:

The petitioner submits that the Commission has allowed a total of Rs. 38.63 Crore towards mandatory spares till 31.03.2019. A summary of the mandatory spares approved by the Commission till March 31, 2019 is as follows:

Table 10 Details of initial mandatory capital spares approved till 31st March, 2019

S. No	Particular/ Description	Amount in Rs. Crore	Remark
1	Mandatory initial spares approved in Order dated November 30, 2018	23.54	The approved initial spares of Rs. 23.54 Crore consists of Rs. 9.01 Crore towards initial spares as on CoD and Rs. 14.53 Crore towards initial spares procured after CoD during FY 2016-17
2	Mandatory initial spares approved in Order dated January 5, 2021	15.09	The approved initial spares of Rs. 23.54 Crore consists of Rs. 8.46 Crore which were pertaining to FY 2017-18 and Rs. 6.63 Crore pertaining to FY 2018-19
Total		38.63	

With regard to the justification of claim of mandatory initial spares for FY 2022-23, petitioner submitted that Regulation 25 of the Regulations, 2020 provides as follows:

“25. Initial Spares:

25.1 Initial spares shall be capitalized as a percentage of the Plant and Machinery cost, subject to following ceiling norms:

- (a) **Coal-based thermal generating stations - 4.0%**
(b) *Hydro generating stations including pumped storage hydro generating system – 4.0%*

Provided that the, Plant and Machinery cost shall be considered as the original project cost excluding IDC, IEDC, Land Cost and cost of civil works. The generating company for the purpose of estimating Plant and Machinery Cost, shall submit the break-up of head-wise IDC and IEDC in its tariff application”

It is submitted that considering the Plant and Machinery cost of Rs. 2269.78 Crore (as on CoD) as approved by the Commission vide its Order dated 30.11.2018, the ceiling limit as per the above Regulations works out to Rs. 90.79 Crore and the petitioner’s claim till 4th September, 2022 including the claimed mandatory initial spares workout to be only Rs. 78.73 Crore on cash basis which is still 14% less than the allowed limit for Capital Spares. Therefore, the initial spares claimed by the Petitioner in FY 2022-23 till 4th September, 2022 along with earlier approved spares are well within the ceiling limit specified in Regulation 25 of the Regulations, 2020. Since commercial operations w.e.f 03.05.2016, this unit is supplying uninterrupted power to MPPMCL and other long-term customers along with market participants, therefore these spares are essential for smooth operations as already explained in para 6.57 of True-up Petition. The petitioner therefore requests Commission to approve the same.

67. The petitioner submitted that out of the total additional capitalization, an amount of Rs. 3.27 Crore is on account of capitalization of the initial / mandatory spares during FY 2022-23 (till 4th September, 2022) claimed in accordance with Regulation 26.1 (iii) of the Regulations, 2020. The petitioner further submitted that the total expenditure on initial spares is within the prescribed limit of 4% of the plant and machinery cost of the project in accordance with Regulation 25 of the Regulations, 2020.
68. In view of the above provision under the Regulations, the said expenditure claimed by the petitioner capitalized after the cut-off date, therefore, does not fall under the Regulation 26.1 (iii) of the Regulations, 2020 Since, the capital spares of Rs. 3.27 Crore capitalized and claimed by the petitioner are under the original scope of works but capitalized after the cut-off date of the project and Commission has not considered the request of the petitioner for extension of the cut-off date of the project, hence, this amount towards capitalization of initial spares is not allowed under Regulation 26.1 (iii) in this Order at this stage.

d) Coal handling Plant

69. The petitioner submitted that an amount of Rs. 0.16 Crore related to CHP works which pertains to the liability discharged during the year for works which were previously carried out and is now being claimed under Regulation 26.1(i) of the Regulations, 2020.
70. On perusal of claim of additional capitalization towards coal handling plant made by the petitioner, it is observed that the aforesaid works are under the original scope of works but capitalized beyond the cut-off date of the project. The petitioner claimed these expenses under Regulation 26.1(i) which is for additional capitalization within the cut-off date of the project. However, the Commission has not considered the prayer of the petitioner for extension of cut-off date of the project. Therefore, additional capitalization towards coal handling plant capitalized after cut-off date is not covered under provisions of the Regulations, 2020, hence, the aforesaid claim is not allowed in this Order.

e) Other Works

71. The petitioner submitted that out of the total additional capitalization, an amount of Rs. 0.24 Crore on cash basis and Rs 0.04 Crore on accrual basis during FY 2022-23 is claimed for works pertaining to Misc. Electrical works. The aforesaid works completed after the cut-off date of the project. The petitioner has claimed capitalizations towards other works under Regulation 26.1 (ii) of the Regulations, 2020.
72. By affidavit dated 31st January, 2024, the petitioner submitted the details of other works as follow:

Table 11: Detailed break-up of other works claimed by the petitioner (Rs. in Crore)

Head	Amount (Rs. Crore)	Reason
Air Condition & Ventilation System	0.012	A-row ventilation system works- Mechanical works, Ducting, Fabrication of Structural Works & A-Row HVAC system works
AoH Capitalised over FY 21-22 & FY 22-23	0.133	Balance payment towards Refurbishment of Crusher Rotor Assembly.
Misc. BOP Electrical	0.042	Misc Electrical Equipment procured like UPS Battery Rack, Que Manager for CCR etc.
Main plant, Site level and Infra	0.048	Balance civil works of Air Washer building
Total	0.24	

73. On perusal of the above submission of petitioner, it is observed that the aforesaid additional works are capitalized after cut-off date of the project, therefore, these are not covered under the Regulation 26.1 of the Regulations, 2020. Hence, the aforesaid claim is not allowed in this Order.

Additional Capitalization Considered in this Order:

74. As mentioned in the foregoing paragraphs, out of total additional capitalization of Rs. 4.62 Crore claimed on cash basis, the Commission has allowed additional capitalization of Rs. 0.02 Crore towards Ash Handling System during FY 2022-23 in this Order. The details of additional capitalization allowed during FY 2022-23 in this Order are as given below:

Table 12: Additional Capitalization allowed in this Order (Rs. in Crore)

Sr No	Name of Asset/works with specifications	Amount of assets Addition allowed
1	Ash Handling Plant/Ash Disposal	0.02
	Total	0.02

75. Component wise break-up of opening GFA as on 1st April, 2022 and closing GFA as on 31st March, 2023 considered by the Commission in this Order is as given below:

Table 13: Opening & Closing Capital Cost Considered in this Order (Rs. in Crore)

Particular	Opening GFA as on 01.04.2022	Asset Additions allowed during FY 2022-23	Closing GFA as on 31.03.2023
Land and site development	55.48	-	55.48
Civil Works	203.72	-	203.72
Plant & Machinery	3750.95	0.02	3750.97
Furniture & Fixture	7.10	-	7.10
IT Equipment	4.04	-	4.04
Office Equipments	3.80	-	3.80
Vehicles	0.21	-	0.21
Total Capital Cost	4025.30	0.02	4025.32

DEBT –EQUITY RATIO**Petitioner's Submission:**

76. In the subject true up petition, petitioner submitted that:

- i. *It is submitted that, the petitioner in terms of Regulation 33.5 of the Regulations, 2020, has considered the debt-equity ratio of 70:30 for the actual additional capital expenditure incurred in FY 2022-23 till 4th September, 2022. Further, the additional capital expenditure has been funded through the operational cash flows as no external borrowings are being granted to the petitioner's company. The lenders/Committee of Creditors (CoC) who were holding the operational control were initially hesitant to allow JPL to initiate any capital expenditure works. However, with the Petitioner's constant discussions & consistent efforts with the*

lenders stressing the importance of the works which were part of original scope of works and safety and reliability of the plant, the lenders agreed for the execution of the most critical works only with available resources with JPL. Accordingly, the Petitioner has funded the additional capitalization from the operational cash flows.

Provision in Regulation:

77. Regulation 33 of the Regulations, 2020 provides as under:

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

Provided that:

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

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

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

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

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

33.4 In case of the generating station declared under commercial operation prior to 1.4.2019, but where debt: equity ratio has not been determined by the Commission for determination of tariff for the period ending 31.3.2019, the Commission shall

approve the debt : equity in accordance with Regulation 33.1 of these Regulations.

33.5 Any expenditure incurred or projected to be incurred on or after 1.4.2019 as may be admitted by the Commission as additional capital expenditure for determination of tariff, and renovation and modernisation expenditure for life extension shall be serviced in the manner specified in clause 33.1 of this Regulation.

Commission's Analysis

78. Regarding opening balance of capital cost and funding, the Commission has considered closing figures of GFA, Equity and Loan as considered in true-up order dated 29th March, 2023 in Petition No 87/2022 as opening balance in this Order as follows:

**Table 14: Opening Capital Cost and funding considered for FY 2022-23
(Rs. in Crore)**

Sr. No	Particular	Amount
1	Opening Capital Cost	4025.30
2	Opening Equity	1010.49
3	Opening Loan	1821.85

79. With regard to funding of additional capitalisation during FY 2022-23, vide Commission's letter dated 19th December, 2023, the petitioner was asked to inform actual loan and equity infused towards additional capitalisation during FY 2022-23 (till 4th September 2022).
80. By affidavit dated 31st January, 2024 the petitioner submitted that the assets during FY 2022-23 till 4th September, 2022 were capitalized through cash inflow/internal resources of the petitioner. Therefore, no actual loan was availed towards the additional capitalization during FY 2022-23 till 4th September, 2022.
81. In view of the above submission and provisions under Regulation 33.1, the Commission has considered the Debt: Equity ratio of 70:30 for additional capitalization as considered by the petitioner.
82. The detail of additional capitalization allowed during the period and its corresponding Debt and Equity considered by the Commission for FY 2022-23 in this Order are as given below:

Table 15: Additional Capitalization and Funding allowed in this Order:
(Rs. in Crore)

Sr. No.	Particulars	Asset Addition and Source of Funding for FY 2022-23		
		Asset	Loan	Equity
1	Debt : Equity Ratio	70:30		
2	Additions during the year	0.02	0.01	0.01

Annual Capacity (fixed) Charges:

83. Regulation 17 of the Regulations, 2020 provides that the Annual Capacity (fixed) Charges derived on the basis of annual fixed cost (AFC) of a generating station shall consist of following components:

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

a. Return on Equity:**Petitioner's Submission:**

84. While claiming the Return on Equity for FY 2022-23, the petitioner submitted that:

The Opening Equity as on 01.04.2022 has been considered as Closing Equity as on 31.03.2022 as approved in the last true-up Order dated 29.03.2023. The Petitioner has claimed return on equity on the average equity considering the equity infused to fund the additional capital expenditure incurred in FY 2022-23 till 4th September, 2022.

Further, keeping in view that there was no tax liability in FY 2022-23 till 4th September, 2022, the RoE has not been grossed up with the applicable Tax rates and has therefore been claimed at 15.50% as per the above Regulations for FY 2022-23 and as considered by the Commission in its MYT Order dated 08.05.2021.

85. Accordingly, the petitioner claimed the Return on Equity for FY 2022-23 considering base rate of return @15.50% as given below:

Table 16: Return on Equity claimed by the petitioner for FY 2022-23 (Rs Crore)

Sr No	Particulars	As claimed
1	Gross Opening Equity (Normal)	1010.49
2	Less: Adjustment in Opening Equity	0.00

Sr No	Particulars	As claimed
3	Adjustment during the year	0.00
4	Net Opening Equity (Normal)	1010.49
5	Add: Increase in equity due to addition during the year/period	1.39
6	Less: Decrease due to De-capitalization during the year/period	0.00
7	Less: Decrease due to reversal during the year/period	0.00
8	Add: Increase due to discharges during the year/period	0.00
9	Net Closing Equity (Normal)	1011.87
10	Average Equity (Normal)	1011.18
11	Rate of RoE (%)	15.50%
12	Total RoE	156.73

Provision in Regulations:

86. Regarding the Return on Equity, Regulation 34 of the Regulations, 2020, provides as under:

34 . Return on Equity:

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

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

Provided that

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

(ii) in case of existing generating station any of the above requirements are found lacking based on the report submitted by the respective SLDC/RLDC, RoE shall be reduced by 1% for the period for which the deficiency continues.

(iii) in case of a thermal generating station, with effect from 1.04.2020:

(a) rate of return on equity shall be reduced by 0.25% in case of failure to achieve the ramp rate of 1% per minute:

(b) an additional rate of return on equity of 0.25% shall be allowed for every incremental ramp rate of 1% per minute achieved over and above the ramp rate of 1% per minute, subject to ceiling of additional rate of return on equity of 1.00%:

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

Commission's Analysis:

87. Equity balance as on 31st March, 2022 as considered by the Commission in last true-up order dated 29th March, 2022 for FY 2021-22 is considered as the base figure for opening equity balance as on 01st April, 2022 for the project. Further, the Commission has considered normative equity addition of Rs. 0.01 Crore during FY 2022-23 towards additional capitalization allowed in this Order, which is in accordance with the Regulations, 2020.
88. The petitioner has claimed Return on Equity on the base rate of return (15.50%) without considering any tax rate for grossing up the base rate during FY 2022-23, as it has not paid any Tax due to loss incurred by the petitioner's company.
89. Accordingly, the following Return on Equity for FY 2022-23 is worked out by applying the base rate of Return on Equity as given below:

Table 17: Annual Return on Equity for FY 2022-23 allowed in this Order

Sr. No.	Particular	Unit	Amount
1	Opening Equity as on 01.04.2022	Rs. Crore	1010.49
2	Equity Addition During the year till 4.9.2022	Rs. Crore	0.01
3	Closing Equity as on 31.03.2023	Rs. Crore	1010.50
4	Average Equity	Rs. Crore	1010.49
5	Base rate of Return on Equity	%	15.50%
6	Annual Return on Equity	Rs. Crore	156.63

b. Depreciation:**Petitioner's Submission**

90. While claiming the Depreciation for FY 2022-23, the petitioner submitted that in accordance with Regulation 37 of the Regulations, 2020, it has computed Weighted Average Rate of Depreciation for FY 2022-23 till 4th September, 2022 considering rates of Depreciation to the Regulations, 2020.
91. The petitioner has claimed the annual depreciation in the petition as given below:

Table 18: Depreciation claimed by the petitioner for FY 2022-23 till 4th September, 2022 (Rs. in Crore)

Sr No	Particulars	As claimed now by JPL
1	Opening Capital Cost	4025.30
2	Closing Capital Cost	4029.92
3	Average Capital Cost	4027.61
4	Freehold land	54.02
5	Rate of depreciation	5.13%

Sr No	Particulars	As claimed now by JPL
6	Depreciation (for the period)	206.50
7	Proportionate Depreciation (till 4 th September, 2022)	88.82

Provision in Regulations:

92. Regulation 37 of the Regulations, 2020 provides as under:

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

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

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

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

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

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

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

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

37.4 Land other than the land held under lease and the land for reservoir in case of hydro generating station shall not be a depreciable asset and its cost shall be

excluded from the capital cost while computing depreciable value of the asset.

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

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

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

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

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

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

Commission's Analysis:

93. For determining the annual Depreciation, the Commission has considered the closing Gross Fixed Assets as on 31st March, 2022, as considered in the last true-up order dated 29th March, 2023 for FY 2021-22, as opening Gross Fixed Assets as on 1st April, 2022 in this Order.
94. The closing Gross Fixed Assets as on 31st March, 2023, is worked out after allowing the asset additions of Rs. 0.02 Crore towards additional capitalization during the year as allowed in this Order.
95. The petitioner has filed the Assets cum Depreciation Register, wherein the weighted average depreciation rate of 5.13% is worked out based on the depreciation rates specified in the Regulations, 2020. The aforesaid weighted average rate of depreciation

worked out by the petitioner by considering the additional capitalization claimed during FY 2022-23. Therefore, the Commission is considering the same weighted average rate of interest as worked out by the petitioner in the subject petition, i.e., @ 5.13%.

96. Accordingly, the depreciation is worked out in the subject petition as given below:

Table 19: Annual Depreciation for FY 2022-23 admitted in this Order

Sr. No.	Particular	Unit	Amount
1	Opening Gross Block as on 1.4.2022	Rs Crore	4025.30
2	Assets Addition till 4.9.2022	Rs Crore	0.02
3	Closing Gross Block	Rs Crore	4025.32
4	Average Gross Block	Rs Crore	4025.31
5	Weighted Average Rate of Depreciation	%	5.13%
6	Annual Depreciation amount	Rs Crore	206.50
7	Depreciation proportionate to 157 days till 4 th September, 2022	Rs Crore	88.82
8	Opening Cumulative Depreciation as on 1.4.2022	Rs Crore	1193.59
9	Closing Cumulative Depreciation as on 04.09.2022	Rs Crore	1282.41

c. Interest on loan Capital:

Petitioner's Submission:

97. While claiming the Interest on Loan for FY 2022-23, the petitioner submitted that:

The Opening Loan as on 01.04.2022 has been considered as Closing Loan as on 31.03.2022 as approved in the Order dated 29.03.2023. With regard to rate of interest, Regulation 36 of the Regulations, 2020 stipulates that the rate of interest shall be weighted average rate of interest calculated on the basis of the actual loan portfolio after providing appropriate adjustment for interest capitalized. Accordingly, the Petitioner has considered the actual Weighted Average Rate of Interest (hereinafter referred as 'WAROI') for FY 2022-23 till 4th September, 2022 as 14.12% after deducting the Penal Interest for computing interest charges for FY 2022-23 till 4th September, 2022 which has also been considered by the Commission in its MYT Order dated 08.05.2021. The repayment for the year is being considered equal to the Depreciation calculated for the respective year. The interest on loan claimed vis-à-vis that approved in the MYT Order dated 08.05.2021 is as shown below:

98. In subject petition, the petitioner has claimed interest on loan as given below:

Table 20: Interest on Loan Claimed by the petitioner till 4th September, 2022 (Rs in Crore)

Sr. No	Particulars	As claimed now by JPL
1.	Net Normative loan – Opening	1821.84
2.	Add: Increase due to addition during the year/period	3.23
3.	Less: Decrease due to de-capitalization during the year/ period	-
4.	Add: Increase due to discharges during the year/period	-
5.	Less: Decrease due to reversal/repayment during the year/period	88.79
6.	Net Normative loan – Closing	1736.28
7.	Average Normative Loan	1779.06
8.	Weighted average Rate of Interest of actual Loans	14.12%
9.	Interest on Normative loan	251.29

Provision in Regulations:

99. With regard to Interest on Loan Capital, Regulation 36 of the Regulations 2020, provides as under:

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

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

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

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

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

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

shall be considered.

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

Commission's Analysis:

100. For determination of interest on term loan, closing loan balance as on 31st March, 2022 as considered in the Commission's true-up order for FY 2021-22 issued on 29th March, 2023 is considered as the opening loan balance as on 1st April, 2022.
101. Further, the Commission has considered the normative loan addition of Rs. 0.01 Crore during FY 2022-23 towards additional capitalization allowed in this Order.
102. With regard to weighted average rate of interest filed in the petition, vide letter dated 19th December, 2023, the petitioner was asked to file detailed computation of actual weighted average rate of interest with supporting documents such as banker's certificates in respect of actual weighted average rate of interest claimed in the petition.
103. By affidavit dated 31st January, 2024, the petitioner broadly submitted the following:

The petitioner submits that the weighted average rate of interest on term loan has been worked out as 14.12% in the Petition as per the last applicable interest rates levied by the Bankers excluding the penal interest. It is further submitted that Commission has in the past approved the same and it is requested that the same may be considered for FY 2022-23 as well. Further, the petitioner respectfully submits that it hasn't claimed any penalty due to default in repayment or interest on interest as part of interest on loan amount in the Petition.

104. In last true up Order dated 29th March, 2023, the Commission had observed that the weighted average rate of interest was on higher side, therefore the petitioner was directed to review existing weighted average rate of interest on loans and explore the possibilities of refinancing/restructuring of loans. However as per Regulations, 2020, the Commission has considered the weighted average rate of interest as 14.12% for FY 2022-23 as filed by the petitioner. The repayment equivalent to depreciation during the period till 4.9.2022 is considered as per the provision under the Regulations, 2020.
105. It is once again brought to the notice of the petitioner that Regulation 57 of the Regulations, 2020 provides that:
57.1 If re-financing or restructuring of loan by the generating company results in net savings on interest after accounting for cost associated with such refinancing or restructuring, the same shall be shared between the beneficiaries and the

generating company in the ratio of 50:50.”

106. In light of the above Regulation, the petitioner is again directed to review existing weighted average rate of interest on loans and explore the possibilities of refinancing/restructuring of loans.
107. In view of the above, the interest on loan is worked out by the Commission based on the following:
- Gross normative opening loan of Rs. 1821.85 Crore has been considered as per last true-up order dated 29th March, 2023.
 - Loan additions of Rs 0.01 Crore (70% of add-cap approved above) is considered.
 - Repayment of loan equal to depreciation corresponding to 157 days (till 4th September, 2022) is considered.
 - Weighted average rate of interest @ 14.12% filed by the petitioner is considered.
108. Based on the above, the annual interest on loan is worked out as given below:

Table 21: Annual Interest on Loan for FY 2022-23 allowed in this Order

Sr. No.	Particulars	Unit	Amount
1	Opening Loan as on 1.4.2022	Rs Crore	1821.85
2	Loan Addition	Rs Crore	0.01
3	Repayment during the Year considered upto 4.09.22	Rs Crore	88.82
4	Closing Loan	Rs Crore	1733.04
5	Average Loan	Rs Crore	1777.45
6	Weighted average Rate of Interest	%	14.12%
7	Annual Interest Amount on Loan	Rs Crore	250.98

d. Operation and Maintenance Expenses:

Petitioner's Submission:

109. The petitioner filed the Operation and Maintenance expenses for FY 2022-23 in the petition as given below:

Table 22: O&M Expenses claimed by the petitioner (Rs. in Crore)

Particulars	FY 2022-23
Annual O & M Expenses	134.82

Provision in Regulations:

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

Regulations, 2020 for the generating Unit of “600 MW Series” for FY 2022-23 which are as given below:

Table 23: Normative O&M Expenses for FY 2022-23

Units (MW)	Rs. Lakh/MW/Year
600/660 MW Series	22.47

Commission’s Analysis:

111. The Commission has worked out the annual Operation and Maintenance Expenses as per the norms prescribed under the Regulations, 2020 for the generating unit of “600 MW” as given below:

Table 24: O& M Expenses for Unit No 1 allowed in this Order (Rs. in Crore)

Particular	Units	FY 2022-23
Generating Unit Capacity	MW	600
Per MW O&M Expenses Norms	Rs in Lakh/MW	22.47
Annual O&M expenses	Rs in Crore	134.82

**e. Interest on Working Capital
Petitioner Submission:**

112. The petitioner claimed the interest on working capital in the subject petition as under:

**Table 25: Interest on Working Capital claimed by the petitioner for FY 2022-23 till
4th September,22 (Rs. in Crore)**

Sr No	Particulars	As claimed
1	Cost of Coal/Lignite	167.01
2	Cost of Secondary Fuel Oil	1.90
3	O & M Expenses	11.24
4	Maintenance Spares	26.96
5	Receivables	224.67
6	Total Working Capital	431.78
7	Rate of Interest	10.50%
8	Interest on Working Capital	45.34

Provision in Regulations:

113. Regulation 38 of the Regulations, 2020 regarding working capital for coal based generating stations provides that:

38.1 *“The Working Capital shall cover:*

(1) Coal- based thermal generating stations

- (i) Cost of coal towards stock, if applicable, for 15 days for pit-head generating stations and 30 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal stock storage capacity whichever is lower;*
- (ii) Advance payment for 30 days towards cost of coal for generation corresponding to the normative annual plant availability factor;*
- (iii) Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil;*
- (iv) Maintenance spares @ 20% of operation and maintenance expenses specified in Regulation 39 and 40 of these Regulations;*
- (v) Receivables equivalent to 45 days of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor; and*
- (vi) Operation and maintenance expenses for one month.*

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

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

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

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

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

Commission's Analysis:

114. In the above-mentioned provision under the Regulations, 2020, it is mentioned that no fuel price escalation shall be provided during the tariff period for calculating the working capital. The Regulation further provides that the interest on working capital shall be payable on normative basis notwithstanding that the generating company has not taken loan for working capital from any outside agency. The working capital is worked out as per the provisions under the Regulations, 2020 as given below:

- (i) Two months' Cost of coal, and Two months' Cost of secondary fuel of main secondary fuel oil equivalent to normative plant availability factor as considered in Commission's MYT Order dated 8th May, 2021 in petition No. 47 of 2020 are considered as follows:

Particulars	FY 2022-23 (Rs in Crore)
Cost of Coal for 60 Days	167.01
Cost of Secondary Fuel Oil for two Months	1.90

- (ii) Maintenance spares as considered in Commission's MYT Order dated 8th May, 2021 in petition No. 47 of 2020 as stated below is considered:

Particulars	FY 2022-23 (Rs in Crore)
Maintenance Spares (20% of O&M Expenses)	26.96

- (iii) O&M expenses for one month for the purpose of working capital as considered in Commission's MYT Order dated 8th May, 2021 is considered:

Particulars	FY 2022-23 (Rs in Crore)
O & M Expenses for One Month	11.24

- (iv) Receivable have been worked out on the basis of 45 Days of fixed and energy charges as given below:

Particulars	FY 2022-23 (Rs in Crore)
Variable Charges- 45 Days (As considered on Order dated 8 th May, 2021)	126.66
Annual Fixed Charges- 45 Days (Worked out in this Order)	97.92
Total	224.58

115. Regarding the rate of interest on working capital, Regulation 38.3 of the Regulations,

2020 provides that:

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

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

116. With regard to Bank Rate, Regulation 3.1 (7) of the Regulations, 2020 provides that Bank rate means the one-year marginal cost of lending rate (MCLR) of the State Bank of India issued from time to time plus 350 basis points. Accordingly, one-year MCLR of State Bank of India applicable as on 1.4.2021 is 7.00%, therefore, the interest on the working capital is considered 10.50% (7.00% + 3.50%) in this order.
117. Considering the above, the interest on working capital worked out by the Commission for FY 2022-23 in this true-up order is as given below:

Table 26: Interest on Working Capital for FY 2022-23 allowed in this Order (Rs. Crore)

Sr. No.	Particulars	Norms	FY 2022-23
1	Cost of Coal/Lignite	60 Days of Coal Purchase (As per Regulation 38.1 (1) (i & ii))	167.01
2	Cost of Main Secondary Fuel Oil	2 months of Sec Oil Purchase	1.90
3	O & M expenses	1 month of O&M	11.24
4	Maintenance Spares	20% of O&M	26.96
5	Receivables	45 days of Total Revenue	224.58
6	Total Working Capital		431.69
7	Rate of Interest (SBI MCLR)	%	10.50%
8	Interest on Working Capital		45.33

f. Non-Tariff Income:

118. In the subject true-up petition, the petitioner filed Rs. 0.0001 Crore (50% of total non-tariff income) as non-tariff income during the year.

Provision in Regulations:

119. Regulation 58 of the Regulations, 2020 provides as under:

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

company on annual basis:

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

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

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

Commission's Analysis:

120. On perusal of the details related to non-tariff income, it was observed by the Commission that the petitioner has filed non-tariff income of Rs. 0.0001 Crore during FY 2022-23, whereas, in Note 23 of Annual Audited Accounts "other income" is shown as Rs. 10.05 Crore. Vide letter dated 19th December, 2023, the petitioner was asked to explain the reasons for aforesaid discrepancy in non-tariff income/other income recorded in Annual Audited Accounts vis-a-vis filed in the subject petition. The petitioner was also asked to file detailed break-up of non-tariff income in accordance with the Regulation 58.1 of the Regulations, 2020 duly reconciled with the Annual Audited Accounts.
121. By affidavit dated 31st January, 2024 the petitioner filed its reply along with the reconciliation of non-tariff income with Annual Audited Accounts of FY 2022-23 as given below:

The petitioner submits that the claim of total non-tariff income of Rs. 0.0001 Crore (Rs. Two thousand) in the Petition corresponds to sum of sale of scrap (Empty drums/ used Oil) as recorded in the Note 23 of Annual Audited Accounts for FY 2022-23. With regard to the reconciliation of the petitioner's claim of non-tariff income with the Annual Audited Accounts for FY 2022-23, the petitioner submits the following item wise justification for non-consideration of the same as non-tariff income:

Table 27: Justification for Petitioner's claim of Non-Tariff Income for FY 2022-23

S. No	Particular/ Description	Amount in Rs. Crore	Remark/ Justification
1	Interest on fixed deposit	9.98	The same has not been considered as non-tariff income as the interest amount received is on account of investments made out of Petitioner's RoE. From the Annual Audited Accounts of the Petitioner, it can be observed that all the cash generated by the Petitioner's company (from the Return on Equity allowed by the Commission) has been lying in the accounts of the company and the Petitioner is neither involved in any other activity other than sale of electricity. Therefore, the above interest amount received is purely out of Petitioner's own funds and is not considered as non-tariff income as per Regulation 58 of Regulations, 2020.
2	Scrap Sale	0.0002	Claimed as non-tariff income as per regulation 58 of Regulations, 2020.
3	Other Miscellaneous Receipts	0.07	It is submitted that Rs. 0.07 Crore pertains to insurance claim received by the company under its Marine Insurance policy. Railway Wagons were derailed outside plant in FY 21-22 and company has lodged a claim with Insurance company towards the loss incurred. The receipt of such claim is reflected in Audited accounts. It may please be noted that insurance receipts do not form part of NTI as per Regulations, 2020.
	Total	10.05	

Keeping in view of the above submissions, the total non-tariff income of the Petitioner for FY 2022-23 till 4th September, 2022 is Rs. 0.0002 Crore (Rs. Two thousand) and as per Regulation 58.1 of the Regulations, 2020, the Petitioner is entitled to retain 50% of the above non-tariff income. Accordingly, the Petitioner requests the Commission to

consider the sharing of non-tariff income of Rs. 0.0001 Cr in 50:50 ratios between Petitioner and Beneficiaries.

122. Since, Regulation 58.1 mentions that the interest or dividend earned from investments made out of Return on Equity corresponding to the regulated business of the Generating Company shall not be included in Non-Tariff Income, therefore, non-tariff income of only scrap sale of Rs. 0.0002 Crore claimed by the petitioner for FY 2022-23 is allowed in accordance to the Regulations, 2020 in this Order. The break-up of non-tariff income considered is as given below:

Table 28: Non-tariff Income for FY 2022-23 allowed in this Order: (Rs in Crore)

Sl. No.	Particulars	Amount
1	Scrap Sale	0.0002
	Total Non-tariff Income during FY 2022-23	0.0002
	50% of Non-tariff Income	Rs 0.0001 Crore

Other Charges:

123. In the subject true-up petition, the petitioner claimed following other charges:
- (i) Allow to recover E.D., Water Charges, WRLDC Fees & Charges and Cess on auxiliary power consumption and other taxes, if any, levied by the Statutory Authorities from the beneficiaries on submission of documentary evidence;
 - (ii) Allow to recover the fees paid to the Hon'ble Commission and publication expenses from the beneficiaries on submission of documentary evidence;
124. Regarding the other charges, In Para 144 to 146 of the MYT order dated 8th May, 2021, the following was mentioned by the Commission:
- In view of above, the petitioner is allowed to recover the fee paid to MPERC and publication expenses as per Regulation 65.1 (i) of the Regulations, 2020 on submission of documentary evidence.
 - In view of the above, the petitioner is allowed to recover the electricity duty on plant auxiliary consumption, Energy Development Cess on energy supplied to MPPMCL and water charges paid to Water Resources Department, Government of MP as per Regulation 65.2 of the Regulations, 2020 on submission of documentary evidence.
125. With regard to Application fee, publication expenses and other statutory charges, Regulation 65 of the Regulations, 2020 provides as under:

65.1 "The following fees, charges and expenses shall be reimbursed directly by the

beneficiary in the manner specified herein:

- 1. The application filing fee and the expenses incurred on publication of notices in the application for approval of tariff, may in the discretion of the Commission, be allowed to be recovered by the generating company directly from the beneficiaries.*
- 2. The Commission may, for the reasons to be recorded in writing and after hearing the affected parties, allow reimbursement of any fee or expenses, as may be considered necessary.*
- 3. SLDC Charges and Transmission Charges as determined by the Commission shall be considered as expenses, if payable by the generating stations.*
- 4. RLDC/NLDC charges as determined by the Central Commission shall also be considered as expenses, if payable by the generating station.*

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

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

126. In view of the above, the petitioner is allowed to recover the fee paid to MPERC and publication expenses as per Regulation 65.1 (i) of the Regulations, 2020 on submission of documentary evidence.
127. The petitioner is also allowed to recover the electricity duty on plant auxiliary consumption, Energy Development Cess on energy supplied to MPPMCL and water charges paid to Water Resources Department, Government of MP as per the provisions under the Regulations, 2020 and amendment thereof on submission of documentary evidence.

Unrecovered Depreciation:

Petitioner's Submission

128. The petitioner submitted that in its previous filings, it has inadvertently included an amount of Rs. 1.47 Crore pertaining to Leased Land under the Freehold Land. As a

result, the Petitioner inadvertently missed out on claiming depreciation on the leased land which is allowable as per the Regulations, 2015 and the Regulations 2020. The petitioner has now requested to approve un-recovered depreciation amounting to Rs. 0.29 Crore towards the Depreciation of Lease Land pertaining to the period from CoD to FY 2022-23 till 4th September, 2022.

Commission's Analysis

129. The petitioner has submitted that it has inadvertently not claimed depreciation on the leased land since CoD of the project and hence now claimed Rs. 0.29 Crore towards depreciation on leased land from CoD to FY 2022-23 till 4th September, 2022 in subject true-up petition. The generating unit of petitioner power project achieved COD on 3rd May, 2016.
130. It is observed that the petitioner has filed Appeal No 547/2023 against the Commission's Order dated 29th March, 2023 in P No 87 of 2022 regarding this issue of unrecovered depreciation pertaining to lease land, which is sub-judice before the Hon'ble Appellate Tribunal for Electricity (APTEL). Since this issue has not attained any finality, hence, the Commission has not allowed this amount in this Order.

Fly Ash Utilization & Ash Transportation Expenses:

Petitioner's Submission

131. With regard to expenditure incurred on fly ash utilization and transportation expenses, petitioner has submitted that in order to comply with MOEFCC Notification regarding utilization of fly ash, it has incurred a cost of Rs. 1.06 Crore in FY 2022-2023 till 4th September, 2022. The actual bills raised to MPPMCL in support to the expenses incurred is also submitted with the subject petition. The details of expenses incurred w.r.t transportation of fly ash is as follows:

Table 29: Expenses incurred on account of transportation of Ash (Rs. Crore)

Particulars	Total Ash utilization expenses	Proportionately claimed from MPPMCL
<i>FY 2022-23 till 4th Sept, 2022 - 5%</i>	1.06	0.21
<i>FY 2022-23 till 4th Sept, 2022 - 30%</i>		0.03

132. The petitioner submitted that it had claimed the proportionate share of such expenses from MPPMCL for FY 2022-23 till 4th September, 2022 against Ash Transportation are admissible as per article 12 of PPA and MPERC Order dated 29.11.2021 (Petition no

26 of 2021 of M/s. Lanco Amarkantak Power Ltd Vs. MPPMCL & Ors). In view of the above, the Petitioner has prayed to allow reimbursement of the cost incurred for transportation of Ash on monthly basis in proportion to the contracted capacity with MPPMCL in FY 2022-23 till 4th September, 2022.

Commission's Analysis

133. On perusal of the details regarding expenditure incurred towards ash utilization and transportation expenses, it is observed that the petitioner has incurred Rs. 1.06 Crore during FY 2022-23 till 4th September'22 towards fly ash transportation in compliance with the MOEFCC Fly Ash Notification, 2016 and claimed proportionate expenditure from MPPMCL corresponding to the contracted capacity on long term basis.
134. It is pertinent to mentioned that the Commission vide order dated 29.11.2021 in the matter of Lanco Amarkantak vs MPPMCL in petition No 26 of 2021, had considered aforesaid expenses under 'change in law' as statutory expenses and allowed generating companies to recover such expenses directly from the procurer / MPPMCL as per provisions under the said notification. In para 26 of the aforesaid order mentioned the following:

“26. As a matter of fact, the aforesaid MoEFCC notification dated 25.01.2016 is applicable on all the thermal power plants also and similar situation for transportation of fly ash like in the subject matter may arise for other coal based thermal power generators in the State also. Pursuant to the aforesaid notification by the Central Government, the generating companies are bound to incur expenditure for compliance with the above-mentioned directives issued by MoEFCC. The Commission has initiated the process for appropriate amendment in MPERC Regulations, 2020 to incorporate appropriate provision in this regard. However, the amendment in Regulations shall be applicable from the date of its notification. Therefore, the Commission in exercise of the powers under the provisions of MPERC Regulations, 2020 decides that the actual additional expenditure incurred/ to be incurred by the coal based thermal power plants towards transportation of fly ash in terms of the aforesaid MOEFCC Notification shall be considered under “Change in Law” as statutory expenses and the generating companies are eligible to recover such expenses directly from the procurer / MPPMCL as per provisions under the said notification.” However, the recovery of the ash transportation expenses by the petitioner/ generating company shall be subject to fulfillment of following conditions by the petitioner/generating company and verification of the following conditions for each station by the procurer / MP Power Management Company Ltd”

135. In view of the aforesaid order, it is observed that the MOEFCC notification for 100%

utilization of fly ash generated in power station has been declared under 'change in law' event and Commission in aforesaid order dated 29.11.2021 in P No. 26 of 2021 had also recognized the aforesaid expenditure under the change in law event. Further, with respect to Fly Ash Transportation Expenses, proviso 65.3 of the 2nd Amendment of the Regulations, 2020 provides that:

65.3 Expenses towards Fly Ash Utilization & transportation shall be payable in accordance to the directives issued by Government of India, Ministry of Environment, Forest & Climate Change vide Notification No. S.O. 5481 (E) dated 31.12.2021 and subsequent amendment issued from time to time.

Provided that the generating company shall maintain separate accounts/records for expenses towards Fly ash Utilization & transportation reconciled with the Annual Audited Accounts and duly certified by the Statutory Auditor. The generating company shall submit complete details of aforesaid expenses to the procurer in Form TPS 19 A along with supporting documents.

136. The petitioner is allowed to recover fly ash utilization and transportation expenses in accordance to the Regulation 65.3 of the 2nd Amendment to the Tariff Regulations, 2020 on actual basis from MPPMCL subject to submission of all details/documents in this regard.

Late Payment Surcharge on the GST Amount

Petitioner's Submission:

137. The petitioner in the subject petition has requested the Commission to allow recovery of Carrying Cost of an amount of Rs. 11.62 Crore which was deducted from monthly bills against GST of Rs. 15.25 Crore (as per the order of Hon'ble NCLT, Kolkata). The petitioner also submitted that deducted amount of Rs. 15.25 Crore has been paid by MPPMCL on 14.07.2023.

Commission's Analysis:

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

Further, Respondent unilaterally adjusted Rs 82.48 Crore against Liquidated Damages along with GST & Penalty thereon (due to delay in CoD) from the monthly invoices though the Respondent didn't suffer any loss due to the delay in CoD as evident from 3% scheduling thereafter. Further, disallowance of IDC on the same account, penalised the Petitioner twice for the same delay which is squarely against the principle of natural justice. The Respondent has set-off the GST amounting to Rs. 15.25 Crore and LD of Rs. 67.23 Crore from monthly bills of the Petitioner

without prior consent of the Petitioner. Subsequent to the NCLAT Order dated 16th November 2022, GST amount of Rs. 15.25 Crore along with LPSC was payable by the Respondent to the Petitioner. After rigorous follow up, MPPMCL has paid only principle amount i.e. Rs. 15.25 Crore to the Petitioner on 14.07.2023, however, LPSC amount of Rs. 11.62 Crore against the same is still pending.

139. Regarding Late payment Surcharge (LPSC), by affidavit dated 11th January, 2024, MPPMCL submitted that:

“It is submitted that due to delay in commissioning of the generating station liquidated damages were levied on the Petitioner. The levy of such damages was never challenged by the Petitioner and thus became final. The answering respondent paid GST on the same in terms of the demand raised by the department of revenue intelligence, where the Petitioner refused to participate. It is submitted that after the clarification of liability of GST on liquidated damages that no GST is to be levied on liquidated damages, the GST amount was returned to the Petitioner. Since the clarification, the Petitioner has been insisting on late payment surcharge on the GST amount refunded.

It is settled law that interest can be claimed only if any wrongdoing can be attributed to the party (Clariant International Ltd & Anr vs SEBI (2004) 8 SCC 524) Para 30). It is not in dispute that the payment of GST was in terms of the demand by the department of revenue intelligence, on the levy of liquidated damages. Admittedly the levy of liquidated damages for delay was never challenged. The consequent imposition of tax therefore cannot be independently challenged. It is submitted that after the law on levy of GST on liquidated damages was clarified the amount was refunded; demand for interest if any has to be raised with the GST authorities and not with MPPMCL”

140. In view of the above submissions of Petitioner and Respondent No.1, the issue related to dispute on payment of LPSC on the GST amount is beyond the scope of the Regulations, 2020 and therefore beyond the scope of this true-up petition. The petitioner and Respondent are required to follow the Dispute Resolution Process under the PPA in this regard.

Summary of Annual Capacity (fixed) Charges:

141. The details of the Annual Capacity (fixed) Charges allowed in this true-up order vis-a-vis those determined in the MYT order dated 8th May, 2021 at normative Plant Availability Factor are summarized in the following table:

Table 30: Head wise Annual Capacity Charges allowed in this Order:- (Rs in Crore)

S. No.	Particulars	MYT Order dated 8 th May, 2021 for FY 2022-23	Allowed for FY 2022-23 in this Order	True-up amount
		A	B	C=B-A
1	Return on Equity	153.14	156.63	3.49
2	Interest on Loan Capital	237.02	250.98	13.96
3	Depreciation	202.37	206.50	4.13
4	O&M Expenses	134.82	134.82	0.00
5	Interest on Working Capital	48.31	45.33	-2.98
6	Total Annual Capacity (Fixed) Charges	775.66	794.26	18.60
7	Less:- Non Tariff Charges	0.11	0.0001	-0.11
8	Net Annual Capacity (Fixed) Charges	775.55	794.25	18.70
9	Annual Capacity (Fixed) Charges proportionate to number of days till 4th September, 2022 (157 Days)	333.59	341.64	8.05
10	Annual Capacity(fixed) Charge corresponding to 30% of the installed capacity of the Units	100.08	102.49	2.41

142. The Annual Capacity (Fixed) Charges as determined above from 1st April, 2022 to 4th September, 2022 are at Normative Availability and these charges are based on Annual Audited Accounts of Jhabua Power Ltd. till 4th September, 2022 submitted by the petitioner.

143. The above Annual Capacity (Fixed) Charges are determined corresponding to the contracted capacity under long term PPA. The recovery of Annual Capacity (Fixed) Charges shall be made by the petitioner in accordance with Clause 42.2 of the Regulations, 2020 on pro rata basis with respect to actual Annual PAF.

144. Regarding the performance-based true-up of energy charges on account of controllable parameters, Regulation 56.1 of the Regulations, 2020 provides that the generating company shall work out gains based on the actual performance of applicable controllable parameters as under:

- Station Heat rate
- Secondary Fuel Oil Consumption
- Auxiliary Energy Consumption

145. In view of the above Regulations, it was observed by the Commission that the

generating company shall carry out the truing-up of tariff of generating station based on the controllable performance parameters like Station Heat Rate, Secondary fuel oil consumption and Auxiliary Energy consumption. Vide letter dated 19th December, 2023, the petitioner was asked to file annual details of aforesaid performance parameters actually achieved vis-à-vis normative parameters under the Regulations, 2020. The petitioner was also asked to file the details of financial gain till 4th September, 2022, if any, on account of controllable parameters and shared with the beneficiaries in light of the Regulations 56.2 of the Regulations, 2020.

146. In response to above, by affidavit dated 31st January, 2024, the petitioner submitted the following:

The details of the Controllable Performance Parameters Viz. Station Heat Rate, Secondary fuel oil consumption and Auxiliary Energy Consumption actually achieved vis-a-vis normative parameters under Regulations, 2020 is attached. Further it can be observed that there has been no gain to the Petitioner on account of actual performance parameters for the period FY 2022-23 till 4th September, 2022”.

147. On perusal of the details of actual operating parameters vis-à-vis normative parameters filed by the petitioner, it is observed that the petitioner incurred loss on account of the inferior performance and poor actual operating parameters achieved by it during the period from 1.4.2022 till 4.9.2022.
148. The Regulation 56.2 of the Regulations, 2020 provides that the financial gains by a generating company on account of controllable parameters shall be shared between generating company and the beneficiaries in the ratio of 50:50 on annual basis. The aforesaid Regulations do not provide for sharing of loss incurred by the generating company. Therefore, the loss incurred by the petitioner on account of inferior operating parameters shall not be passed on to the beneficiary.

Implementation of the Order

149. The petitioner must take steps to implement the order after giving seven days public notice in accordance with clause 1.30 of MPERC (Details to be furnished and fee payable by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004 and its amendments and recalculate its bills for the energy supplied to Distribution Companies of the State/ M.P. Power Management Company Ltd. since 1st April, 2022 to 4th September, 2022. The petitioner is also directed to provide information to the Commission in support of having complied with this Order.

150. The deficit amount as a result of this Order shall be recovered from MP Power Management Company Ltd. / three Distribution Companies of the state in terms of applicable Regulation in six equal monthly installments during FY 2024-25.

151. With the above directions, this Petition No. 61 of 2023 is disposed of.

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S.P.S Parihar)
Chairman

Date: 5th March, 2024

Place: Bhopal

Annexure-I

Petitioner's Reply on the response of the Respondent No.1 (MPPMCL) along with observations:

MPPMCL's Response-

In terms of Section 79(1) (a) of the Act, Tariff for generating stations owned and controlled by the Central Government are determined by the Ld. Central Electricity Regulatory Commission. However, it is also important to note that tariff determined of a generating station is undertaken on projection basis at the beginning of a control period. It is submitted that tariff determined on projection basis is true-up for actual expenditures however tariff once determined cannot be subject to redetermination. The tariff determined by this Commission in terms of the Regulations is valid for the period from 1st April 2019 to 31st March 2024 and notwithstanding the change in shareholding pattern, the tariff cannot be determined. As a corollary, true-up exercise for the entire control period would also have to be undertaken by this Commission and piecemeal true-up exercise proposed by the petitioner is illegal and is liable to be rejected.

True-up of the tariff determined can only falls under the purview of only such Commission which originally determined the tariff in accordance with extant laws. There is no provision either under the CERC Regulation or Regulations framed by this Commission or under the Act wherein true-up for part of the control period becomes subject matter of a different commission. It is submitted that the provisions of the Act, the Rules and the Regulations framed thereunder would have to be interested harmoniously and therefore tariff determination would continue to be in terms of regulations applicable at the beginning of the control period.

That the contention of the Petitioner that the true up of tariff ought to be only till 04.09.2022 after which the true up would be done by the Ld. CERC cannot be accepted in the scheme of the Act or the extant regulations. Regulation 9.1 of the Regulations clearly states as under :-

“9.1 The Commission shall define Tariff period for the generating company from time to time. The principles for Tariff determination shall be applicable for the duration of the Tariff period. The principles that guide Tariff determination for the next Tariff period shall be valid for a period from 1st April, 2019 upto 31st March, 2024.”

Further, true-up of such tariff year-on-year is to be carried out in terms of Regulations 9.4 and 9.8 of the Regulations, 2020.

That it is clear that when tariff of a generating company is determined by this Commission, the true up for the same would also have to be determined by this Commission. It is absurd to suggest that for the Petitioner when the tariff has been determined by this Commission in terms of the Regulations, 2020. Then the true up of that tariff would be undertaken in terms of the CERC Tariff Regulations by the Ld. CERC.

That not just limited to the above grounds, it is pertinent to note that as elaborated hereunder, the capital cost for the Petitioner has changed drastically after NTPC acquired it through the resolution process under IBC. The same needs reconsideration as in the absence of the same, the tariff recovered would be exponentially higher than the actual expenditure. However, for the purposes of the present subject petition, this Commission ought to direct the Petitioners to file for true-up of the entire period FY22-23 and not just until 04.09.2022.

Petitioner's Reply-

The averments made by the Respondent are denied and disputed. The Petitioner submits that the True-up of Tariff for FY 2022-23 till 4th September, 2022 has been filed because w.e.f. 05.09.2022 i.e Transfer Date, Jurisdiction is a question of law and in the case of statutory commissions, it has to flow from the Statue itself, namely the Electricity Act, 2003. The Act clearly demarcates the jurisdiction of the Central Commission and the State Commissions under Sections 79 and 86. Since 05.09.2022, the status of Jhabua Power has changed from an IPP to a company owned or controlled by Central Government, jurisdiction over the tariff of Jhabua Power can only be exercised by the CERC and any tariff petition subsequent to 04.09.2022 must be governed by CERC (Terms and Conditions of Tariff) Regulations, 2019. In view of the above, the Petitioner is right in filing the true-up till 4th September, 2022 and requests the Commission to approve the additional capitalization claimed in the Petition till 4th September, 2022.

Observation-

The petitioner has submitted that after acquisition of project by NTPC, it has become central generating station and come under the jurisdiction of the CERC under Section 79 (1) (a) of the Electricity Act, 2003. In support of its contention, the petitioner by affidavit dated 13th February, 2024 filed legal opinion in this regard. The Commission has considered the legal opinion and concluded that Central Electricity Regulatory Commission under Section 79(1)(a) of the Electricity Act 2003 has exclusive jurisdiction to regulate tariff of generating company owned and controlled by the Central Government.

The Commission has examined the true up tariff petition thoroughly in accordance to the provisions under the Regulations, 2020, Annual Audited Accounts of the petitioner for FY 2022-23 (till 4th September, 2022), Asset-cum-Depreciation Register for FY 2022-23 (till 4th September, 2022) and other supplementary submissions filed by the petitioner and other documents placed on record by the petitioner.

MPPMCL's Response-

That admittedly, the cut-off date for the plant was 31.03.2019. In the True-up petition, as has been clearly recorded in Paragraph 7 of the Review Order dated 27.12.2019, the true-up was sought for the FY 2019-20 in accordance with Regulation 9.4 of the Regulations, 2020.

In the subject petition it is clear that the cut-off date for the plant is 31.03.2019 and the additional capital expenditure claim is incurred post that can be allowed only if they are in accordance with Regulation 27.2. Since the additional capitalisation claimed have been incurred after the cut-off date and is not in accordance with Regulation 27.2 of the extant Regulations, the claims are untenable as per the scheme of the Regulations, 2020.

It is submitted that all the terms i.e. “Cut-off Date” “controllable factors” and “uncontrollable factors” are defined in the extant tariff regulations. It is settled law that the Regulations once notified are binding on all stakeholders including the Commission. Therefore, “Cut-off Date” cannot be extended as a matter of routine and such extension is only possible if the project is impacted by “uncontrollable factors”. While the definition of “uncontrollable factors” is an inclusive definition, what would constitute “uncontrollable factors” shall have to be guided by the illustrated heads in the definition which are Force Majeure Events, Change in Law, Time and cost over-runs on account of land acquisition except where the delay is attributable to the generating company. It is submitted that ‘includes’ in the definition of the “uncontrollable factors” would have to be interpreted *ejusdem generis* and financial difficulty of the generating company cannot be termed as an “uncontrollable factor”. The MPERC has previously time and again rightly held that events relied on by the Petitioner to extend the cut-off date were not entirely beyond the control of the Petitioner. As a result, the prayer for extension of cut-off date ought not to be allowed by the MPERC.

It is pertinent to note that the Petitioner has not put any evidence on record suggesting that the difficulties faced by the Petitioner would qualify as such. In fact it is pertinent to submit that the ‘uncontrollable factors’ as alleged by the Petitioner pertains to financial difficulties faced by the Petitioner and such financial difficulties were solely attributable to the Petitioner. The petitioner having practiced poor financial prudence had to go through the IBC proceedings and resolution thereunder. The liability of such poor financial handling cannot be put on the beneficiaries in the form of additional capitalisation expended past the cut-off date.

Further, it is also pertinent to state that this. Commission has consistently disallowed the Petitioner’s claim for extension of cut-off date and grant of additional capitalisation in lieu of the same. Grant of the same would not only lead to inconsistency but would open a pandora’s box of revision of all previous and further claims on the part of the Petitioner and similarly placed entities. Further, the matter of whether cut-off date for commissioning the Petitioner’s project should be extended is already sub-judice before the Hon’ble APTEL and any decision contrary to the same would lead to severe prejudice to the Answering Respondent before the Hon’ble APTEL.

It is also pertinent to state that in the subject petition, the Petitioner seeks to put the onus of the financial difficulties faced by it on the Answering Respondent. However, in that regard it is submitted that the schedule to a generating station is not provided by the procurer. It is provided by the appropriate load despatch centre in accordance with the merit order available

to the procurer. It is submitted that even assuming low off-take by MPPMCL, the entitlement of capacity charge is not impacted and debt servicing is part of the capacity charge. MPPMCL like any other procurer provides its load requirement to the appropriate load despatch centre who provide schedule to the generating stations. It is submitted that MPPMCL had a PPA for maximum of 35% of power generated. Accordingly, even if it proposed to schedule the entire power, then also the Petitioner would not have the technical minimum schedule unless it tied-up the remaining capacity. Accordingly, the Petitioner's failure to tie-up or otherwise sell the power caused the distress and MPPMCL cannot be blamed for the same. Similarly low energy prices in the power exchanges are business risk that any generator is required to take and the same cannot be cited as a reason for extending the cut-off date.

Petitioner's Reply-

The averments made by Respondent are denied and disputed except to the extent of facts stated therein, the Petitioner submits that the Respondent even after being aware of the current situation of the Petitioner, for which the Respondent itself was responsible, has made such averments without any material basis. The Petitioner requests the Commission to decide the prayers made in the instant Petition considering the submissions and documentary proofs submitted along with the Petition which shall substantiate beyond doubt that the factors responsible for delay in executing works were truly uncontrollable and under no circumstances attributable to the Petitioner.

The averments made by Respondent in above para are without any material basis and accordingly are denied and disputed. The Respondent has very cleverly shifted the responsibility of low scheduling by the Respondent to the appropriate load dispatch centre which has further resulted the Petitioner into the huge financial risk due to the cascading effects. In view of the above, the averments made by the Respondent are misleading and therefore denied and disputed.

Observation-

The issue of extension of cut-off date has already been addressed by the Commission in earlier tariff/true up orders of the Petitioner's Project. Further, there is no provision under the Regulations, 2020 for extension of cut-off date of the project. Therefore, the request of the petitioner for extension of cut-off date is not considered in this true-up Order.

Since, the additional capitalization claimed by the petitioner is beyond the cut-off date of the project and within the original scope of work, therefore, same has been analysed under Regulation 27 of the Regulations, 2020.

MPPMCL's Response-

That it is the case of the Petitioner in Paragraphs 6.53-6.71 of the present Petition that certain railway related works had been accepted by this Commission *vide* its order dated 18.08.2022

& 29.03.2023. Towards such capitalization in terms of Regulation 27.1 (vi) of the Regulations, 2020, cost of Rs. 0.94 Crore has been incurred. The same is unchallenged in line with the previous decisions of this Commission.

However, the Petitioner seeks to approve Rs. 3.69 Crore on account of balance works incurred in FY 2022-23 till 04.09.2022 in terms of Regulation 26.1 (ii) of the Regulations, 2020. It is reiterated that as averred hereinabove, such cost of balance works took place after the cut-off date and financial hardships clearly do not attract force majeure or change in law provisions. Therefore, there is no grounds in terms of the Regulations, 2020, basis which the cost of balance works amounting to Rs. 3.69 can be allowed to be passed through in true up.

That similarly as above, the Petitioner seeks to pass through liability of Rs. 3.19 crore on account of expenditure done on capital spares. Further other misc. electric works to the tune of Rs. 0.04 Crore is also sought to be passed through in true up. It is the case of the Petitioner that such expenditures were taken after the cut-off date on account of the inability of the Petitioner to invest money during the CIRP process. However, it is reiterated herein that financial hardships that were brought upon itself by the Petitioner cannot be passed on to the beneficiaries. In that regard the averments made hereinabove are reiterated.

Further additional expenditure towards ash handling system amounting to Rs. 0.02 Crore and additional expenditure towards coal handling plant amounting to Rs. 0.16 crore are also sought for similar reasons as above. It is reiterated that the present case as held by this Commission before is not a fit case for extension of cut-off date and therefore such claims on additional capitalization ought to be disallowed. In sum, the additional capitalization amount of Rs. 3.23 Crore (on accrual basis) and Rs. 4.62 Crore (on cash basis) claimed by the Petitioner is untenable under the scheme of the Regulations, 2020 and ought to be disallowed by this Commission.

Petitioner's Reply-

The Respondent has agreed that Railway related works should be granted to the petitioner. Thus, Commission is requested to allow the same.

In reply to the averments made by the Respondent in above para, the Petitioner submits that averments made by Respondent are without any material basis and accordingly are denied and disputed. In support of this reply, the petitioner submits that the assets capitalized during the year FY 2022-23 till 4th September'22 are under original scope of work. It is submitted that the works for the additional capital expenditure claimed were already envisaged in the DPR, however, the same could not be completed within cut-off date owing to the uncontrollable reasons. The petitioner submits that it has claimed the additional capitalization for FY 2022-23 till 4th September, 2022 under Regulation 26.1 and Regulation 27.1 of the Regulations, 2020 and The Commission is requested to consider the submissions made by the Petitioner as per the Regulations, 2020.

Observation-

The additional capitalization claimed in the petition has been examined thoroughly and dealt with, by the Commission in accordance to the provisions under the Regulations, 2020, Annual Audited Accounts of the petitioner for FY 2022-23 (till 4th September, 2022), Asset-cum-Depreciation Register for FY 2022-23 (till 4th September, 2022) and other supplementary submissions filed by the petitioner and other documents placed on record by the petitioner.

MPPMCL's Response-

It is submitted that it is not under dispute in the subject petition that JPL was successfully acquired by NTPC for Rs. 925 Crore through the CIRP initiated by NCLT, Kolkata. NTPC bought 50.5% of the shares in JPL for the aforementioned Rs. 925 Crore.

Petitioner's Reply-

The averments made by Respondent are matter of facts. The Petitioner, hereby submits that NTPC Ltd is a 50% shareholder in JPL along with the secured financial creditors and not 50.5% as indicated by the Respondent in its submissions.

Observation-

The Commission has determined true-up of tariff prior to project takeover by NTPC.

MPPMCL's Response-

That in terms of Regulation 9 of the Regulations, 2020, it is evidently clear that for purpose of tariff determination and tariff true-up in a cost-plus regime under Section 62 of the Act. It is pertinent to take into consideration the details of actual capital expenditure and actual additional expenditure. While it is true that the erstwhile management of the Petitioners had made certain capital investments in construction of the Petitioner's plant. However, it is pertinent to note that the said plant was acquired by NTPC with a capital investment of just 925 Crore. Therefore, for the purpose of determination of tariff and true-up of tariff, it is pertinent to take the actual capital expenditure for the period.

That the Hon'ble APTEL in its judgement in **Renasant Power Ventures Private Limited v. Uttar Pradesh Electricity Regulatory Commission & Ors. (Appeal No. 183 of 2019)** had observed that while revision of tariff for generators whose tariff is determined by the bidding route in terms of Section 63, capital investment and structure does not matter. Such enquiry has to be done in determination/revision of tariff for generators whose tariff is determined in terms of Section 62 of the Act. The relevant paragraph has been reproduced hereunder for ready reference :-

"103. As contended by the Appellant and the 2nd Respondent-SBI, in the process undertaken under Section 63 of the Act, question of examination of capital cost or capital

*structure of the project by UPERC at the time of adoption of tariff would not arise. **However, such examination can be undertaken by the Commission if it is a case of determination of tariff by the appropriate Commission under Section 62 of the Act. Under Section 62 PPA, tariff is determined based on the capital cost of the project, debt and equity amounts invested or capital structure of the project.** Whereas if tariff is discovered through competitive bidding process, the same has to undergo the process of adoption of tariff by appropriate Commission under Section 63 of the Act. During such examination, the Commission has to see “whether the guidelines issued by the Ministry of Power for procurement of power on long term basis is complied with or not and whether the bidding process was transparent, fair and justified?”*

Therefore on a conjoint reading of the relevant regulations in the Regulation, 2020, along with the observations of the Hon’ble APTEL, it is clear that this Commission in the present subject petition ought to take into account that the actual capital expenditure from NTPC is to the tune of Rs. 925 Crore. Any tariff that is based on a sum more than Rs. 925 Crore is excess tariff that is accruing to NTPC and must be disallowed by this Commission.

That it is pertinent to state that NTPC took control of the petitioner only on 04.09.2022. Therefore, any tariff that accrues to the Petitioner before that period can be in terms of the previously determined tariff. However, any tariff that is computed after the takeover of control by NTPC must be based on a revised tariff where the actual capital expenditure from NTPC of Rs. 925 Crore needs to be the base capital cost for determination of tariff.

In that regard as stated hereinabove, the contention of the petitioner that there should only be a part true up in the subject petition whereas the balance true up would be done before the CERC is legally untenable. The petitioner would have to continue to operate on the tariff determined by this Commission and the true up is done by this Commission in terms of the Tariff Regulations in full. There is no legal method for determination and part true up of tariff by one commission and part true up by another commission.

That this Commission must take into account that the actual capital expenditure by the Petitioner is only Rs. 925 Crore. This makes it a case fit for rebate in true up in terms of Regulation 9.9 of the Tariff Regulations.

Petitioner’s Reply-

The averments made by Respondent are completely misleading. Petitioner has filed the Petition for true-up of tariff for FY 2022-23 till 4th September, 2022, i.e. period before take over by NTPC Limited which falls within the jurisdiction of this Commission. The same has been clearly explained in the instant petition and this reply. Accordingly, the averments made by the Respondent are denied.

Observation-

The Commission has examined true-up of tariff for FY 2022-23 only till 4th September, 2022 prior to takeover by NTPC and true up has been carried out as per the provision of the Regulations, 2020.

MPPMCL's Response-

That in response to the capacity charges claimed by the petitioner, it is submitted that only such capacity charges may be allowed by this Commission as is applicable in terms of the Tariff Regulations. However, it is pertinent to note that any increase in capital cost in terms of additional capital expenditure may not be allowed as the same has been done after the cut-off date. Further, there has been no extension of cut-off date allowed by this Commission. It is submitted that any return on equity claims, interest and financing charges claims, depreciation claims, depreciation pertaining to lease land claims, interest on working capital claims, non-tariff income claims must be evaluated sans the additional capital expenditure made by the Petitioner after the cut-off dates.

That it is also pertinent to note that the capacity charges as claimed by the petitioner pertains to the period till 04.09.2023. As submitted hereinabove, the Petitioner ought to file its entire financial statements for trueing up as there is no provision for part true up before this Commission in terms of the Tariff Regulations. The present petition is therefore incomplete in nature and no claims can be correctly evaluated on such incomplete petition.

Petitioner's Reply-

In respect of averments made by the Respondent regarding the return on equity, non-tariff income, interest on loan, depreciation, interest on working capital and annual capacity charges claimed in the Petition, the Commission is requested to consider the submissions made by the Petitioner which are in line with the Regulations, 2020.

Observation-

As per Section 79 (1) (a) of the Electricity Act, 2003, CERC has exclusive jurisdiction to regulate tariff of Generating Company owned and controlled by the Central Government and the Commission has examined true-up of tariff for FY 2022-23 till 4th September, 2022 under the provision of the Regulations, 2020.

MPPMCL's Response-

That for fly ash utilization and transportation, the petitioner has claimed that it has incurred a cost of Rs. 1.06 Crore in FY 2022-23. The petitioner claims 0.24 lakhs from the Respondent for the period till 04.09.2023. However, it is submitted that the additional expenditure on the same has occurred after the cut-off date and cannot be granted by this Commission.

Petitioner's Reply-

In reply to the averments made by the Respondent are denied and disputed except to the extent they are the matter of facts mentioned in instant petition. The claims raised for Fly Ash Utilisation and transportation are as per article 12 of the executed PPA and in line with MPERC Order dated 29.11.2021 (Petition No. 26 of 2021). Accordingly, the Commission is requested to consider the submissions made by the petitioner which are in line with the Regulations, 2020. The said Ash utilisation expenses are not capitalised expenses thus the concept of cut-off date is not applicable to the such claim. The said bills are claimed on reimbursement basis along with the submission of all the necessary documents.

Observation-

Claim regarding Fly Ash Transportation Charges has been dealt in accordance to relevant order issued by the Commission in petition No. 26 of 2021 and provisions of the 2nd Amendment to the Regulations, 2020.

MPPMCL's Response-

It is submitted that due to delay in commissioning of the generating station liquidated damages were levied on the Petitioner. The levy of such damages was never challenged by the Petitioner and thus became final. The answering respondent paid GST on the same in terms of the demand raised by the department of revenue intelligence, where the Petitioner refused to participate. It is submitted that after the clarification of liability of GST on liquidated damages that no GST is to be levied on liquidated damages, the GST amount was returned to the Petitioner. Since the clarification, the Petitioner has been insisting on late payment surcharge on the GST amount refunded.

It is settled law that interest can be claimed only if any wrongdoing can be attributed to the party (Clariant International Ltd & Anr vs SEBI (2004) 8 SCC 524) Para 30). It is not in dispute that the payment of GST was in terms of the demand by the department of revenue intelligence, on the levy of liquidated damages. Admittedly the levy of liquidated damages for delay was never challenged. The consequent imposition of tax therefore cannot be independently challenged. It is submitted that after the law on levy of GST on liquidated damages was clarified the amount was refunded; demand for interest if any has to be raised with the GST authorities and not with MPPMCL.

Petitioner's Reply-

The averments made by Respondent are denied and disputed. The Petitioner has prayed for LPSC amount deducted in October 2019 towards GST by the Respondent. Accordingly, NCLT vide its order dated 23.03.22 held that GST amount recovery cannot be made from JPL as the company was under moratorium. MPPMCL appealed in NCLAT against the aforementioned

NCLT's order and NCLAT vide its order dated 16.11.22 dismissed the MPPMCL's petition. The Petitioner submits that the Respondent after considerable delay from the date NCLT/NCLAT Order has refunded the amount of Rs. 15.25 Crore on account of GST levied on LD on 14.07.2023. Therefore, The Petitioner is right in claiming the Late Payment Surcharge as per article 10.4.2 of the executed PPA. Accordingly, the Commission is requested to consider the submissions made by the Petitioner as per Regulation 32 of the Regulations, 2020.

Observation-

Dispute related to Late Payment Surcharge on the GST amount is therefore not covered under the scope of the Regulations, 2020, hence not allowed in this Order.

MPPMCL's Response-

That in response to the statutory charges claimed by the petitioner, it is submitted that such claims can only be entertained by this Commission on production of documentary evidence. The same has not been produced by the Petitioner and must therefore be disallowed.

That, it is humbly prayed that the prudence check, carried out by the MPERC, be shared with this respondent and any reasoning/ rationale advanced in support for inclusion of above indicated Costs with the Capital Cost of the Project deserves to be summarily rejected/ ignored.

Petitioner's Reply-

In respect of averments made by the Respondent, the Commission is requested to consider the submissions made by the Petitioner which are in line with the Regulations, 2020 and the Commission is requested to approve the same as claimed by the Petitioner.

Observation-

In the subject true-up petition, Statutory Charges upto 4th September, 2022 have been allowed in accordance to the provisions under the Regulations, 2020.

Annexure-II

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

Stakeholder's Comment

Subject petition for partial period :- The Commission has issued tariff for M/s Jhabua Power Limited from 01st April, 2019 to 31st March, 2024 by MYT Order dated 08/05/2021 as per the provisions of the Regulations, 2020 and on the basis of the subject petition filed for the year 2019-20 and 2020-21, the final tariff was determined by approving the additional capitalization under the Tariff Regulations.

In the subject petition, due to change in the management of the company, the petitioner has sought true-up only till 4th September, 2022 and for the remaining period - the petition will be filed in the Central Electricity Regulatory Commission under Section 79(1)(a) of the Electricity Act 2003 in future. But in the petition, it is not mentioned whether, the petition for true-up from 5th September, 2022 to 31st March, 2023 has been filed with the Central Electricity Regulatory Commission or not.

The Central Electricity Regulatory Commission has not determined any tariff for the private power plants. Therefore, it is not clear on what basis the true up will be done. It is not clear which rule has been taken by the petitioner in submitting two separate petitions for one financial year to different Regulatory Commissions. It is clear from the petition that the above referred petition is final and thereafter the petitioner will file the petition at the Central Electricity Regulatory Commission.

The Commission is requested to direct the petitioner to provide a copy of the petition to be filed in the Central Electricity Regulatory Commission for the remaining period of the financial year 2022-23 from 5th September, 2022 to 31st March, 2023. Apart from this, instructions will also be given to provide any order given by the Central Electricity Regulatory Commission for accepting the petition for consideration for a partial period.

The verification of the petition for partial/full year under power purchase contract executed by the former management of the plant on January 5, 2011 and with the M.P. Govt. for remaining 5 percent electricity is desirable under the provisions of the contract, by the Commission.

Petitioner's Reply:

The averments made by the stakeholder pertains to the matters not related to the prayers made by the petitioner in the petition. Further, it has been already explained in para 1.4 to para 1.7 in the petition that post NTPC takeover w.e.f. 5th September, 2022. The petitioner is a

company under Section 79 (1) (a) of Electricity Act, 2003 and therefore the same shall not be under the jurisdiction of this Commission.

Observation:

The petitioner by affidavit dated 13th February, 2024 filed legal opinion on the matter of Petitioner's Company, which has been taken over by NTPC Limited as a Joint Venture with Secured Financial Creditors (50:50) through CIRP (Corporate Insolvency Resolution Process) vide NCLT Order dated 6th July 2022. The Commission has considered the legal opinion and concluded that Central Electricity Regulatory Commission under Section 79(1)(a) of the Electricity Act 2003 has exclusive jurisdiction to regulate tariff of generating company owned and controlled by the Central Government.

The Commission has examined the true up tariff petition thoroughly in accordance to the provisions under the Regulations, 2020, Annual Audited Accounts of the petitioner for FY 2022-23 (till 4th September, 2022), Asset-cum-Depreciation Register for FY 2022-23 (till 4th September, 2022) and other supplementary submissions filed by the petitioner and other documents placed on record by the petitioner.

Stakeholder's Comment:

Increase in cut-off date of plant:- While the subject petition has been filed for the period up to 4th September, 2022, however due to various reasons mentioned in paragraphs 6.11 to 6.49, the cut-off date of the plant, which was 31st March, 2019, petitioner has requested the Commission to extend it till 4th July, 2024, which is contradictory to itself.

In paragraphs 6.11 to 6.29, the petitioner mainly said that MPPMCL is to be blamed for the plant becoming sick, which is completely wrong in view of the facts. The petitioner or the new management has not taken into account that MPPMCL is responsible for managing only 30 percent of the finances. No specific information/details of any specific difficulty is mentioned in the petition by the petitioner for the remaining share of 65 percent electricity and 70 percent finance. Therefore, the poor performance of the plant can't be attributed to M.P. Power Management Company, which has less share and it is not befitting an institution, which has just undergone transfer of management.

In Section 27 and 28 of the Regulations, 2020, provisions are there for approval of additional capitalization after the cut-off date of the project. Apart from this, petition no. 19/2019 specifically filed by the parent management of the Company, in that order, clear guidelines had been given for additional capitalization and on the same basis, the subject petition for FY 2019-20 and FY 2020-21 had been disposed of. Therefore, re- raising an issue regarding extension of cut-off date that has been resolved is contrary to the principle of law.

The Commission is requested to completely reject the petitioner's demand for increasing the cut-off date in view of the incomplete facts.

Petitioner's Reply

The averments made by the stakeholder are completely false. The petitioner submits that the reasons regarding extension of the cut-off date has been explained in detail in para 6.5 to 648 at page no 19 to page no 37 of the petition. Accordingly, the petitioner humbly requests the Commission to consider prayers made by the petitioner and reject the averments made by the stakeholder.

Observation:

The issue of extension of cut-off date has already been addressed by the Commission in earlier tariff/true up orders of the Petitioner's Project. Further, there is no provision under the Regulations, 2020 for extension of cut-off date of the project, therefore, the request of the petitioner for extension of cut-off date is not considered in this Order.

Since, the additional capitalization claimed by the petitioner is beyond the cut-off date of the project and within the original scope of work, therefore, same has been analysed under Regulation 27 of the Regulations, 2020.

Stakeholder's Comment

Report of the Comptroller and Auditor General of India:-The plant has been transferred to the NTPC with effect from 05/09/2022 in pursuance of the order dated 06/07/2022 of the National Company Law Tribunal (NCLT). Therefore, seeking relief by mentioning the previous issues without complete information is completely outside the scope of the verification petition. The petitioner probably does not know that it is mentioned in Part-2 Para 2.1.11 of the Report No. 34/2017 issued by the Comptroller and Auditor General of India (GAG) for the Ministry of Energy, Government of India (Commerce) that:

2.1.11. The promoters of M/s Jhabua Power Limited (JPL) formed for setting up 600 MW coal-based thermal power plant, had no experience of implementing similar projects. The promoter M/s Avantha Power and Infrastructure Limited (APIL), was formed by way of diversment of small power generation assets with a total capacity of 95 MW (individual unit capacity ranged between 13 MW and 30 MW) and had implemented a few expansion projects However, the loan was sanctioned.

Therefore, the figures of poor performance of the plant for 2016-17 and 2017-18 in the report of the Comptroller and Auditor General of India, itself verify on the inexperience of the promoters. It is not appropriate to blame anyone else and this is a major reason for the transfer of the plant to NTPC.

Petitioner's Reply:

The averments made by the stakeholder pertains to the matters not related to the prayers made by the petitioner in the petition. The extract of CAG report quoted by stakeholder is out of context without any material basis.

Observation:

The comment is general in nature and does not seek any action related to prayers of the petitioner.

Stakeholder's Comment:

Non-availability of railway line for coal transportation:- The date of commercial operation was 3rd May, 2016. Till then there was no permanent arrangement for bringing coal to the plant. The then management had assured that the transportation of coal by rail would be operational by January, 2017, which was accepted by the Commission. Approval was given to bring coal by road transport for a distance of about 80 km from Sagara Railway Station of Jabalpur to the plant. But actually, after the construction of Jabalpur Gondia Broad Railway Gauge line in May, 2017, coal transportation through railways became possible till Binaiki which was the railway station nearest to the plant. Despite this, the work of railway line (Last Mile Connectivity) from Binaki to the plant was completed on 21/08/2020 and as a result of which, the availability from the plant could be increased from FY 2020-21, which is also mentioned in the petition. Therefore, it is not right for the petitioner to blame anyone else for the poor performance of the plant.

Petitioner's Reply

The averments raised by the stakeholder pertains to the matters not related to the prayers made by the petitioner in the petition and accordingly requests the Commission to reject the averments made by the stakeholder.

Observation:

The comment is general in nature and does not seek any action related to prayers of the petitioner.

Stakeholder's Comment

Benefits of change in Management to Consumers:- Since now Jhabua Power Limited is a joint venture between NTPC, which is a Maharatna company in the power generation sector of India and Secured Financial Creditors. Therefore, it would be fair for the lenders as well as the consumers of the state to get the direct benefit of the transfer of the referred BIMARU

company into the hands of a highly efficient management in the form of tariff reduction. Paragraph 57 of the Regulations, 2020 also has the following provisions in this regard:

57. Sharing of saving in interest due to re-financing or restructuring of loan-

57.1 If re-financing or restructuring of loan by the generating company results in net savings on interest after accounting for cost associated with such refinancing or re-structuring, the same shall be shared between the beneficiaries and the generating company in the ratio of 50:50.

Petitioner's Reply

The averments raised pertains to the matters not related to the period for which the instant petition is filed and accordingly requests the Commission to reject the averments made by the stakeholder.

Observation:

The Commission has determined true-up of Annual Capacity (fixed) Charges for FY 2022-23 prior to acquisition of the petitioner by NTPC Ltd on 5th September, 2022 considering actual Additional Capital Expenditure incurred during FY 2022-23 till 4th September, 2022 in accordance with Regulation 9.4 of the Regulations, 2020. The issue raised by the stakeholder is beyond the period under consideration in this Order.