

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

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



Petition No. 70 of 2015

PRESENT:

Dr. Dev Raj Birdi, Chairman

A.B. Bajpai, Member

Alok Gupta, Member

IN THE MATTER OF:

True-up of Generation Tariff of 2 x 250 MW (Phase-I) coal based power project at Bina, District Sagar (M.P.) for FY 2014-15 determined by MP Electricity Regulatory Commission vide order dated 26th November, 2014 and subsequently revised vide order dated 08th May, 2015.

M/s Jaiprakash Power Ventures Ltd., Noida (UP):

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 3rd June' 2016)**

1. M/s Jaiprakash Power Ventures Limited (hereinafter called "the petitioner" or JPVL) (erstwhile M/s. Bina Power Supply Co. Ltd. merged with M/s. Jaiprakash Power Ventures Ltd) has filed the subject petition on 26th November' 2015 for True-up of the Generation Tariff for FY 2014-15 in respect of its 2 x 250MW (Phase I) of Bina Thermal Power Plant, determined by the Madhya Pradesh Electricity Regulatory Commission (hereinafter called "the Commission or MPERC") vide order dated 26th November' 2014.
2. The subject true-up petition has been filed under section 62 and 64 of Electricity Act, 2003 and in terms of proviso 8.4 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 (herein after referred to as "the Regulations' 2012").
3. The Bina Thermal Power Plant (Phase I) under the subject petition comprises of two generating units of 250 MW each. Date of Commercial Operation (CoD) of both units of the petitioner's power plant under Phase I are as given below:

Table 1: Capacity and CoD of unit I and II under Phase 1

Sr. No.	Units	Installed Capacity (in MW)	Date of Commercial Operation
1	Unit-I	250 MW	31 st August' 2012
2	Unit-II	250 MW	07 th April' 2013

4. Vide tariff order dated 26th November' 2014 in Petition No. 40 of 2012, the Commission determined the final generation tariff for 2 x 250MW (Phase-I) of Bina Thermal Power Plant for FY 2012-13 and FY 2013-14 based on Annual Audited Accounts. The generation tariff for FY 2014-15 and FY 2015-16 was determined on provisional basis subject to true-up on availability of Annual Audited Accounts. The details of the capital cost considered by the Commission in its aforesaid order are as given below:

Table 2: Capital Cost admitted by the Commission in final Tariff order dated 26.11.2014
(₹ in Crores)

Particulars	As on 31 st August, 2012	As on 31 st March, 2013	As on 06 th April, 2013	As on 31 st March, 2014	As on 31 st March, 2015	As on 31 st March, 2016
Unit operational	Unit I	Unit I	Unit I	Unit I and II	Unit I and II	Unit I and II
Capital Cost	1448.31	1450.70	1450.70	3471.73	3471.73	3471.73

5. Based on the aforesaid capital cost, the Annual Capacity (fixed) charges for both the units of Bina Thermal Power Station for FY 2012-13 to FY 2015-16 were determined by the Commission
6. On 23rd January' 2015, the petitioner filed a review Petition No. 05 of 2015, seeking review of the aforesaid Commission's order dated 26th November' 2014 on the following issues:
 - a. Pre commissioning fuel expenses
 - b. Double Deduction of Infirm Power
 - c. Interest and Finance Charges on Loan Capital
 - d. Inadequate Recovery of Capacity Charges
7. Vide order dated 08th May' 2015 in the aforesaid review petition, the Commission revised the Annual Capacity (fixed) charges on the basis of revision in only one issue i.e. interest and finance charges on loan. Regarding other issues, the petitioner has filed an appeal with the Hon'ble Appellate Tribunal for Electricity, New Delhi.
8. The revised Annual Capacity (fixed) charges for both the units of Bina Thermal Power Plant for FY 2012-13 to FY 2015-16 determined vide Commission's order dated 08th May' 2015 are as given below:

Table 3: Revised Annual Capacity (Fixed) Charges (₹ in Crores)

Particulars	As on 31 st March, 2013	As on 06 th April, 2013	As on 31 st March, 2014	As on 31 st March, 2015	As on 31 st March, 2016
Return on Equity	85.27	85.34	197.07	204.24	204.24
Interest Charges on loan	133.39	124.12	283.13	272.65	250.69
Depreciation	71.03	71.08	165.81	172.20	172.20

Operation & Maintenance expenses	42.70	46.05	92.10	99.50	107.30
Secondary Fuel Oil Expenses	11.22	11.23	22.47	22.47	22.53
Interest on Working capital	32.67	25.68	53.28	55.05	55.12
Annual Capacity (Fixed) charges	376.28	363.51	813.86	826.10	812.08
Operational No. of Days	213	6	359	365	366
Annual capacity (Fixed) charges apportioned for actual days of operation	218.99	5.98	800.48	826.10	812.08
Less: Non-Tariff Income	0.00	0.04	2.67	0.00	0.00
Net Annual Capacity Charges	218.99	5.94	797.81	826.10	812.08
Annual Capacity (Fixed) charges corresponding to 65% of the installed capacity of the units	142.34	3.86	518.58	536.96	527.85

9. In the subject true-up petition, the petitioner prayed the following:
- True Up of the Tariff order dated 26th November' 2014 in terms of the additional capital expenditure incurred by the petitioner.
 - Pass appropriate orders directing recovery of capacity charges worked out by petitioner after additional capitalization of ₹16,17,99,380 and deletion of ₹3,79,01,185 i.e. net additional capitalization of ₹12,38,98,195/-.
 - Determine the capacity charges for FY 2015-16 after considering planned capital outlay of ₹100.16 Crores to be incurred during the same period.
10. The Commission has examined the instant petition in accordance with the provisions under Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) (Revision-II) Regulations, 2012 {RG-26 (II) of 2012} and Annual Audited Accounts of Jaypee Bina Thermal Power Project for FY 2014-15. The Commission has also examined the subject true up petition in light of the comments/suggestions offered by the Respondent No. 1 (MPPMCL) / other stakeholder and the response of petitioner on the same.

Procedural History

11. Motion hearing in the subject true up petition was held on 19th January' 2016. Vide Commission's order dated 20th January' 2016, the petition was admitted and the petitioner was directed to serve copies of its petition to all Respondents in the

- matter. The Respondents were also asked to file their response on the petition by 10th February' 2016.
12. Vide letter dated 10th February, 2016, Respondent No. 1 (MPPMCL) sought six weeks' time extension for filing its reply/comments on the petition. Later, vide letter dated 26th February' 2016, Respondent No. 1 filed its comments on the petition.
 13. Vide Commission's letter dated 23rd February' 2016, the information gaps on preliminary scrutiny of the petition were communicated to the petitioner seeking its comprehensive reply by 15th March' 2016. Vide letter dated 14th March, 2016, the petitioner sought time extension for submission of its reply to the information gaps communicated by the Commission.
 14. Subsequently, by affidavit dated 30th March' 2016, the petitioner filed its reply to the issues raised by the Commission and also to the comments offered by Respondent No.1. Issue-wise reply of the petitioner to the comments offered by Respondent No. 1 is mentioned in Annexure II of this order.
 15. The public notice was published in the Raj Express (Hindi) and the Times of India (English) newspapers on 23rd March' 2016, inviting comments/suggestions from all stakeholders in the matter. The petitioner was asked to file its response on all the comments/suggestion received in the subject petition, by 20th April' 2016.
 16. The public hearing was held on 26th April' 2016, wherein only one objector appeared and submitted his comments on the petition. The objections relevant to the subject petition filed by the objector and the response of the petitioner are mentioned in Annexure – II with this order.
 17. On perusal of the additional submissions filed by the petitioner on 30th March' 2016, the Commission observed that its response on some issues like Capital Spares, MAT and other charges was lacking clarity. Therefore, vide Commission's letter dated 21st April' 2016, the additional information gaps were communicated to the petitioner and it was asked to file a comprehensive reply along with all relevant supporting documents by 26th April' 2016.
 18. By affidavit dated 09th May' 2016, the petitioner filed its reply to the additional

information gaps communicated by the Commission.

19. Issue-wise response of petitioner to all information gaps/ requirement of additional information/ documents sought by the Commission is mentioned in Annexure I with this order.
20. The petitioner has sought true-up of Annual Capacity (fixed) Charges based on the additional capital expenditure incurred during FY 2014-15 in accordance with Regulation 8.4 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 with 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 the period from 1.4.2013 to 31.3.2016, duly audited and certified by the auditors.”

21. The petitioner filed the additional capitalization of ₹16.18 Crores and write off/deletion of ₹3.79 Crores i.e. net additional capitalization of ₹ 12.39 Crores during FY 2014-15. Based on the aforesaid additional capitalization and written off/deletion during FY 2014-15, the petitioner filed the following Annual Capacity (fixed) charges and energy charges for Unit I & II of Bina Thermal Power Plant:

Table 4: Capacity and Energy Charges claimed for FY 2014-15 (₹ in Crores)

Sr. No.	Particulars	FY 2014-15
1	<u>Capacity Charge or Fixed Charge</u>	
1.1	Depreciation	172.47
1.2	Interest on Loan	266.95
1.3	Return on Equity	205.39
1.4	Interest on Working Capital	66.87
1.5	O & M Expenses	99.50
1.5A	O & M expenses (400kV Transmission Lines & Bay)	0.48
1.6	Secondary fuel oil cost	21.35
1.7	Compensation Allowance (if applicable)	-
1.8	Lease rent payable for Land (yearly)	0.24
2	<u>Variable Charges recoverable</u>	
	Coal Cost (Fuel Cost)	973.55

	Total	1806.80
3	Total Capacity Charge (1)	833.25
4	No of days applicable for the period	365.00
5	Total Capacity Charge for applicable days (S.No 3/365*S.No 4)	833.25
6	Total Cost of fuel for applicable days (S.No 2/365*S.No 4)	973.55
7	68.42% of Capacity charge ((S.No 5*.6842)	570.12
	(Capacity charge of the 5% loaded on 65%-{65%/95%})	
8	70% of Cost of Fuel (S.No 6 *.70)	681.49

CAPITAL COST**Petitioner's Submission:**

22. The details of opening Gross Fixed Assets along with asset additions, write off/deletion during FY 2014-15 and closing Gross Fixed Assets as filed by the petitioner are as given below:

Table 5: Opening Gross Block and Asset Addition claimed: (₹ in Crores)

Particulars	Original up to 31-03-2014	Addition during 2014-15	Deletion/ Adjustment during 2014-15	Capital Cost upto 31-03-2015
Land	6.86	0.00	0.00	6.86
BTG	1,742.92	1.65	3.77	1,740.80
BOP	1,145.13	8.59	0.02	1,153.70
Civil Cost	590.07	5.94	0.00	596.02
Total	3,484.98	16.18	3.79	3,497.38

23. The petitioner has also submitted that it has received Input Tax Credit on VAT to the tune of ₹3.79 Crores from Commercial Tax Department, Government of Madhya Pradesh during FY 2014-15. The said write off/deletion has been reduced from the cost of the BTG and BOP components of Gross Fixed Assets.

Provision in Regulations:

24. Regulation 17.1 and 17.2 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 provide as under:

17.1 Capital cost for a Project shall include:

- a) *“the Expenditure Incurred or Projected to be incurred on original scope of work, including interest during construction and financing charges, any gain or loss on account of foreign exchange risk variation during construction on the loan - (i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or (ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed, - up to the Date of Commercial operation of the Project, as admitted by the Commission, after prudent check shall form the basis for determination of Tariff.*

- b) *Capitalized initial spares subject to the ceiling norms as specified below:*
 - i) *Coal-based thermal generating stations - 2.5% of original Project Cost.*
 - (ii) *Hydro generating stations - 1.5% of original Project Cost.*
Provided that where the benchmark norms for initial spares have been published as part of the benchmark norms for capital cost under first proviso to 17.2, such norms shall apply to the exclusion of the norms specified herein
- c) *Additional capital expenditure determined under Regulation 20*

17.2 *Subject to prudent check, the capital cost admitted by the Commission shall form the basis for determination of Tariff:*

Provided that, prudent check of capital cost may be carried out based on the benchmark norms to be specified by the Central Commission from time to time:

Provided further that in cases where benchmark norms have not been specified by the Central Commission, prudent check may include scrutiny of the reasonableness of the capital expenditure, financing plan, interest during construction, use of efficient technology, cost over-run and time over-run, and such other matters as may be considered appropriate by the Commission for determination of Tariff :.....”

25. Regarding additional Capitalization of the generating station, Regulation 20.1 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 provides as under:

20 Additional Capitalization

20.1 *The capital Expenditure Incurred or projected to be Incurred, on the following counts within the original scope of work, after the Date of Commercial operation and up to cut-off date may be admitted by the Commission, subject to prudent check:*

- (a) *Undischarged liabilities*
- (b) *Works deferred for execution*

- (c) *liabilities to meet award of arbitration or for compliance of order or decree of a court,*
- (d) *Change in Law,*
- (e) *Procurement of initial capital spares within the original scope of work, subject to the provisions of Regulation 17.1(b)*

Provided that the details of works included in the original scope of work along with estimates of expenditure, un-discharged liabilities and works deferred for execution shall be submitted along with the application for Tariff.

Commission's Analysis:

26. The petitioner has filed the Annual Audited Accounts of Jaypee Bina Thermal Power Plant (JBTPP) as on March 31st 2015, along with the Consolidated Balance Sheet of Jaypee Power Ventures Limited (JPVL) as on March 31st, 2015.

Opening Gross Fixed Assets

27. It was observed that in the instant petition, the petitioner filed the opening Gross Fixed Assets (GFA) of ₹3484.98 Crores (as on 01st April' 2014), whereas as per Annual Audited Accounts of Jaypee Bina Thermal Power Plant (JBTPP) the opening Gross Fixed Assets (GFA) is ₹3461.50 Crores and the closing GFA of ₹3471.73 Crores (as on 31.03.2014) was admitted by the Commission. Therefore, vide Commission's letter dated 23rd February' 2016, the petitioner was asked to explain the reasons for aforementioned discrepancies.
28. By affidavit dated 30th March' 2016, the petitioner submitted the following reconciliation:

Table 6: Reconciliation

Sr. No.	Particulars	₹Cr.	Remarks
1	Capital Cost upto 31.03.2014 (excl. CWIP) as per CA Certificate dated June 4th, 2014 & Balance Sheet as on 31.03.2014	3461.51	Recorded in Note 9 of Annual Audited Accounts
2	Add-Interest for 218 days (intervening period between COD of Unit I & COD of Unit II) on Debt Component of unallocated costs allowed by the Commission vide its order dated Nov 26th, 2014 (Please refer 4.30 & 4.31 of said order)	23.46	
3	Closing Capital costs as on 31.03.2014/	3484.98	Filed in the Petition (Rounding off ₹0.01 Crore)

29. Further, with regard to difference in GFA of ₹3484.98 Crores (as per petition) and ₹3471.73 Crores (as admitted by the Commission), the petitioner stated that this difference of ₹13.24 Crores is on account of cost (Pre-commissioning coal cost of ₹4.01 Crores and revenue earned from sale of infirm power of ₹9.23 Crores) disallowed by the Commission in its final Tariff order as also in its review order. The petitioner is contesting on these disallowances through an appeal filed by it before the Hon'ble APTEL. Therefore, it has added back all such disallowance in the capital cost as on 31.03.2014 for the purpose of instant petition.
30. With regard to the above cost claimed in the petition, the Commission has observed that the appeal filed by the petitioner on this issue has not been disposed of. Therefore in this order, the Commission has considered the same opening Gross Fixed assets of ₹3471.73 Crores as admitted by the Commission (as on 31.03.2014), in its order dated 26th November 2014.

Additional Capitalization

Petitioner's Submission

31. The petitioner filed the additional capitalization of ₹16.18 Crores during FY 2014-15. Out of this, ₹1.65 Crores pertains BTG and ₹8.59 Crores towards BOP and the balance of ₹5.94 Crores is towards civil cost. The petitioner has also filed the write off/deletion of ₹3.79 Crores on account of VAT (Input tax credit) received from Commercial Tax Department, Government of Madhya Pradesh. Accordingly, the petitioner has claimed the net additional capitalization of **₹12.39 Crores**.
32. The petitioner has filed the following detail of additional capitalization:

Table 7: Detail of Additional Capitalization

(₹ in Crores)

Particular		FY 2014-15
Sr. No	<u>BTG</u>	
1	Procurement of valves & components for Boiler	0.89
2	Procurement of mandatory spares which were part of the main supply	0.75
	Total	1.65
Sr. No	<u>BOP</u>	
1	Cost of lifts and its erection for Boiler-II through BHEL	1.78

2	Supply, installation testing & commissioning of 6.6 KV sub-station, LT Panel and laying of LT/HT cables for base camp and Township Area	0.49
3	Balance bill raised by Paharpur Cooling Towers Pvt Ltd for Cooling Tower No.2;	0.98
4	Unfinished tiling work of Ash Pond Lagoons-II of Ash Handling Plant	0.87
5	Cost of plant illumination and lighting	1.54
6	Procurement of various types of Electric Motors and Electrical equipments as insurance items for critical equipment such as ID Fan, PA Fan & FD Fan, Lube oil Pumps	2.37
7	Procurement of items to enhance the reliability and monitoring of health of Air Preheaters, HFO system and other items procured for statutory requirement	0.23
8	Procurement of other workshop equipments/tools/implements, Furnitures/Fixtures, other Office Equipments, Computers/Computer peripherals	0.33
	Total	8.59
Sr. No	Civil Cost	
1	Cost of construction of bridge across the river over the Barrage	1.68
2	Construction of unfinished portion of Bunker Floor	0.26
3	Incurred to complete unfinished work of D-6, F-8, G-8, H-9 & 10 Block, Field Hostel-1, Field Hostel-4	3.05
4	Incurred to complete unfinished works of building and Mess of Sardar Patel Uchcharat Madhyamik Vidyalaya	0.77
5	Incurred to complete unfinished building of ITI	0.08
6	Installation of Fire Exit Doors at Switchyard building	0.04
7	Erection of Fire detection System	0.06
	Total	5.94
	Total Additional Capitalization	16.18

33. Vide Commission's letter dated 23rd February' 2016, the petitioner was asked to file a comprehensive reply to the following issues with all relevant supporting documents in favour of its claim for additional capitalization and write-off/ deletion during FY 2014-15:

- i. Whether the addition of assets is on account of the reasons (a) to (e) in clause 20.1 of the MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2012.
- ii. Whether the assets capitalized during the year are under original scope of work. Supporting documents were also sought in this regard.
- iii. Whether the additional capitalization is within the cut-off date of the project.
- iv. Statement showing the detailed break-up of the project cost originally approved by the competent authority along with the Revised Project cost if

any, was sought.

- v. Details of the works completed as on 31st March' 2015 along with supporting documents were sought.

34. By affidavit dated 30th March' 2016, the petitioner broadly submitted the following with regard to above issue at S.No. (i) to (iii),:

(i) *That "the additional net capitalization of ₹12.39 Crores falls within the norms specified under Regulation 20.1 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012. The said Regulation reads as under:-*

"The Capital Expenditure incurred or projected to be incurred, on the following counts within the original scope of work, after the Date of Commercial Operation and up to cut-off date may be admitted by the Commission, subject to prudent check:

- (a) *Undisclosed liabilities*
- (b) *Work deferred for execution*
- (c) *Liabilities to meet award of arbitration or for compliance of order or decree of a court,*
- (d) *Change in Law,*
- (e) *Procurement of initial spares within the original scope of work, subject to the provisions of Regulation 17.1(b)*

Provided that the details of works included in the original scope of along with estimates of expenditure, un-discharged liabilities and works deferred for execution shall be submitted along with the application for Tariff."

(ii) & (iii) *That the said capitalization is within the original scope of the work authorized by the Resolution of Board of directors dated May 17th, 2014, attached with the reply to Para (d) and is also within the prescribed cut-off date.*

35. With regard to issue (iv), the petitioner submitted that "Break up of originally approved project cost, revised project cost and final project cost are given as under:-

Table 8: Original, Revised and Final Project Cost (₹ in Crores)

Particulars	Original Project Cost	Revised Project Cost	Final Project Cost
Land	7	7	7
BTG	1294	1338	1381
BOP	480	575	954
Civil Cost	433	686	479
Overhead & Pre-Objective	201	201	253
IDC/IEDC	294	398	524*
Margin Money	45	35	
Total	2754	3240	3598

*This includes ₹23.46Cr approved by Commission towards interest from COD of Unit I to COD II on unallocated capital costs as on COD of Unit I vide Para 4.30 and 4.32

36. With Regard to issue (v), the petitioner submitted that “Detail of work completed upto 31st March’ 2015 has been mentioned in the Asset-Cum-depreciation register and the same is attached as Annexure with the reply.
37. It is observed that the additional capitalization of ₹16.18 Crores includes cost towards capital spares also. Therefore, vide Commission’s letter dated 23rd February’ 2016, the petitioner was asked to justify its claim towards capital spares of ₹0.75 Crore in light of the Regulation 17.1 (b) of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012.
38. By Affidavit dated 30th March’ 2016, the petitioner submitted that in the additional capitalization towards BOP of ₹8.59 Crores, the total additional capitalization is inclusive of capital spare of ₹2.76 Crores also apart from capital spares of ₹0.75 Crores in BTG. Therefore, the ceiling limit and capital spares claimed by the petitioner are as given below:

Table 9: Capital Spares claimed (₹ in Crores)

Original Project cost as on 31.03.2014	Capital Spare till March 31 st 2014 Admitted by the Commission	Admitted Capital Spares % of the Original Capital cost	Capital Spare filed in true up FY 2014-15	Total Capital Spares filed as on 31/12/2015	Total Capital Spares % of the Original Capital cost
	(A)		(B)	(A+B)	
₹ Cr.	₹ Cr.	%	₹ Cr.	₹ Cr.	%
3484.98	17.58	0.50%	3.52	21.10	0.61%

39. On examination of the above mentioned reply, the Commission observed the following:

- a) In the main petition, the petitioner submitted that ₹0.75 Crore were spent towards procurement of mandatory spares under the additional capitalization of BTG, (which were part of the main supply) whereas, in the instant additional submission, the petitioner has stated that the capital spares of ₹2.76 Crores were also added under BOP in FY 2014-15.
- b) In its additional submission, the petitioner mentioned that the total Capital spares of ₹17.58 Crores have been admitted by the Commission till 31st March' 2014 whereas, the amount against the Capital Spares is shown as nil by the petitioner in Format TPS 5B enclosed with its reply.
40. In view of the above, vide Commission's letter dated 21st April' 2016, the petitioner was asked to clarify certain issues.
41. By Affidavit dated 09th May' 2016, the petitioner filed its reply to the Commission's queries. Issue-wise response of the petitioner is as given below:

Issue (a) - The reasons for not mentioning the amount of ₹2.76 Crores under BOP Capital Spares in the main petition.

Response of the Petitioner

It is respectfully submitted that while summarizing the additions during FY 2014-15 in BOP Para 13 (ii) at Page No.9 of the main petition, submission given in the last three bullets pertained to addition of ₹2.76 Crs of spares in BOP.

Submission given in the last three bullets is reproduced as under:-

- *₹2.37 Crores towards procurement of various types of Electric Motors and Electrical equipments as insurance items for critical equipment such as ID Fan, PA Fan & FD Fan, Lube oil Pumps;*
- *₹0.23 Crore towards procurement of items to enhance the reliability and monitoring of health of Air Preheaters, HFO system and other items procured for statutory requirement;*
- *₹0.33 Crore towards procurement of other workshop equipments/ tools/ implements, Furnitures/ Fixtures, other Office Equipments, Computers/Computer peripherals.*

It is respectfully submitted that explanation of ₹0.33 Crore includes ₹ 0.16 Crore

of spares.

The total of first two bullets and ₹0.16 Crore of last bullet comes to ₹2.76 Crores.

Therefore, the Petitioner had mentioned the addition of spares in the main petition itself although the same was not specifically mentioned as “Capital Spares”.

Issue (b) - The reasons for not indicating the capital spares under BTG and under BOP in format TPS 5B.

Response of the Petitioner:

Since capital spares are capitalized with the main assets/ machines, additions of capital spares are not mentioned separately in TPS 5B. However, the addition of capital spares in BOP during 2014-15 to the tune of ₹ 2.76 Crores is mentioned at Sl. No.2.3.17.

Issue (c) - The basis of petitioner’s contention that the capital spares of ₹17.58 Crores, have been admitted by the Commission.

Response by the Petitioner:

It is respectfully submitted that during the course of the proceeding under Petition No.40 of 2012, neither had the Petitioner submitted Capital Spares Cost separately nor the Hon’ble Commission had segregated the same while determining the Capital Cost of ₹3,471.73 Crores as on March 31st, 2014. It is only to comply with the requirement of Hon’ble Commission vide Para (m) of the Letter dated 23-02-2016, the Petitioner worked out the figure of ₹17.58 Crores towards the cost of Capital Spares which was the part of the Capital Cost submitted by the Petitioner and admitted by the Commission.

Issue (d) - The documentary evidence in support of procurement of above capital spares was also sought from the petitioner.

Response by the Petitioner:

Xerox copies of the bills of Capital Spares (₹0.75 Crore in BTG and ₹2.76 Crores in BOP) procured during FY 2014-15 are being attached herewith as Annexure-1.

42. On perusal of above reply, the Commission observed that the capital spares as

filed by the petitioner are within the ceiling limit specified under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 which are worked out as given below:

Table 10: Capital Spare as admitted (₹ in Crore)

Original Project cost as on 31.03.2014	Capital Spare till March 31 st 2014 as filed by the Petitioner	Admitted Capital Spares % of the Original Capital cost	Capital Spare filed in true up FY 2014-15	Total Capital Spares filed as on 31/12/2015	Total Capital Spares % of the Original Capital cost
	(A)		(B)	(A+B)	
₹Cr.	₹Cr.	%	₹Cr.	₹Cr.	%
3471.73	17.58	0.51%	3.52	21.10	0.61%

43. It is observed that the additional capitalization of ₹16.18 Crores as claimed by the petitioner is captured in Annual Audited Accounts of Jaypee Bina Thermal Power Plant (JBTPP) for FY 2014-15. The aforesaid additional capitalization is within the cut-off date in terms of aforesaid Tariff Regulations.
44. The said additional capitalization is as per provisions of Regulation 20.1 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 and it is within the **original scope of work with a Project completion cost of ₹3575 Crores** as per its Board's resolution submitted as Annexure-1 with its affidavit dated 30th March' 2016. Therefore, the Commission has admitted the additional capitalization of ₹16.18 Crores in this instant order.
45. The Commission, further, observed that write off/deletion of gross fixed assets of ₹3.79 Crores during FY 2014-15 is also captured in Annual Audited Books of Accounts for FY 2014-15. Thus, the Commission has considered the write off/deletion of ₹3.79 Crores as filed by the petitioner.
46. In view of the above, the Opening Gross Fixed Assets, addition/write off during the year and Closing Gross Fixed Assets as approved by the Commission in this order are as given below:

Table 11: Approved Capital Cost (₹ in Crores)

Particulars	Cost already admitted as on 01.04.2014 by the Commission	Addition during 2014-15	Write off/Deletion during 2014-15	Capital Cost admitted upto 31.03.2015 in this order
Land	6.86	0.00	0.00	6.86
BTG	1713.07	1.65	3.77	1710.95
BOP	1171.05	8.59	0.02	1179.62
Civil Cost	580.75	5.94	0.00	586.69
Total	3471.73	16.18	3.79	3484.12

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

47. The petitioner has submitted the additional capitalization of ₹16.18 Crores and write off/deletion of ₹3.79 Crores i.e. net additional capitalization of ₹12.39 Crores during FY 2014-15.
48. Regarding the sources of funding of aforesaid additional capitalization, by affidavit dated 30th March' 2016, the petitioner submitted that there was no fresh draw down of loan and the additional capitalization had been financed entirely out of the equity/reserve/internal accruals. Thus, for the purpose of computation of ROE and Interest on loan, the petitioner has considered the funding of net additional capitalization of ₹12.39 Crores in the ratio of 70:30. i.e. ₹8.68 Crores by normative loan component and ₹3.72 Crores by equity component.

Provision in Regulation:

49. Regulation 21 of the MPERC (Terms and Conditions for determination of Generation tariff) Regulations 2012 provides as under:

"In case of the generating station declared under commercial operation prior to 1.4.2013, debt-equity ratio allowed by the commission for determination of Tariff for the period ending 31.3.2013 shall be considered. For the purpose of determination of Tariff of new generating station Commissioned or capacity expanded on or after 01.04.2013, debt-equity ratio as on the Date of Commercial operation shall be 70:30. The debt-equity amount arrived in accordance with this clause shall be used for calculation of interest on loan, return on equity and foreign exchange rate variation.

Where equity actually employed is in excess of 30%, the amount of equity for the purpose of Tariff shall be limited to 30% and the balance amount shall be considered as loan. The interest rate applicable on the equity in excess of 30% treated as loan has been specified in Regulation 23. Where actual equity employed is less than 30%, the actual equity shall be considered.”

Commission’s Analysis:

50. The petitioner submitted that additional capitalization of ₹16.18 Crores has been completely funded by the equity, keeping in view of above Regulation “*Where equity actually employed is in excess of 30%, the amount of equity for the purpose of Tariff shall be limited to 30% and the balance amount shall be considered as loan*”, The Commission has considered the excess equity i.e. above 30% of additional capitalization, as normative loan.”
51. With regard to write off/deletion of ₹3.79 Crores, the Commission has considered the corresponding reduction of debt and equity in the ratio of 70:30 as admitted by the Commission while approving the capital cost, in its order dated 26th November’ 2014.
52. The detail of admitted additional capitalization and write off/deletion during the year and its corresponding debt and equity as admitted by the Commission for FY 2014-15 is as follows:

Table 12: Addition, Write Off/deletion and Sources of funding (₹ in Crores)

Sr. No.	Particular	Addition/ write off/deletion and sources of funding admitted for FY 2014-15		
		Addition/write off	Loan Addition	Equity Addition
1	Addition capitalization	16.18	11.33	4.85
2	Less: Write off	3.79	2.65	1.14
3	Net Addition	12.39	8.67	3.72

Annual Capacity (fixed) Charges:

53. The tariff for supply of electricity from a thermal power generating station comprises of Capacity (fixed) charge and Energy (variable) charge is to be derived in the manner specified in the Regulations 40 and 41 of “Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012. {RG-26 (II) of 2012}. The Annual Capacity (fixed) Charges consist of:

- (i) Return on Equity;
- (ii) Interest and Financing Charges on Loan Capital;
- (iii) Depreciation;
- (iv) Lease/Hire Purchase Charges;
- (v) Operation and Maintenance Expenses;
- (vi) Interest Charges on Working Capital;
- (vii) Cost of Secondary Fuel Oil;
- (viii) Special allowance in lieu of R&M or separate compensation allowance, wherever applicable:

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

54. The petitioner claimed the Return on equity in Annexure P3 of the petition as given below:

Table 13: Opening, Closing & Average Normative Equity: (₹ in Crores)

Year		FY 2014-15
Opening Equity Normative	₹Cr.	1045.49
Equity Additions normative	₹Cr.	3.72
Closing Equity Normative	₹Cr.	1049.21
Average Equity Normative	₹Cr.	1,047.35
Base Rate of Return On Equity	%	15.50%
Tax rate considered MAT	%	20.96%
Rate of Return on Equity	%	19.61%
Return on Equity	₹Cr.	205.39
Return of equity		205.39

55. While claiming the Return on Equity, the petitioner has considered the base rate of return on equity as 15.50%, which is grossed up with MAT rate of 20.96%.

Provision in Regulations:

56. Regulation 22 of MPERC (Terms and Conditions for determination of Generation

tariff) Regulations, 2012, provides as under:

“Return on equity shall be computed in rupee terms, on the paid up equity capital determined in accordance with Regulation 21.

Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per Regulation 22.3 of this Regulation:

Provided that in case of Projects commissioned on or after 1st April, 2013, an additional return of 0.5% shall be allowed if such Projects are completed within the timeline specified in Appendix-I :

Provided further that the additional return of 0.5% shall not be admissible if the Project is not completed within the timeline specified above for reasons whatsoever.

The rate of return on equity shall be computed by grossing up the base rate with the normal tax rate for the Year 2014-15 applicable to the Generating Company:

Provided that return on equity with respect to the actual tax rate applicable to the Generating Company, in line with the provisions of the relevant Finance Acts of the respective Year during the Tariff period shall be trued up separately.

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

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

Where t is the applicable tax rate in accordance with Regulation 22.3.”

Illustration.-

(i) *In case of Generating Company paying Minimum Alternate Tax (MAT) say @ 20.01% including surcharge and cess:*

Rate of return on equity = 15.50/ (1-0.2001) = 19.377%

(i) *In case of Generating Company paying normal corporate tax say @ 33.99% including surcharge and cess:*

Rate of return on equity = 15.50/ (1-0.3399) = 23.481%

Commission's Analysis:

57. For the purpose of computation of Return on Equity, the normative closing equity as on 31st March' 2014 as admitted in the tariff order dated 26th November' 2014, has been considered as the opening equity as on 1st April' 2014.
58. The petitioner filed the additional capitalization of ₹16.18 Crores and also filed the write off/ deletion of fixed assets of ₹3.79 Crores on account of VAT refund in during FY2014-15 i.e. net additional capitalization of ₹12.39 Crores. The petitioner mentioned that the aforesaid additional asset have been funded through equity component. Accordingly, the petitioner claimed corresponding normative equity infusion of ₹3.72 Crores i.e. 30% of net additional capitalization as per the provision of the Regulations, 2012.
59. Vide Commission's letter dated 23rd February' 2016, the petitioner was asked to mention/indicate the amount of ₹3.72 Crores as equity addition in the relevant part of its balance sheet and approvals of its Board of Directors for equity infusion in additional assets.
60. By affidavit dated 30th March' 2016, the petitioner submitted that since, this **addition is part of original scope of work with a Project completion cost of ₹3575 Crores**, hence it does not require fresh approval of its Board of Director.
61. With regard to grossing up the rate of Return on Equity with MAT, vide Commission's letter dated 23rd February, 2016, the petitioner was asked to explain with the supporting documents for its eligibility for MAT in light of figures recorded in its balance sheet and the provisions under the Regulations, 2012.
62. By affidavit dated 30th March, 2016, the petitioner submitted that the petitioner's company has paid the MAT for FY 2014-15, which can be substantiated by the Income Tax Return filed by the petitioner.
63. On perusal of the response filed by the petitioner, it was observed that the subject petition is for true-up of Bina Thermal Power Project whereas, the petitioner's response on this issue is based on its company (JPVL) as a whole.
64. Therefore, vide Commission's letter dated 21st April' 2016, the petitioner was asked to clarify the following-

- i. With regard to Minimum Alternate Tax (MAT), the petitioner was asked to clarify the following in light of the proviso under Regulation 22.3 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012, which provides as under:

“Provided that return on equity with respect to the actual tax rate applicable to the Generating Company, in line with the provisions of the relevant Finance Acts of the respective Year during the Tariff period shall be trued up separately.”

- a) As per the Books of Account of JPVL Bina project for FY 2014-15, the tax amount is indicated as NIL, while the petitioner has claimed ROE on the basis of MAT. Therefore, the petitioner was asked to file the basis of tax amount claimed, whereas, it has not paid any income tax for Bina TPS in FY 2014-15.
- b) The Annual Audited Accounts at page no. 267 of the petition note no. 32 indicates that **“there is no taxable profit upto 31st March 2015, no income Tax has been provided”**. The petitioner was asked to clarify the above statement of auditor for taxability of JPVL.
- c) The petitioner was also asked to clarify/explain the following statement of auditor, at page No. 254 of the petition:
- “Provision for current tax is being made after taking into consideration benefits admissible to the company under the provision of Income Tax Act 1961”.**
- d) Whether Bina TPS is exempted from income tax under income tax Act? If yes, the relevant section of income tax act and the time period for exemption was sought from the petitioner.
65. By affidavit dated 09th May’ 2016, the petitioner filed its reply to the above issues as given below:

“The provision as contained in Regulation 22.3 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations 2012 provide for “actual tax rate applicable to the Generating Company, in line with the provisions of the

relevant Finance Acts of the respective year during the Tariff period shall be trued up separately". The Generating company here is M/s Jaiprakash Power Ventures Limited (JPVL) and JPVL has paid MAT for Assessment Year 2015-16, relevant to Previous Year 2014-15. The Para Wise reply is as under:-

- (a) The Tax amount has been claimed as per existing Tariff Guidelines, i.e. Gross up with the applicable Tax rate, which in our case is 20.96% (for P.Y 2014-15) as MAT, **even though as per Income Tax, the Company is not liable for Tax as explained in the subsequent paragraphs.(emphasis supplied)**
- (b) Taxable profits is being considered after taking into account depreciation as per income Tax Act. The rates of depreciation as per Income Tax Act are different from the rates of depreciation as per Companies Act. Even if there is no Taxable Income as per Income Tax Act, the company is liable to pay MAT.
- (c) & (d) Extract quoted by the Hon'ble Commission is the Accounting Policy of the Company, given at para no. 1K of the Note No. 1(ii) "Summary of Significant Accounting Policies". As per the Accounting Policies of the Company, provision for Current Tax is being made after taking into consideration the benefit admissible to the Company under the Provisions of Income Tax Act, 1961. As per the Provisions of Income Tax Act, 1961, Income from generation and distribution of power is exempted from the Tax and this benefit can be claimed by the assessee in any 10 Assessment Years out of first 15 Assessment Years. However, till date, the Company has not availed benefit of exemption under section 80IA

66. On perusal of the aforesaid response filed by the petitioner on MAT, the Commission observed the following:

- i. The petitioner has filed the Annual Audited Accounts including balance sheet, profit and loss accounts and annexure thereto, of Jaypee Bina Thermal Power Plant (JBTPP) along with Consolidated Financial Statement of Jaypee Power Ventures Limited (JPVL) as on March 31st, 2015.
- ii. The Consolidated Financial statement of Jaypee Power Ventures Limited (JPVL) comprises of the financials of following power plants also including 500 MW Bina TPS in the subject petition:
 - (a) 300 MW Jaypee Baspa-II Hydro Electric Project (HEP),

- (b) 400 MW Jaypee Vishnuprayag HEP,
 - (c) 1091 MW Jaypee Karcham Wangtoo HEP,
 - (d) 500 MW Bina TPS
 - (e) 1320 MW Jaypee Nigrie Super Thermal Power Station.
- iii. In the Annual Audited Accounts of Bina Thermal Power Plant, the payment towards Income Tax or MAT has been shown as NIL during FY 2014-15. While carrying out the true up exercise, the base rate of ROE is required to be grossed up with the actual tax rate. In the instant matter of Jaypee Bina Thermal Power Plant, the payment towards income tax or MAT is NIL. Thus, the Commission does not find any basis for grossing up the base rate of ROE with MAT.
- iv. It is observed that the petitioner has submitted the income tax return of Jaypee Power Ventures Limited (JPVL) for FY 2014-15. It is observed at page 54 of the said income tax return, the MAT has been calculated on the profit of **₹137 Crores**.
- v. The above profit of ₹137 Crores has been shown at page 70 of the Annual Audited Accounts of JPVL. The relevant part is reproduced below:

Table 14: JPVL Consolidated Profit (₹ in Crores)

Particulars	Continuing operations	Discontinuing Operations		Total (A+B+C)
	(JPVL) (A)	Baspa HEP (B)	Karcham HEP (C)	
Profit (Loss)from Operating Activities After Tax	(298.41)	106.79	328.83	137.21

- vi. In the above table, the said profit of ₹137 Crores has been computed by way of clubbing the JPVL loss of ₹298.41 Crores from continuing operation with the profit of ₹106.79 Crores (Baspa) and ₹328.83 Crores (Karcham) from Discontinuing Operation.
- vii. From the above, it is evident that JPVL's financial statement includes the profit and loss of business other than the Bina Thermal Power Plant also. Therefore, the claim of petitioner for MAT in the subject petition of Bina thermal power station, based on JPVL financial statement is not appropriate. And considerable.

- viii. While processing the subject true up petition, the Commission has considered the Assets, Liabilities, Income and Expenditure as per the Audited Financial Statement of Bina Thermal Power Plant (JBTPP). Therefore, for the purpose of actual tax, the Commission has considered the Audited Financial Statement of Bina Thermal Power Plant (JBTPP) instead of Jaypee Power Ventures Limited (JPVL).
- ix. It is pertinent to mention here that Jaypee Bina Thermal Power Plant cannot be allowed for grossing up with the base rate of ROE with MAT merely on the pretext that the group company (JPVL-consolidated balance sheet) is paying the tax,.
67. In view of the above observations, the Commission has not considered grossing up the base rate of ROE with MAT. Accordingly, the Return on equity for FY 2014-15 is worked out as given below:

Table 15: Return on Equity for FY 2014-15 (₹ in Crores)

Sr. No.	Particular	Unit	FY 2014-15
1.	Opening normative equity	₹ Cr.	1041.52
2.	Addition during the year	₹ Cr.	3.72
3.	Closing normative equity	₹ Cr.	1045.24
4.	Average normative equity	₹ Cr.	1043.38
5.	Applicable base rate of Return on Equity	%	15.50
6.	Tax rate	%	0.00
7.	Annual Return on Equity	₹ Cr.	161.72

b. Interest and finance charges on loan:

Petitioner's Submission:

68. The petitioner submitted the detailed break-up of opening loan balances, net addition, repayment during the year, closing balance of Loan, Weighted Average rate of Interest and Interest on loan in form TPS 13 A of the petition as given below:

Table 16: Interest on Loan Claimed for FY 2014-15 (₹ in Crores)

Particulars	FY 2014-15
Gross Normative Loan - Opening	2,439.49
Cumulative Repayment of Normative Loan upto Previous Year	205.96

Net Normative Loan-Opening	2,233.52
Net Loan Additions during the year	8.68
Repayment During the year	172.47
Closing Loan	2,069.73
Average Loan-Normative	2,151.63
Weighted average Rate of Interest on actual Loans	12.41%
Interest on Normative loan	266.95

Provision in Regulations:

69. Regulation 23 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations 2012, provides as under:

“The loans arrived at in the manner indicated in Regulation 21 shall be considered as gross normative loan for calculation of interest on loan.

The normative loan outstanding as on 1.4.2013 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2013 from the gross normative loan.

The repayment for the Year of the Tariff period 2013-16 shall be deemed to be equal to the depreciation allowed for that Year.

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 annual depreciation allowed.

The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio at the beginning of each Year applicable to the Project:

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.

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

The Generating Company shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the Beneficiaries and the net savings shall be shared between the Beneficiaries and the Generating Company, in the ratio of 2:1.

The changes to the terms and conditions of the loans shall be reflected from the date of such re-financing-----“.

Commission’s Analysis:

70. For the purpose of computation of interest on term loan, the normative closing loan balance as on 31st March’ 2014 as admitted in the review order dated 08th May’ 2015, has been considered as the opening loan balance as on 1st April’ 2014.
71. The petitioner filed the additional capitalization of ₹16.18 Crores and also filed the write off/ deletion of fixed assets of ₹3.79 Crores on account of VAT refund during FY 2014-15 i.e. net additional capitalization of ₹12.39 Crores. The petitioner mentioned that the assets under additional capitalization has been funded through equity component. Accordingly, the petitioner claimed corresponding net normative loan of ₹8.67 Crores i.e. 70% of net additional capitalization.
72. With regard to weighted average rate of interest filed in the petition, vide letter dated 23rd February’ 2016, the petitioner was asked to file the documents in support of weighted average rate of interest for all the lenders/ bankers.
73. By affidavit dated 30th March’ 2016, the petitioner filed a summary statement showing actual amount of monthly interest paid, rate of interest alongwith bank statement showing such payment in this regard.
74. In view of the above, the interest on loan has been worked out by the Commission as under:
 - (a) Gross normative opening loan of ₹2224.51 Crores has been considered.
 - (b) Net Addition of normative loan amount of ₹8.67 Cr. (70% of net additional capital expenditure approved above) has been considered.

- (c) Repayment equal to annual depreciation has been considered.
- (d) Weighted average rate of interest @ 12.41% filed by the petitioner considering the actual loan portfolio has been considered.
- (e) The interest on loan is worked out as given below:

Table 17: Interest on Loan (₹ in Crores)

Sr. No	Particular	Unit	FY 2014-15
1.	Opening loan	₹ Cr.	2224.51
2.	Net normative loan addition	₹ Cr.	8.67
3.	Normative repayment equal to depreciation	₹ Cr.	171.81
4.	Closing loan balance	₹ Cr.	2061.37
5.	Average loan	₹ Cr.	2142.94
6.	Applicable weighted average rate of interest	%	12.41
7.	Annual interest amount on loan	₹ Cr.	265.88

c. Depreciation:

Petitioner's Submission

75. The petitioner submitted the break-up of opening Gross Fixed Assets, addition, write off/deletion during the year, closing Gross Fixed Assets, depreciation rates as per MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012 depreciation rate schedule and depreciation in form TPS 11 (4) of the petition is as given below:

Table 18: Depreciation on assets (₹ in Crores)

Particulars	Total Opening Gross Block As at 1st April, 2014	Additions during the Year	Deletions during the Year	Total Closing Gross Block as at 31st March, 2015	Average Gross Block as at 31st March, 2015	Depreciation's rates as per Regulations	Depreciation
	Unit I and II	Unit I and II	Unit I and II	Unit I and II	Unit I and II	Unit I and II	
Land	6.86	0.00	0.00	6.86	6.86	0%	0.00
BTG	1742.92	1.65	3.77	1740.8	1741.86	5.28%	91.97
BOP	1145.13	8.59	0.02	1153.7	1149.42	5.28%	60.69
Civil Cost	590.07	5.94	0	596.01	593.04	3.34%	19.81
Gross Fixed Assets	3484.98	16.18	3.79	3497.37	3491.18		172.47

Provision in Regulations:

76. Regulation 24 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 provides as under:

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

- (a) The value base for the purpose of depreciation shall be the capital cost - of the assets as admitted by the Commission*
- (b) The approved/accepted cost shall include foreign currency funding converted to equivalent rupee at the exchange rate prevalent on the date of foreign currency actually availed.*
- (c) 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 stations, the salvage value shall be as provided in the agreement signed by the developers with the State Government for creation of the site:

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

- (d) Land other than 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.*
- (e) Depreciation shall be calculated annually based on ‘Straight Line Method’ and at rates specified in Appendix-II to these Regulations for the assets of the generating station:*

Provided that, the remaining depreciable value as on 31st March of the Year closing after a period of 12 Years from the Date of Commercial operation shall be spread over the balance Useful life of

the assets.

- (f) *In case of the existing Projects, the balance depreciable value as on 1.4.2013 shall be worked out by deducting the cumulative depreciation including Advance against Depreciation if any as admitted by the Commission upto 31.3.2013 from the gross depreciable value of the assets. The rate of Depreciation shall be continued to be charged at the rate specified in Appendix-II till cumulative depreciation reaches 70%. Thereafter the remaining depreciable value shall be spread over the remaining life of the asset such that the maximum depreciation does not exceed 90%.*
- (g) *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.”*

Commission’s Analysis:

77. For the purpose of computation of Depreciation, the closing Gross Fixed Assets as on 31st March’ 2014, as admitted in the order dated 26th November’ 2014, has been considered as the opening Gross Fixed Assets as on 1st April’ 2014.
78. The petitioner filed the additional capitalization of ₹16.18 Crores during the year. The petitioner also filed the write off/ deletion of fixed assets of ₹3.79 Crores on account of VAT refund during FY 2014-15. Thus the Commission has considered net addition to fixed assets of ₹12.39 Crores in this order.
79. The closing Gross Fixed Assets as on 31st March’ 2015, is worked out after considering the addition due to additional capitalization and reduction due to assets write off/deletion during the year.
80. The Commission observed that the petitioner has not filed the Asset-cum-Depreciation register with the petition. Vide letter dated 23rd February’ 2016, the petitioner was asked to file the Asset-cum-Depreciation register for Bina Thermal Power Project duly reconciled with the Annual Audited Accounts. By affidavit dated 30th March’ 2016, the petitioner filed Asset-cum-Depreciation register as on 31.03.2015 duly reconciled with the Annual Audited Accounts.

81. The Commission has worked out the depreciation on average Gross Fixed Assets duly taking into account the opening Gross Fixed Assets, additions, write off during the year, closing Fixed Assets as considered in this order and weighted average rate of depreciation as filed by the petitioner as per Regulations, 2012, is given below:

Sr. No.	Particular	Unit	FY 2014-15
1.	Opening GFA	₹ Cr.	3471.73
2.	Addition during the year	₹ Cr.	16.18
3.	Write-off during the year	₹ Cr.	3.79
4.	Net GFA Addition	₹ Cr.	12.39
5.	Closing GFA	₹ Cr.	3484.12
6.	Average GFA	₹ Cr.	3477.92
7.	Applicable rate of depreciation	%	4.94%
8.	Annual depreciation	₹ Cr.	171.81
9.	Closing cumulative depreciation	₹ Cr.	377.51

d. Lease/Hire Purchase Charges

82. In the subject true up petition, the petitioner has filed ₹0.24 Crore as yearly lease rent payable for FY 2014-15.

Provision in Regulation:

83. Regarding the lease/Hire purchase charges of thermal power stations, Regulation 25.1 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2012, provides as under,

“Lease charges for assets taken on lease by a Generating Company shall be considered as per lease agreement provided they are considered reasonable by the Commission.”

Commission’s Analysis:

84. The petitioner has claimed ₹0.24 Cr. against lease rent payable for land during the year. Vide Commission’s letter dated 23rd February’ 2016, the petitioner was asked to show the reconciled lease rent payment for land with Annual Audited Accounts. Supporting document in this regard were also sought from the petitioner. The petitioner was also asked to file a copy of the “Lease Agreement” in light of the Regulation 25.1 of MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2012.

85. By affidavit dated 30th March' 2016, the petitioner submitted the following it has "claimed Land lease rent of ₹5,81,059/- (₹5,20,512+₹60,547) & Railway Land lease rent of ₹18,19,966/-, totaling ₹24,01,125/-. Both these figures are grouped under "Other Expenses" (Note 23- of P&L A/c). Out of these figures ₹5,81,059/- is shown against sub-head "Lease Rent " and railway Lease Rent of ₹18,19,966/- is grouped under sub-head "Taxes & Fees".
86. On perusal of the aforesaid details filed by the petitioner, it was observed that the petitioner has paid railway lease rent of ₹18,19,966/-. Vide Commission's letter dated 21st April' 2016, the petitioner was asked to furnish the detailed break up and CA certificate of sub-head of Taxes & Fees, indicating the Railway lease of ₹18,19,166/-. By affidavit dated 09th May' 2016, the petitioner submitted the detailed Break up of sub head of "Taxes & Fees" duly certified by CA.
87. In view of the above, the Commission has considered the lease rent payment of ₹0.24 Crore as claimed by the petitioner for FY 2014-15 in this order.

e. Operation and Maintenance Expenses:

Petitioner's Submission:

88. The petitioner has filed the Operation and Maintenance expenses for generating units in Form F5 of the petition is as given below:

Table 20: O&M Expenses claimed for generating units (₹ in Crores)

Phase-1	Particulars	FY 2014-15
Unit I & II	O&M Expenses	99.50

89. The petitioner has also filed the Operation & Maintenance expenses on Transmission lines & Bay in form F5A of the petition is as given below:

Table 21: O&M Expenses on Transmission lines & Bay (in ₹ Crores)

Sl. No.	Particulars	FY 2014-15
1	O&M Expenses of 400kV Transmission Line	39.294 ckt km
2	O&M Expenses of 400kV Bay	2 Nos of 400kV Bay
	Total O&M Expenses	0.48

Provision in Regulations:

90. Regarding the Operation and Maintenance expenses of thermal power stations,

Regulation 36.1 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2012, provides as under:

“The Operation and Maintenance expenses admissible to existing thermal power stations comprise of employee cost, Repair & Maintenance (R&M) cost and Administrative and General (A&G) cost. These norms exclude Pension, Terminal Benefits and Incentive to be paid to employees, taxes payable to the Government, MPSEB expenses and fees payable to MPERC. The Generating Company shall claim the taxes payable to the Government and fees to be paid to MPERC separately as actuals. The claim of pension and Terminal Benefits shall be dealt as per Regulation 26.5.”

Table No. 22: O&M Norms for Thermal Generating ₹ in Lakh/MW

Units (MW)	FY 2014-15 ₹ Lacs/MW
45	27.96
200/210/250	19.90
500	14.90
600 and above	13.98

Commission’s Analysis:

91. For Thermal Power Station, the Commission has worked out the Annual Operation and Maintenance Expenses as per the above Regulations. Accordingly, the Operation and Maintenance Expenses for generating units are determined as given below:

Table No. 23: Operation and Maintenance Expenses admitted

Sr. No.	Phase-I	Capacity	Normative O&M Expenses	Annual O&M Expenses as per norms
		MW	₹ Lack/MW	₹ Cr.
1	Unit I & II	250X2	19.90	99.50

92. With regard to Operation & Maintenance expenses on Transmission lines & Bay, vide Commission’s letter dated 23rd February’ 2016, the petitioner was asked that “In the subject true-up petition, the petitioner has also claimed ₹0.48 Croress and ₹0.51 Croress for FY 2014-15 and FY 2015-16 respectively for O&M expenses of transmission line and bay on the basis of the norms prescribed under MPERC (Terms and Conditions for determination of Transmission Tariff) Regulations. The

contention/claim of the petitioner in this regard is appearing unreasonable. Therefore, the petitioner was to justify its claim for a dedicated transmission line in light of the MPERC (Terms and Condition for determination of Generation Tariff) Regulations, 2012.”

93. By affidavit dated 30th March' 2016, the petitioner submitted the following “The O&M expenses of Transmission lines & bay has been claimed on the basis of the norms prescribed under MPERC (Terms and Conditions for determination of Transmission Tariff) Regulations and the detailed calculation of the same has been provided on the Page No.193 of the subject petition.”The same is being reproduced as under:-

Statement of O&M Expenses of Transmission Lines & Bay

Sl. No.	Particulars		FY 2014-15	FY 2015-16
1	O&M Expenses of 400kV Transmission Line	39.294 ckt km	0.14	0.15
2	O&M Expenses of 400kV Bay	2 Nos of 400kV Bay	0.33	0.36
Total O&M Expenses			0.48	0.51

Length of Transmission Line

a 13.444 kms 400kV Double Circuit Line

b Single Circuit MPPTCL Line

c Single Circuit PGCIL Line

Total Circuit Kms

Circuit Kms

26.888ckt km

6.177 ckt km

6.229 ckt km

39.294 ckt km

Note:-

- (1) As per MPERC Tariff Guidelines, O&M Expenses of 400 kV Transmission Line @ 36.20 Lacs Per 100 ckt km Per Annum is allowable for FY 2014-15 & @ 39.10 Lacs Per 100 ckt km Per Annum is allowable for FY 2015-16.
- (2) As per MPERC Tariff Guidelines, O&M Expenses of 400 kV Bay @ 16.70 Lacs Per Bay Per Annum is allowable for FY2014-15 & @ 18.00 Lacs Per Bay Per Annum is allowable for FY2015-16.

The Generation Project of the Petitioner having two units of 250 MW each achieved COD of Unit -1 on 31-08-2012 and Unit-2 on 07-04-2013. The PPA entered into with MPPMCL (Procurer) dated 05-01-2011 Article 4.8 has the

following provision:-

“The Contracted Capacity shall be evacuated by a dedicated transmission line of 400 KV to be constructed by the Company from the Delivery Point to 400 KV S/s of MPPTCL at Bina. Since contracted capacity has been increased 42% (forty two percent) to 70% (seventy percent) for Phase-I i.e. 2X250 MW), the sharing of the cost of dedicated transmission line shall be decided mutually between the Company and the GoMP. In this arrangement, the procurer shall not be liable to pay transmission charges of PGCIL’s (Power Grid Corporation of India Limited) network of Western Region transmission system.”

During the proceedings for determination of final tariff for the station, there were two options to be mutually agreed between the Generator and the Procurer. The first being sharing of the cost of construction of this transmission line in a mutually agreeable ratio wherein the original percentage of 50 % of sharing of cost was based on 42 % supply of power to Procurer which increased to 70 % at the time of signing of PPA. The second option was to include the cost of this dedicated transmission line as a part of the Generation Project.

The Procurer agreed to option No .2 i.e. to include the cost of this dedicated transmission line as a part of the Generation Project and the Hon’ble Commission was pleased to determine the capital cost of the Generation Project which included the cost of this dedicated transmission line.

Due to an inadvertent mistake on the Part of the petitioner, the O&M cost of this transmission line was not claimed for the periods FY 2012-13 and FY 2013-14. Since the provisions for O&M in the Generation tariff are based on per MW cost which cater only for the Generation assets, hence the only option left with the Petitioner to be compensated for the expenditure incurred against operation and maintenance of this dedicated transmission line was to adopt per Circuit km and per Bay O&M cost as provided under the MPERC (terms and conditions for determination of tariff) Regulations.”

94. It is evident from the above submission of the petitioner that the Transmission line in the subject petition is a dedicated line and its cost has been appropriately included in the capital cost of the 2x250 MW (Phase-I) of petitioner’s power plant

while determining its final tariff vide Commission's order dated 26.11.2014. Further, the petitioner had never claimed the operation and maintenance (O&M) expenses for the said dedicated transmission line in its any of the petitions filed for determination of provisional tariff of each generating unit and also the final tariff of the petitioner's power plant. For the first time in the subject true-up petition, the O&M expenses of dedicated transmission line is claimed by the petitioner.

95. The status of the aforesaid dedicated transmission line has already been dealt with in para 27 to 30 of the Commission's first order dated 12th December' 2012 in Petition No. 40 of 2012. Further, the remaining issue has been dealt with in relevant paras of Commission's order dated 26.11.2014.
96. The extract of the above-mentioned paragraphs of Commission's order is that the dedicated transmission lines is neither a transmission line in terms of sub-section (72) of Section 2 of the Electricity Act' 2003 nor it is a distribution system connecting the point of a connection to the installation of consumer in terms of sub-section (19) of Section 2 of the Act. The O&M expenses of a transmission line are part of the Annual Fixed Cost of the line of a transmission licensee whereas, the petitioner is not a transmission licensee. The cost of dedicated line has been considered in the capital cost of the petitioner's power plant and the tariff of the said power plant has been determined in terms of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations' 2012 which does not provide for any O&M expenses of dedicated transmission line separately. In view of the aforesaid, the claim of petitioner for O&M expenses of dedicated transmission line has no merit hence not considered in this order.

f. Cost of Secondary Fuel Oil

Provision in Regulation:

97. Regulation 38 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 provides as under:

"Expenses on Secondary fuel oil in Rupees shall be computed corresponding to normative Specific Fuel Oil Consumption (SFC) specified in Regulation 35, in accordance with the following formula:

$$= SFC \times LPSFi \times NAPAF \times 24 \times NDY \times IC \times 10$$

Where,

SFC - Normative Specific Fuel Oil Consumption in ml/kWh

LPSFi - Weighted Average Landed Price of Secondary Fuel in ₹/ml considered initially

NAPAF - Normative Annual Plant Availability Factor in percentage NDY - Number of Days in a Year

IC - Installed Capacity in MW”

With regard to landed cost of oil, Regulation 38.2 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 provides as under;

“Initially, the landed cost incurred by the Generating Company on secondary fuel oil shall be taken based on actuals of the weighted average price of the three preceding months and in the absence of landed costs for the three preceding months, latest procurement price for the generating station, before the start of the Year.

The secondary fuel oil expenses shall be subject to fuel price adjustment at the end of the each Year of Tariff period as per following formula:

$SFC \times NAPAF \times 24 \times NDY \times IC \times 10 \times (LPSFy - LPSFi)$

Where,

LPSFy = The weighted average landed price of secondary fuel oil for the Year in Rs. /ml.”

Commission’s Analysis:

98. The above Regulation provides for a mechanism/formula for the adjustment of fuel oil expenses with actual rate at the end of each financial year of the tariff period. Therefore, there is no need for true up of secondary fuel oil by the Commission in terms of the aforesaid Regulation.

g. Interest on Working Capital:

Petitioner Submission:

99. The petitioner has claimed the interest on working capital in form TPS 13B of the

petition as given below:

Table 24: Interest on Working Capital Claimed (₹in Crores)

Sl. No.	Particulars	Norms	FY 2014-15
1	Cost of Coal/Lignite	2 months of coal purchase	162.92
2	Cost of Main Secondary Fuel Oil	2 months of sec oil purchase	2.98
3	O & M expenses	1 month of O&M purchase	8.29
3A	O & M expenses (Transmission Lines & Bay)	1 month of O&M purchase	0.04
4	Maintenance Spares	20% of O&M purchase	19.90
4A	Maintenance Spares (Transmission Line & Bay)	20% of O&M purchase	0.10
5	Receivables	2 months of total revenue	301.13
6	Total Working Capital		495.36
7	Rate of Interest (SBI PLR)		13.50%
8	Interest on Working Capital		66.87

Provision in Regulations:

100. Regulation 37.1 of the MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2012 regarding working capital for coal based generating stations provides that:

“The Working Capital for Coal based generating stations shall cover:

- (i) *Cost of coal for 45 Days for pit-head generating stations and two months for non-pit-head generating stations, corresponding to the normative availability;*
- (ii) *Cost of secondary fuel oil for two months corresponding to the normative availability:
Provided that in case of use of more than one secondary fuel oil, cost of fuel oil stock shall be provided for the main secondary fuel oil.*
- (iii) *Maintenance spares @ 20% of the normative O&M expenses;*
- (iv) *Receivables equivalent to two months of capacity charges and energy charges for sale of electricity calculated on the Normative Annual Plant Availability Factor; and*
- (v) *Operation and Maintenance expenses for one month.*

101. Regulation 37.2 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 provides as under:

*The cost of fuel shall be based on the landed cost incurred (taking into account normative transit and handling losses) by the Generating Company and Gross Calorific Value of the fuel as per actual for the preceding three months **and no fuel price escalation shall be provided during the Tariff period.*** (Emphasis Supplied)

102. With regard to the rate of interest on working capital, Regulation 27.1 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012 provides as under:

“Rate of interest on working capital to be computed as provided subsequently in these Regulations shall be on normative basis and shall be equal to the State Bank of India’s Base Rate as on 1st of April of that year plus 3.50%.....”

Commission’s Analysis:

103. In the above-mentioned provision under Regulations, 2012, no fuel price escalation shall be provided during the tariff period for calculating the working capital. The details of working capital are worked out as per the provisions under the Regulations, 2012 as given below:

- (i) Cost of coal and cost of secondary fuel oil for 2 months as considered in order dated 26.11.2014 as stated below is considered:

Particular	FY 2014-15 (₹ Cr.)
Cost of coal for two months	119.39
Cost of secondary fuel oil for two months	3.10

- (ii) Maintenance spares as considered in order dated 26.11.2014 as stated below are considered:

Particular	FY 2014-15 (₹ Cr.)
Maintenance Spares	19.90

- (iii) Receivables have been worked out on the basis of two months of fixed and energy charges as given below:

Particular	FY 2014-15 (₹ Cr.)
Variable charges – 2 months (As considered in order dated	119.39

26.11.2014)	
Annual Fixed Charges – 2 months (Worked out in this order)	137.68
Total	248.65

- (iv) O&M expenses for one month for the purpose of working capital as considered in order dated 26.11.2014 has been considered:

Particular	FY 2014-15 (₹ Cr.)
O&M expenses for one month	8.29

104. The State Bank of India Base rate applicable/ prevailing as on 07.11.2013 (up to 1st April 2014) is 10.0% + 3.50% = 13.50%. Accordingly, no variation in the Interest rate is observed.
105. Considering the above, the interest on working capital worked out by the Commission for FY 2014-15 in this true-up order is as given below:

Table No. 25: Interest on working capital (₹ in Crores)

Sl. No.	Particulars	Norms	FY 2014-15
1	Cost of Coal	2 months of coal purchase	119.39
2	Cost of Main Secondary Fuel Oil	2 months of sec oil purchase	3.10
3	O & M expenses	1 month of O&M	8.29
4	Maintenance Spares	20% of O&M	19.90
5	Receivables	2 months of total revenue	248.65
6	Total Working Capital		399.33
7	Rate of Interest		13.50%
8	Interest on Working Capital		53.91

h. Non-Tariff Income:

Provision in Regulations:

106. Regulation 31 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 provides as under:

“(a) Any income being incidental to the business of the Generating Company derived from sources, including but not limited to the disposal of assets, income from investments, rents, income from sale of scrap other than the de-capitalized/written off assets, income from advertisements, interest on advances to suppliers/contractors, income from sale of ash/rejected coal,

and any other miscellaneous receipts other than income from sale of energy shall constitute the non tariff income.

- (b) The amount of Non-Tariff Income relating to the Generation Business as approved by the Commission shall be deducted from the Annual Fixed Cost in determining the Annual Fixed Charge of the Generation Company:
 Provided that the Generation Company shall submit full details of its forecast of Non-Tariff Income to the Commission in such form as may be stipulated by the Commission from time to time. Non tariff income shall also be Trued-up based on audited accounts.

Commission's Analysis:

107. Aforesaid provision under the Regulations, 2012 provides that the non-tariff income shall also be trued up based on the Audited Accounts. On scrutiny of the subject petition, it was observed that the petitioner had not filed the non-tariff income in its claim in TPS-1 of the petition. On further scrutiny of the petition, it was observed that in form S1 (Statement for Profit & Loss A/c), the petitioner has indicated the other non-tariff income of ₹1.74 Crores as recorded in Note-18 of the Annual Audited Accounts.
108. Vide letter dated 23rd February' 2016, the petitioner was asked to file the break-up of other non-tariff income recorder in Form S1 of the petition.
109. By affidavit dated 30th March' 2016, the petitioner filed break-up of other non-tariff income of ₹1.74 Crores as given below:

Table No. 26: Break-up of non-tariff income

S. No.	Particular	Amount in ₹
1	Interest Received	1,00,104
2	Excess/ Short Provision Written Back	2,58,817
3	Profit on Sale of Assets	12,556
4	Rent Received	8,31,530
5	Sale of Scrap	1,61,57,111
	Total	1,73,60,118

110. The Commission further observed that an amount of ₹4.03 Cr. is reflected in Note-17 of the Annual Audited Accounts as income from sale of fly ash. Such income from fly ash shall also be considered as non-tariff income under the provision of the Regulations, 2012. Therefore, the total non-tariff income

considered by the Commission in this order is as given below:

Table No. 27: Total Non-Tariff Income (₹ in Crores)

Particulars	Amount for FY 2014-15
Other non-tariff income as per Note-18 of the Audited Accounts	1.74
Income from sale of fly ash as per Note-17 of the Audited Accounts	4.03
Total non-tariff income considered	5.77

Summary of Annual Capacity (fixed) charges:

111. The details of the Annual Capacity (fixed) Charges for FY 2014-15 as determined in the Tariff order dated 08th May, 2015 vis-a-vis allowed in this true-up order at normative Plant Availability Factor are summarized in the following table:

Table No. 28: Head wise Annual Capacity Charges at normative availability: (₹ in Crores)

Particulars/Years	MPERC order dated 08.05.2015 for FY 2014-15	Allowed in This order for FY 2014-15 on Normative Availability	True-up amount at Normative Availability
Capacity Charge or Fixed Charge			
Depreciation	172.20	171.81	(0.39)
Interest on Loan	272.65	265.88	(6.77)
Return on Equity	204.24	161.72	(42.52)
Interest on Working Capital	55.05	53.91	(1.14)
O & M Expenses	99.50	99.50	-
Secondary Fuel Oil expenses	22.47	22.47	-
Lease rent payable for land (yearly)	-	0.24	0.24
Annual Capacity (fixed) charges	826.10	775.53	(50.57)
Less: Non-Tariff Income	-	5.77	5.77
Net Annual Capacity charges	826.10	769.76	(56.34)
Annual Capacity (fixed) charges corresponding to 65% of the installed capacity of the units	536.96	500.34	(36.62)

112. The Annual Capacity (fixed) Charges as determined above for FY 2014-15 are at Normative Availability and these charges are based on Annual Audited Accounts of Japye Bina Thermal Power Plant for FY 2014-15.

113. The recovery of Annual Capacity (fixed) Charge for FY2014-15 shall be made by the petitioner in accordance with clause 40.2 and clause 40.3 of the Regulations 2012 on pro-rata basis with respect to actual Annual Plant Availability Factor.

114. In the subject petition, the petitioner has filed the true-up of energy charges also. It was mentioned in para 6.76 of the Commission's main order dated 26.11.2014 (in Petition No. 40 of 2012) that the energy charges were calculated for the purpose of calculation of two months' billing used for computation of interest on working capital in that order. The actual monthly billing of energy charges has been done during FY 2014-15 on the basis of actual landed price and GCV of primary fuel (coal) in accordance with the formula and other provisions detailed in Regulation 41 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012. Therefore, there is no need for truing up of energy charges in light of the provisions under the aforesaid Regulations, 2012.

Implementation of the order

115. The petitioner must take steps to implement the order after giving seven (7) days' public notice in accordance with Clause 1.30 of MPERC (Details to be furnished and fee payable by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004 and its amendments and recalculate its bills for the energy supplied to Distribution Companies of the State/ M.P. Power Management Company Ltd. since 1st April, 2014 to 31st March, 2015.
116. The petitioner is also directed to provide information to the Commission in support of having complied with this Order. The deficit/ surplus amount as a result of this order shall be passed on to MP Power Management Company Ltd/ three Distribution Companies of the state in terms of applicable Regulation in six equal monthly installments during FY 2016-17.

With the above directions, this Petition No. 70 of 2015 is disposed of.

(Alok Gupta)
Member

(A. B. Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman

Date : 3rd June' 2016

Place : Bhopal

Annexure-I

Summary of reply filed by the petitioner to the queries raised by the Commission:-

a) Issue:

- (i) The figures regarding fixed assets filed in the subject petition and those recorded in the Audited financial Accounts are at variance as given below:

S. No.	Particular	Filed in the petition (₹ Cr.)	Recorded in Note 9 of the Audited Account (₹ Cr.)
1.	Opening GFA as on 31.03.2014	3484.98	3481.50
2.	Addition during FY 2014-15	16.18	16.18
3.	Deletion/ Adjustment during FY 2014-15	3.79	3.79
4.	Closing up to 31.03.2015	3497.38	3473.89

Petitioner's Response:

Reconciliation of variances observed by the Hon'ble Commission between the figures of fixed assets filed in the Petition and the Audited Financial Accounts are as under:-

Sl. No.	Particular	₹ Cr.	Remarks
1.	Capital Cost up to 31.03.2014 (excl. CWIP) as per CA Certificate dated June 4 th , 2014 & Balance Sheet as on 31.03.2014	3,461.51	Recorded in Note 9 of Audited Accounts
2.	Add:- Interest for 218 days (intervening period between COD of Unit I & COD of Unit II) on Debt Component of unallocated costs allowed by Hon'ble Commission vide its Order dated Nov 26 th , 2014. (Please refer Para 4.30 & 4.31 of the said Order)	23.46	
3.	Closing Capital Costs as on 31.03.2014/ Opening Capital Costs as on 01.04.2014	3,484.98	Filed in the Petition (Rounding off 0.01Cr)
4.	Addition during FY 2014-15	16.18	
5.	Deletion/Adjustment during FY 2014-15	3.79	
6.	Closing Capital Cost up to 31.03.2015	3,497.37	Filed in the Petition
7.	Less: Interest at Sl. No.2	23.46	
8.	Closing Capital Cost up to 31.03.2015	3,473.89	Recorded in Note 9 of Audited Accounts (Rounding off 0.02Cr)

It is pertinent to point out that there is a typographical error in letter dated 23.02.2015 while stating the figure appearing at Sl.No.1, it has been wrongly typed as

₹3,481.50 Cr in the said letter, instead of ₹3,461.51 Crs.

- (ii) **The Commission admitted the closing GFA of ₹3471.73 Crores as on 31.03.2014 whereas, the petitioner has claimed additions over and above the GFA of ₹3484.98 Crores as on 31.03.2014 considered in the subject petition. Therefore, the petitioner is required to explain the reasons for above discrepancies.**

Petitioner's Response:

The difference between Capital Cost as on 31-03-2014 admitted by the Hon'ble Commission and the Capital Costs submitted by the petitioner is equal to the disallowances made by the Commission. Since the Petitioner has contested these disallowances, the same have been added back to the Capital Cost as on 31-03-2014 for the purpose of presentation.

However, the reconciliation of the difference between Capital Cost as on 31-03-2014 admitted by the Hon'ble Commission and the Capital Costs submitted by the petitioner is as under:-

Sl. No.	Particular	₹ Cr.
1.	Capital Cost up to 31.03.2014 admitted by Hon'ble Commission as on 31.03.2014	3,471.73
2.	Add:- Pre-Commissioning Coal Cost disallowed by Hon'ble Commission vide its Order dated Nov 26 th , 2014 being contested by the Petitioner (Appeal No. 25 of 2016 filed in APTEL)	4.01
3.	Add:- Disallowance made on account of revenue earned from sale of infirm power Hon'ble Commission vide its Order dated Nov 26 th , 2014 being contested by the Petitioner (Appeal No. 25 of 2016 filed in APTEL)	9.23
4.	Capital Costs as on 31.03.2014 filed in the Petition	3,484.98

b) Issue:

Other non-tariff income of ₹ 1.74 Crores is claimed in the petition (Form S1). Break-up of other/ non-tariff income as recorded in Note-18 of the Audited Account be filed.

Petitioner's Response:

The break-up of other Non-Tariff Income is as under:-

Sl. No.	Particular	₹
1	Interest Received	1,00,104
2	Excess/Short Provision Written Back	2,58,817

3	Profit on Sale of Assets	12,556
4	Rent Received	8,31,530
5	Sale of Scrap	1,61,57,111
6	Total	1,73,60,118

c) **Issue:**

In the subject true-up petition, the petitioner has also claimed ₹0.48 Crore and ₹0.51 Crore for FY 2014-15 and FY 2015-16 respectively for O&M expenses of transmission line and bay on the basis of the norms prescribed under MPERC (Terms and Conditions for determination of Transmission Tariff) Regulations. The contention /claim of the petitioner in this regard is appearing unreasonable. Therefore, the petitioner is required to justify its claim for a dedicated transmission line in light of the MPERC (Terms and Condition for determination of Generation Tariff) Regulations, 2012.

Petitioner's Response:

The O&M expenses of Transmission lines & bay has been claimed on the basis of the norms prescribed under MPERC (Terms and Conditions for determination of Transmission Tariff) Regulations and the detailed calculation of the same has been same provided on the Page No.193 of the subject petition. The same is being reproduced as under:-

Statement of O&M Expenses of Transmission Line & Bay: ₹ in Crore

Sl. No.	Particulars		FY 2014-15	FY 2015-16
1	O&M Expenses of 400kV Transmission Line	39.29 ckt km	0.14	0.15
2	O&M Expenses of 400kV Bay	2 Nos	0.33	0.36
	Total O&M Expenses		0.48	0.51
	Length of Transmission Line	Circuit Kms		
a	13.444 kms 400kV Double Circuit Line	26.888 ckt km		
b	Single Circuit MPPTCL Line	6.177 ckt km		
c	Single Circuit PGCIL Line	6.229 ckt km		
	Total Circuit Kms	39.294 ckt km		

Note:-

(1) As per MPERC (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2012, O&M Expenses of 400 kV Transmission Line @ 36.20 Lacs Per 100 ckt km Per Annum is allowable for 2014-15 & @ 39.10 Lacs Per 100 ckt km Per Annum is allowable for 2015-16.

(2) As per MPERC Regulations, 2012, O&M Expenses of 400 kV Bay @ 16.70 Lacs Per Bay Per Annum is allowable for 2014-15 & @ 18.00 Lacs Per Bay Per Annum is allowable for 2015-16.

The Generation Project of the Petitioner having two units of 250 MW each achieved COD of Unit – 1 on 31-08-2012 and Unit – 2 on 07-04-2013. The PPA entered into with MPPMCL (Procurer) dated 05-01-2011 in Article 4.8 has the following provision:-

“The Contracted Capacity shall be evacuated by a dedicated transmission line of 400 KV to be constructed by the Company from the Delivery Point to 400 KV S/s of MPPTCL at Bina. Since contracted capacity has been increased from 42% (forty two percent) to 70% (seventy percent) for Phase – I (i.e. 2X250 MW), the sharing of the cost of dedicated transmission line shall be decided mutually between the Company and the GoMP. In this arrangement, the procurer shall not be liable to pay transmission charges of PGCIL's (Power Grid Corporation of India Limited) network of Western Region transmission system.”

During the proceedings for determination of final tariff for the station, there were two options to be mutually agreed between the Generator and the Procurer. The first being sharing of the cost of construction of this transmission line in a mutually agreeable ratio wherein the original percentage of 50% of sharing of cost was based on 42% supply of power to Procurer which increased to 70% at the time of signing of PPA. The second option was to include the cost of this dedicated transmission line as a part of the Generation Project.

The Procurer agreed to Option No.2 i.e. to include the cost of this dedicated transmission line as a part of the Generation Project and the Hon'ble Commission was pleased to determine the capital cost of the Generation Project which included the cost of this dedicated transmission line.

Due to an inadvertent mistake on the part of the Petitioner, the O&M cost of this transmission line was not claimed for the periods 2012-13 and 2013-14. Since the provisions for O&M in the generation tariff are based on per MW cost which cater only for the generation assets, hence the only option left with the Petitioner to be compensated for the expenditure incurred against operation and maintenance of this dedicated transmission line was to adopt per Circuit km and per Bay O&M cost as provided under the MPERC (terms and conditions for determination of tariff)

Regulations.

d) Issue:

The opening and closing normative equity filed in the subject petition for FY 2014-15 is ₹1045.49 Crores and ₹1049.21 Crores respectively. The petitioner has also claimed equity addition of ₹3.72 Crores during FY 2014-15. The petitioner is required to mention/indicate the amount of aforesaid equity addition in the relevant part of its balance sheet. Approvals of its Board of Directors for equity infusion in additional assets be also filed by the petitioner.

Petitioner's Response:

The petitioner has made an addition of ₹16.18 Crs and reduced its Gross Block by ₹3.79 Crs during FY 2014-15. Thereby, net addition works out to be ₹12.39 Crs. It is pertinent to note here that there was no fresh draw down of loan and this addition had been financed entirely out of the equity/ reserves/ internal accruals.

*Since, this addition is part of original scope of work with a Project Completion Cost of ₹3,575 Crs, hence it does not require fresh approval of Board of Directors. The approval for ₹3,575 Crs is attached as **Annexure-1**.*

e) Issue:

The petitioner has claimed Return on Equity by grossing up the base rate with MAT. It needs to be explained with supporting documents whether the petitioner is eligible for MAT in light of figures recorded in its balance sheet and the provisions under MPERC (Terms and Condition for determination of Generation Tariff) Regulations, 2012.

Petitioner's Response:

*The Petitioner Company has paid MAT for FY 2014-15, which can be substantiated by the Income Tax Return file by the Petitioner. Income Tax Return for FY 2014-15 as attached herewith as **Annexure-2**.*

f) Issue:

In Form TPS-1, an amount of ₹0.24 Crore and ₹0.25 Crore is claimed during FY 2014-15 as lease rent payment for land. Supporting documents in this regard need to be filed by the petitioner. This amount is required to be shown in the concerned part of its balance sheet. The petitioner is also

required to file a copy of the “Lease Agreement” in light of the Regulation 25.1 of MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2012.

Petitioner’s Response:

We have claimed Land Lease Rent of ₹5,81,059/- (₹5,20,512+₹60,547) & Railway Land Lease Rent of ₹18,19,966/-, totaling ₹24,01,025/-. Both these figures are grouped under “Other Expenses” (Note-23 of P&L A/c). Out of these figures, ₹5,81,059/- is shown against sub-head “Lease Rent” and Railway Lease Rent of ₹18,19,966/- is grouped under sub-head “Taxes & Fees”.

*However, relevant “Lease Agreements” are attached as **Annexure-3 (Colly)**. The claim for FY 2015-16 of ₹0.25 Crs is also based on the above.*

g) Issue:

In Form TPS-3, the petitioner has mentioned prime lending rate of SBI whereas, as per Regulation, 2012, it should be base rate of SBI. The petitioner is required to clarify its stand and address this discrepancy.

Petitioner’s Response:

Petitioner intended to mention “Base Rate of SBI” instead of “Prime Lending Rate of SBI” in TPS-3, for which the Petitioner renders an unqualified apology. The Petitioner requests the Hon’ble Commission to please read “Base Rate of SBI” in TPS-3 instead of “Prime Lending Rate of SBI”.

h) Issue:

In TPS-5B, the petitioner has filed the break-up of capital cost. The petitioner is required to file the break-up of original project cost also in the same form. The reasons for component-wise increase in capital cost be also informed by the petitioner.

Petitioner’s Response:

*The break-up of original project cost in TPS-5B format along with the component wise variance and explanation thereto is attached herewith as **Annexure-4**. The Hon’ble Commission may be pleased to note that though there are some minor variations within the sub-groups of the Project Cost, the overall capital expenditure as on 31.03.2016, is well within the estimated cost of completion of ₹3,575 Crs. The details are as under:-*

Particulars	₹ in Crs
<i>Estimated Cost of Completion</i>	3,575.00
<i>Add: Interest for intervening period between COD of Unit I & COD of Unit II on Debt Component of unallocated costs allowed by Hon'ble Commission vide its Order dated Nov 26th, 2014.</i>	23.46
Adjusted Cost of Completion	3598.46
Currently Estimated Cost up to 31.03.2016	3,597.34

i) Issue:

The petitioner is required to file the Asset-cum-depreciation registers for Bina Thermal Power Project duly reconciled with the Audited Balance sheet.

Petitioner's Response:

*Asset-cum-depreciation register as on 31-03-2015, duly audited & reconciled is attached herewith as **Annexure-5**.*

j) Issue:

The petitioner has worked out the weighted average rate of interest on loan of different lenders. The petitioner is required to file documents in support of weighted average rate of interest for different lenders mentioned in the petition.

Petitioner's Response:

*To substantiate the Rate of Interest, a summary of Actual amount of monthly interest paid, rate of interest, sample payment instructions to Bank along with the true copy of bank statement showing payment thereof has been attached herewith as **Annexure-6**.*

k) Issue:

The petitioner has claimed the additional loan of ₹8.68 Crores during FY 2014-15. Actual date-wise drawl schedule be filed in this regard.

Petitioner's Response:

As explained earlier in Reply to Para (d), the petitioner has made an addition of ₹16.18 Crs and reduced its Gross Block by ₹3.79 Crs during FY 2014-15. Thereby, net addition works out to be ₹12.39 Crs. It is pertinent to note that since there was no fresh draw down of loan this addition has been financed entirely out of the equity/ reserves/internal

accruals. We have claimed only thirty percent of this addition i.e. ₹3.72 Crs as normative equity addition and the balance seventy percent i.e. ₹8.68 Crs has been taken as normative loan.

As explained above that this amount of ₹8.68 Crs is Normative Loan, the Petitioner humbly submits that there was no drawl of Loan/ Debt.

l) Issue:

With regard to cost of secondary fuel oil, the petitioner is also required to file invoice/bills in support of oil purchased during the year.

Petitioner's Response:

To support the claim of cost of Cost of Secondary Fuel, copies of LDO bills along with transportation bills thereof are attached as **Annexure-7** for the month of March, 2015. Similarly, copies of HFO bills along with their transportation bills are attached as **Annexure-8** for the month of March, 2015.

m) Issue:

With regard to the capital spares of ₹0.75 Crore filed in the petition, the petitioner is required to explain /demonstrate whether the capital spares filed in the petition are within the ceiling norms prescribed under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012. The petitioner is required to justify its claim in light of the Regulation 17.1 (b) of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012. The petitioner is also required to file the following details in light of the aforesaid Regulations:

Original Project Cost	Capital Spares till 31 st March, 2014 admitted by the Commission (A)	Admitted capital spares % of the original capital cost	Capital Spares filled in true-up FY2014-15 (B)	Total Capital Spares filed as on 31/12/2015 (A+B)	Total capital spares % of the original capital cost
₹Cr.	₹Cr.	%	₹ Cr.	₹Cr.	%

Petitioner's Response:

Apart from Capital Spares of ₹0.75 Crs in BTG, Capital Spares worth ₹2.76 Crs also procured in BOP during 2014-15 out of total addition of ₹8.59 Crs in BOP. However, the required information is as under:-

Original Project Cost as on 31-03-2014	Capital Spares till March 31st, 2014 admitted by the Commission	Admitted Capital Spares % of the Original Capital Cost	Capital Spares filed in true-up FY 2014-15	Total Capital Spares filed as on 31/12/2015	Total Capital Spares % of the Original Capital Cost
	(A)		(B)	(A+B)	
₹ Cr.	₹ Cr.	%	₹ Cr.	₹ Cr.	%
3,484.98	17.58	0.50%	3.52	21.10	0.61%

To justify above claim the in the light of Regulation 17.1 (b) of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2012, the Petitioner wishes to reproduce said regulation as under:-

“17.1 Capital Cost for a Project shall include:

- (a) The Expenditure
- (b) Capitalized initial spares subject to the ceiling norms as specified below:
 - (i) Coal-based/ lignite-fired thermal generating stations- 2.5% of the original Project Cost.
 - (ii) Hydro generating stations- 1.5% of original Project Cost.
Provided.....
- (c) additional

It is humbly submitted that the total cost of Capital spares up to 31st, March 2015 is well within the limit specified in the Regulation 17.1 (b).

n) Issue:

With regard to the additional capitalization during FY 2014-15 filed in the petition, the petitioner is required to file a comprehensive reply to the following issues with all relevant supporting documents in favor of its claim.

(i) Issue:

Whether the addition of assets is on account of the reasons (a) to (e) in clause 20.1 of the MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2012.

Petitioner's Response:

The Petitioner humbly submits that the additional net capitalization of Rs 12.39 Crs falls within the norms specified under Regulation 20.1 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012. The said Regulation reads as under:-

“The Capital Expenditure incurred or projected to be incurred, on the following counts within the original scope of work, after the Date of Commercial Operation and up to cut-off date may be admitted by the Commission, subject to prudent check:

- (f) Undisclosed liabilities*
- (g) Work deferred for execution*
- (h) Liabilities to meet award of arbitration or for compliance of order or decree of a court,*
- (i) Change in Law,*
- (j) Procurement of initial spares within the original scope of work, subject to the provisions of Regulation 17.1(b)*

Provided that the details of works included in the original scope of along with estimates of expenditure, un-discharged liabilities and works deferred for execution shall be submitted along with the application for Tariff.”

The Petitioner would humbly like to draw the kind attention of Hon'ble Commission in the light of the above Regulation that the said additional capitalization is within the original scope of the work authorized by the Resolution of Board of Directors dated May 17th, 2014 attached with the reply to Para (d) and is also within the prescribed cut-off date.

(ii)

Issue:

Whether the assets capitalized during the year are under original scope of work. Supporting documents be also filed in this regard.

Petitioner's Response:

Break up of Originally Approved Project Cost, Revised Project Cost and Final Project Cost are given as under:-

(₹ in Crores)

Particulars	Original Project Cost	Revised Project Cost	Final Project Cost
Land	7	7	7
BTG	1294	1338	1381
BOP	480	575	954
Civil Cost	433	686	479
Overhead & Pre-Operative	201	201	253
IDC/IEDC	294	398	524*
Margin Money	45	35	
Total	2754	3240	3598

* This includes ₹23.46 Crs approved by Hon'ble Commission towards interest from COD of Unit I to COD II on unallocated capital cost as on COD of Unit I vide Para 4.30 and 4.31.

- (iii) **Issue:**
Whether the additional capitalization is within the cut-off date of the project.

Petitioner's Response:

Details of work completed in the up to 31st, March 2015 has been mentioned in the Asset-cum-depreciation register and the same is attached as Annexure to the reply of Para (i).

- o) **Issue:**
Regarding funding of additional capitalization, the petitioner has not filled up the Form TPS-10 and mentioned that "Not applicable". The petitioner is required to file the Form TPS-10 duly filled-up with the details of funding of additional capitalization claimed in the petition.

Petitioner's Response:

Duly filled up TPS-10 in respect of additional capitalization is attached as Annexure-9.

- p) **Issue:**
The petitioner has filed write-off/adjustment of assets during FY 2014-15. The petitioner is required to confirm whether the funding and cost components pertain to write-off/adjustment assets have been accounted for in its claim.

Petitioner's Response:

As explained in Reply to Para (d) & Para (k) earlier, the petitioner has made an addition of ₹16.18 Crs and reduced its Gross Block by ₹3.79 Crs during FY 2014-15. Thereby, net addition works out to be ₹12.39 Crs. The Petitioner hereby confirms that the write-off/ adjustment of ₹Rs 3.79 Crs has been duly accounted for in the Books of Accounts with a net addition of ₹12.39 Crs (being Gross Addition ₹16.18 Crs minus reduction of ₹3.79 Crs).

q) Issue:

The petitioner has claimed ₹8.59 Crores towards major additional capitalization in Balance of Plant items. The petitioner is required to explain how the generating unit was commissioned and remained under operation for the period of more than two years without aforesaid works.

Petitioner's Response:

As reflected in the TPS 5-B, filed with the main petition, the additions of ₹8.59 Crs in BOP being part of the original scope of work during FY 2014-15 were due to following reasons:-

- **Cooling Towers** **₹ 0.98 Crs.**
This amount pertains to those jobs which were completed before commissioning but the contractors/parties raised the bills during FY 2014-15. These jobs included internal painting works, erection of distribution pipe system, and erection of GI Girders Erection of installation of Electrical items and Erection of Aviation Warning Light.
- **Ash Handling System** **₹0.87 Crs**
We had planned two Ash Ponds for each of our units. 1st Ash Pond was already commissioned and was being used for Bottom Ash disposal as Ash Slurry and 2nd Ash Pond was under construction and these materials (cement & steel) were utilized for Ash Pond-2. It is to be utilized once Ash Pond-1 is to be taken up for cleaning.
- **Coal Handling Plant** **₹1.78 Crs**
₹1.78 Crs were spent towards cost of lifts. Before the capitalization of these lifts regular stairs were being used.
- **Other Equipments** **₹2.76 Crs**
Out of these ₹2.76 Crs, ₹2.08 were spent for procurement of Electric Motors. There were no standby Electric Motors. Hence, these Motors were procured from

BHEL, Bhopal to increase the reliability of the system. Moreover, other equipments and spares were also procured additionally (stand by) to avoid interruption in the production of energy just in case of any breakdown of the existing equipments. The provision for these capital spares are within the % prescribed under the Regulations, as explained in the reply to Para (m).

- **Lighting, Cables, Cable Facilities & Grounding ₹2.20Cr**

Earlier we were using 33 KV construction power for our Base Camp power requirement. After commissioning of our plant we surrendered the 33 KV power connection and wanted to draw the auxiliary power from the plant hence we constructed a 6.6 KV Sub-station at Base Camp. Moreover, Plant was commissioned with minimal lighting but these lighting works were essential for proper lighting & illumination in JBTPP Complex and are part of the finishing work within the original scope.

In the light of above explanations, it is quite obvious that though being part of original scope of work, none of the above jobs were of such nature that in the absence of any of the above, Commissioning/smooth functioning of our plant could be hampered but at the same time they were necessary to be carried out for better efficiency.

r) **Issue:**

The petitioner is required to file a list of the orders for the works under additional capitalization placed to different vendors along with date of order and anticipated date of completion of each work. If there has been any delay in completion of works from contractor side, the details of penalty if any, imposed on the contractor be informed.

Petitioner's Response:

A detailed list of work orders covering additional capitalization placed to the different vendors is being attached herewith as **Annexure-10**. This list includes:-

- work orders issued before COD and the job completed during FY 2014-15 or likely to be completed during FY 2015-16;
- Work orders issued after COD for those works which were part of original scope of works but the job completed during FY 2014-15 or likely to be completed during FY 2015-16.
- Though being part of original scope of work but work Orders yet to be

issued due to cash flow constraints and/or other issues.

s) Issue:

The petitioner is required to file Actual Plant Availability achieved during FY 2014-15 duly certified by SLDC.

Petitioner's Response:

Actual Plant Availability achieved during FY 2014-15 was 92.37% as reflected in the State Energy Account for the month of March'16 issued by State Load Despatch Centre vide their Letter No.07-05/PM-68A/SEA-3.1/1381 dated 28-04-2015. However, if the Petitioner takes into account the energy sold to the Procurer through STOA route, then the Plant Availability Factor for the Year (PAFY) gets amended to 97.30%.

State Energy Account for the month of March'16 is attached herewith as Annexure-11.

t) Issue:

It is observed that the petitioner has filed the Annual Capacity Charges for the period FY 2012-13 and FY 2013-14 for which the Commission has already issued final tariff order based on Audited Accounts. The petitioner is required to explain/justify its contention on the aforesaid issue.

Petitioner's Response:

The Annual Capacity Charges for the FY 2012-and FY 2013-14 are for illustration only to show year wise position.

By affidavit dated 09th May, 2016, JPVL has filed its response on the issues raised by the Commission vide letter dated 21st April, 2016. Issue wise response filed by the petitioner are as follows:

1. Capital spares:

- a) **In the main petition, it has submitted that ₹0.7542 Croress were spent towards procurement of mandatory spares under the additional capitalization of BTG, (which were part of the main supply) whereas, in its additional submission under reference, the petitioner has stated that the capital spares of ₹2.76 Croress were also added under BOP in FY 2014-15.**
- b) **It is mentioned by the petitioner without any reference that the total**

Capital spares of ₹17.58 Crores have been admitted by the Commission till 31st March, 2014.

- c) Despite above submission, the amount against the Capital Spares is shown as nil by the petitioner in Format TPS 5B enclosed with its reply.

In view of the above observations, the petitioner is required to clarify/submit the following:

- a) The reasons for not mentioning the amount of ₹2.76 Crores under BOP Capital Spares in the main petition.
- b) The reasons for not indicating the capital spares under BTG and under BOP in format TPS 5B.
- c) The basis of petitioner's contention along with reference of the relevant documents that the capital spares of ₹17.58 Crores, have been admitted by the Commission.

The documentary evidence in support of procurement of above capital spares.

Petitioner's Response

Reply to Para 1

Reply to Para 1(a)

It is respectfully submitted that while summarizing the additions during FY 2014-15 in BOP Para 13 (ii) at Page No.9 of the main petition, submission given in the last three bullets pertained to addition of ₹2.76 Crs of spares in BOP.

Submission given in the last three bullets is reproduced as under:-

- ₹2.37 Crores towards procurement of various types of Electric Motors and Electrical equipments as insurance items for critical equipment such as ID Fan, PA Fan & FD Fan, Lube oil Pumps;
- ₹0.23 Crore towards procurement of items to enhance the reliability and monitoring of health of Air Preheaters, HFO system and other items procured for statutory requirement;
- ₹0.33 Crore towards procurement of other workshop equipments/tools/implements, Furnitures/Fixtures, other Office Equipments, Computers/Computer peripherals.

It is respectfully submitted that explanation of ₹0.33 Crore includes ₹0.16 Crore of

spares.

The total of first two bullets and ₹0.16 Crore of last bullet comes to ₹ 2.76 Crores.

Therefore, the Petitioner had mentioned the addition of spares in the main petition itself although the same was not specifically mentioned as “Capital Spares”.

Reply to Para 1(b)

Since capital spares are capitalized with the main assets/ machines, additions of capital spares are not mentioned separately in TPS 5B. However, the addition of capital spares in BOP during 2014-15 to the tune of ₹2.76 Crores is mentioned at Sl. No.2.3.17.

Reply to Para 1(c)

It is respectfully submitted that during the course of the proceeding under Petition No.40 of 2012, neither had the Petitioner submitted Capital Spares Cost separately nor the Hon'ble Commission had segregated the same while determining the Capital Cost of ₹3,471.73 Crores as on March 31st, 2014. It is only to comply with the requirement of Hon'ble Commission vide Para (m) of the Letter dated 23-02-2016, the Petitioner worked out the figure of ₹17.58 Crores towards the cost of Capital Spares which was the part of the Capital Cost submitted by the Petitioner and admitted by the Commission.

Reply to Para 1(d)

Xerox copies of the bills of Capital Spares (₹0.75 Crores in BTG and ₹2.76 Crores in BOP) procured during FY 2014-15 are being attached herewith as Annexure-1.

2. **With regard to Minimum Alternate Tax (MAT), the petitioner is required to clarify the following in light of the proviso under Regulation 22.3 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012, which provides as under:**

“Provided that return on equity with respect to the actual tax rate applicable to the Generating Company, in line with the provisions of the relevant Finance Acts of the respective Year during the Tariff period shall be trued up separately.”

- a) **As per the books of Account of JPVL Bina project for FY 2014-15, the tax amount is indicated as NIL, while the petitioner has claimed ROE on the basis of MAT. Therefore, the petitioner is required to file the basis of tax amount claimed, whereas it has not paid any income tax for Bina TPS in FY 2014-15.**
- b) **The Audited books of accounts at page no. 267 of the petition note no.**

32 indicates that “there is no taxable profit upto 31st March 2015, no income Tax has been provided”. The petitioner is required to clarify the above statement of auditor for taxability of JPVL.

- c) The petitioner is required to clarify/explain the following statement of auditor, at page No. 254 of the petition:
“Provision for current tax is being made after taking into consideration benefits admissible to the company under the provision of Income Tax Act 1961”.
- d) Whether Bina TPS is exempted from income tax under income tax Act? If yes, the relevant section of income tax act and the time period for exemption be informed.

Petitioner’s Response

Reply to Para 2

The provision as contained in Regulation 22.3 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulation 2012 provide for “actual tax rate applicable to the Generating Company, in line with the provisions of the relevant Finance Acts of the respective Year during the Tariff period shall be trued up separately”. The Generating Company here is M/s Jaiprakash Power Ventures Limited (JPVL) and JPVL has paid MAT for Assessment Year 2015-16, relevant to Previous Year 2014-15. The Para wise reply is as under:-

Reply to Para 2(a)

The Tax amount has been claimed as per existing Tariff Guidelines, i.e. Gross up with the applicable Tax rate, which in our case is 20.96 % (for P.Y.2014-15) as MAT, even though as per Income Tax, the Company is not liable for Tax as explained in the subsequent paragraphs.

Reply to Para 2(b)

Taxable profit is being considered after taking into account depreciation as per Income Tax Act. The rates of depreciation as per Income Tax Act are different from the rates of depreciation as per Companies Act. Even if there is no Taxable Income as per Income Tax Act, the Company is liable to pay MAT.

Reply to Para 2(c) & (d)

Extract quoted by the Hon’ble Commission is the Accounting Policy of the Company, given at para No. 1K of the Note No. 1(ii) “Summary of Significant Accounting Policies”. As per the Accounting Policies of the Company, provision for current tax is being made after taking into consideration the benefit admissible

to the Company under the Provisions of Income Tax Act, 1961.

As per the Provisions of Income Tax Act, 1961, Income from generation and distribution of power is exempted from the Tax and this benefit can be claimed by the assessee in any 10 Assessment Years out of the first 15 Assessment Years. However, till date, the Company has not availed benefit of exemption under section 80IA.

- 3. Regarding other charges, the petitioner is required to furnish the detailed break up and CA certificate of sub-head of Taxes & Fees, clearly indicating the Railway lease of ₹18,19,166/-.**

Petitioner's Response

The Hon'ble Commission has wrongly written the amount of Railway Lease as ₹18,19,166/- whereas the correct amount is ₹18,19,966/- as mentioned in our submission dated March 30th, 2016.

Detailed Break up of sub head of "Taxes & Fees" duly certified by CA is attached as Annexure-2.

- 4. The petitioner has filed the Asset-cum-Depreciation register for 2x250 MW Bina thermal power project. A soft copy of the same in excel form be filed by the petitioner.**

Petitioner's Response

Soft copy of Asset-cum-Depreciation Register as 31-03-2015 of 2x250 MW Bina Thermal Power Plant is being filed in a CD as Annexure-3.

Annexure II: Petitioner's response on the comments offered by the Respondent No. 1 and stakeholders during public hearing:

1. **Comment:** The Petitioner has filed the present Petition under Section 62 of Electricity Act 2003 read with MPERC (Terms and conditions for determination of Generation Tariff) (Revision –II) Regulations, 2012 (*for short the Tariff Regulations*) for true up of Tariff determined for the Petitioner's 2x250 MW (Phase-I) Coal based Power Project at Bina, Dist. Sagar (MP), due to Additional Capital expenditure said to be incurred by the Petitioner subsequent to the order dated 26-11-2014 passed by this Hon'ble Commission.
2. **Comment:** That, in the present Petition the Petitioner, *inter-alia*, has made following prayers before this Hon'ble Commission :

“

PRAYER

18.*In view of the above,*

- a. *True Up the Order dated 26-11-2014 in terms of the Additional Capital Expenditure incurred by the Petitioner as enumerated in Para 13 above;*
 - b. *Pass appropriate Orders directing recovery of Capital Charges worked out by Petitioner after addition of Rs. 16,17,99,380/- (Rupees Sixteen Crores Seventeen Lacs Ninety Nine Thousand Three Hundred and Eighty Rupees) and deletion of Rs. 3,79,01,185/- (Rupees Three Crore Seventy Nine Lacs One Thousand One Hundred Eighty Five) i.e. net addition of Rs. 12,38,98,195/- (Rs. Twelve Crores Thirty Eight Lacs Ninety Eight Thousand One Hundred Ninety Five only);*
 - c. *Determine Capacity Charges for FY 2015-16 after considering planned capital outlay of Rs. 100.16 Crores to be incurred during the same period.*
 - d.
 - e.
 - f.”
3. **Comment:** That, in view of above, it is most humbly prayed that the Petitioner may kindly be directed to clarify whether increases claimed under each head in Para 13 (i) to (iii) are as per the Regulation 20 of the Tariff Regulations 2012, justifying each figure individually.
 4. **Comment:** That, the Respondent No. 1 humbly prays for application of prudence check on all the individual claims for Additional Capital Expenditure. It is humbly

prayed that the prudence check, carried out by the Hon'ble MPERC, be shared with this respondent.

5. **Comment:** That, in the Order dated 08.05.2015, this Hon'ble Commission has determined Blended Annual Capacity Charge for Unit No. 1 and 2. This is strongly opposed, and it is humbly submitted that blended tariff for both the Units together may not be allowed. Instead, it is humbly submitted that Unit wise tariff be determined.

Petitioner's Reply

"That the above contention of the Respondent No.1 is specifically denied for the following reasons:

- 1.1 *It is submitted that the present Power Project has been envisaged and designed as a single generation station consisting of two similar units of 250 MW each and having similar capacity and parameters for generation of power.*
- 1.2 *That the source of supply of coal for both the units for generation of electricity is common. Further, the electricity generated from both the units will be evacuated through a common bus-bar. Therefore, the request of the Respondent No.1 that Unit wise Tariff is to be determined is outside the scope of the PPA signed between the parties and is legally untenable.*
- 1.3 *The contract entered into by the Petitioner for supply of electricity from the project with MPPMCL have proceeded on the basis that the power generated from both the units will be supplied to MPPMCL under the PPAs to meet the supply obligations. Therefore, two units of the Power Project from part and parcel of one generating station with similar characteristics in terms of cost and operational parameters.*
- 1.4 *It is therefore submitted that the present project qualifies for determination of combined tariff for the two units under the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations 2012 (Tariff Regulations). Clause 5.1 of the Tariff Regulations provides that the tariff in respect of a generating station may be determined for the whole of the generating station or a stage or unit or block of the generating station.*
- 1.5 *Further, it is submitted that Regulation 8.32 of the first amendment to MPERC*

(Terms and Conditions for Determination of Generation Tariff) (Revision-II) Regulations 2012, explicitly provides that tariff in respect of a generating company can be determined unit wise or for a group of units. However, the commission can determine separate tariff for new units, which are added after 1st April, 2013 only if the installed capacity and operating norms of such units are different from other units of the generating station. The relevant extract of Regulation 8.2 is quoted herein below:-

“8.2 Tariff in respect of a Generating Company under these Regulations shall be determined Unit wise or for a group of Units. However, when a new generating Unit is added after 1.4.2013, the Commission shall determine separate Tariff for such new Unit(s). The Generating Company shall submit separate calculations in respect of each generating station giving breakup for Units prior to 1.4.2013 and Units added thereafter.”

- 1.6 *It is submitted that it is an accepted fact that Unit-II of the Petitioner’s generating station was commissioned on 7th April, 2013, which is subsequent to the cut- off date of 1st April, 2013 provided in the Regulation. Further, it is pertinent to mention that the Regulation specifically provides that the commission may determine separate tariff for the unit added after 1st April, 2013 only if the installed capacity and operating norms of such units are different. However, in light of facts and circumstances relating to the present project is designed as a single generation station consisting of two units, with identical installed capacity of 250 MW each and identical operating norms and parameters for generation of power, hence, the commission cannot determine separate tariff for this unit as this is an appropriate case for treatment of the project as an integrated station for a blended tariff. Therefore, the request of the Respondents that unit wise Tariff may be determined is contrary to the Regulations itself and cannot be permitted in law.*
- 1.7 *Moreover, since the supply of power under the different PPAs/ arrangements will be supplied from both the units combined, hence it will be operationally convenient to have a combined tariff for the entire station as opposed to unit-wise tariff. Hence, there is absolutely no question of Unit wise Tariff being determined in terms of the PPA signed between the parties.”*
6. **Comment:** That, it is stated that in the definition of ‘Declared Capacity’ in PPA, the DC of the Power Station at any time means the net capacity of the Power Station declared at the relevant time. For example, if Unit-2 is ‘off-bar’, then the

Generator cannot declare the capacity of Unit-2. At any point of time, the procurer is not privy to the reasons whether and why any Unit is off-bar. The chances of 'misuse' cannot be ruled out. This may result in costly power in case of misuse of blended tariff. Providing blended tariff may result in

- Higher tariff for end consumers of the state, and
- Undue benefit to the generator.

It is stated that neither the PPA nor the Regulations provide for Procurer to pay fixed charges for off-bar Unit.

7. **Comment:** That, it is stated that the Procurer is liable to pay fixed charges in case of only On-bar Units because it provides back-up in case of tripping of any one Unit. In the present scenario, if 95 % of power in the instant case is being scheduled from U#1 while U#2 is off-bar, then in case of tripping of U#1, the Procurer will be left without power from the Power station as U#2 will take at least 8-12 hrs for cold start. However, if both Units are on-bar, then in case of tripping of any one Unit, the Procurer will be affected only to the extent of 65% power of that Unit, and scheduling of 65% power from other Unit may continue unabated. Thus it is required that both the Units should be on-bar and Fixed charge for only on-bar Units shall be paid in lieu of back-up or a cushion in case of tripping of any one Unit.

Petitioner's Reply

"That the above contention of the Respondent No.1 is specifically denied for the following reasons:-

- 1.1 *The contention raised by the Respondent that the procurer is only liable to pay fixed charges for the On-Bar unit is completely misplaced as it is an accepted practice that the procurer is obligated to pay to the Generator, the fixed charges for the contracted capacity under the PPA. Further since the Generator is supplying power in accordance with the demand of the procurer, hence it is not relevant whether the units are On-Bar or Off Bar.*
- 1.2 *Further it is most respectfully submitted that it is an accepted industry practice that if the station or unit is backed down under the instruction of SLDC, it will be considered as deemed available in so far as the recovery of fixed charges are concerned. However, it is pertinent to mention that the subject matter of these proceedings is capital cost True-up of the Petitioner's generating station. Therefore, the contention raised by the Respondent No.1 is out of the context and is not a matter of consideration in the present proceedings. The*

Respondent is raising ancillary contentions which are not relevant to the present proceedings and are devoid of any merit and is liable to be rejected.

8. **Comment:** Here, it is also pertinent to mention that unit wise fixed charges have been approved for 2 X 600 MW Singaji TPP. The provisionally approved capital cost for Unit-1, vide Order dated 10/11/2014, is ₹ 3508.10 Cr, while that for Unit-2, vide Order dated 18/03/2015, is ₹3228.75 Cr.
9. **Comment:** That, it is humbly submitted that Unit wise tariff be determined.

Without prejudice to above comments/ observations, it is humbly requested that following points may also be kept in view while considering true up of Additional Capital Expenditure, if any.

Petitioner's Reply

"The contents of Para 8-9 of the Para Wise Reply are wrong and detailed reasons are mentioned in reply of Para No.7 and 10.

10. **Comment:** That, in the earlier submission for determination of Final Tariff, the Petitioner had attempted to justify increase in Civil Cost by ₹142 Cr. over revised estimated figure of ₹710 Cr. (Original estimate was ₹432 Cr.), i.e., total increase so far of about 97% from original estimate of ₹432 Cr, which is very high. This assumes greater significance as the civil contract was placed on a related party, i.e., **M/s Jaiprakash Associates Ltd. (JAL)**, on negotiated basis as a variable price escalable contract. JAL was given the Contract on the condition that they accept civil work rates equivalent to rates at which they were working for Bokaro Cement (Provisional Tariff order for Unit-1, Pg 29). So a question arises as to why the cost of civil work has increased by such large margin. The Petitioner may be directed to submit documents showing Statutory Compliance and Central Government approval in terms of **Section 297 of Companies Act 1956**, with copy of same to this Respondent. It is humbly requested that strict prudence check may again be applied by Hon'ble MPERC, if deemed fit, by means of independent site inspection and technical study by "Expert Commission" etc. to verify the expenses claimed.

Petitioner's Reply

"That the above contention of the Respondent No.1 is specifically denies for the following reasons:

- 1.1 *That the expenditure claimed qua increase in Civil Cost has already been*

determined by this Commission in the Final Tariff Petition and the same cannot be raised again in the present Petition. It is further submitted that the detailed reasons for increase in Civil Cost have already been explained under Para 13 of the present Petition and is not being repeated again for the sake of brevity. Further as far as reliance being placed on Section 297 of the Companies Act, 1956 it is humbly submitted that the applicable provisions of law, has been complied. It is most respectfully submitted that the aforesaid issue has been adjudicated upon by the Hon'ble Commission in case No.40 of 2012 and therefore, the Respondent No.1 cannot re-agitate the issue again in the present proceedings.

1.2 That the expenditure claimed qua increase in Capital Cost has also been determined by this Commission in the Final Tariff Petition and the same cannot be raised again in the present Petition. It is further submitted that Comparison of the project cost has to be done for similar cost of the other projects and any cost deviations are due to certain project specific conditions and hence the Petitioner cannot be ought not to be equated with other projects. Moreover, it is most respectfully submitted that the aforesaid issue has been adjudicated upon by the Hon'ble Commission in Case No.40 of 2012 and therefore, the Respondent No.1 cannot re-agitate the issue again in the present proceedings.

11. **Comment:** That, Per MW cost of project, as prayed by the Petitioner, comes to ₹3497.38 Cr/ 500MW = ₹6.99 Cr/MW which is one of the highest in the country and not in line with CERC guidelines. Here, it is pertinent to mention that the cost of 2x250 MW Chhabra TPS in Rajasthan, which is of same capacity and which was commissioned in recent past on 04.05.2010, comes to only ₹5.55 Cr./MW, excluding the cost of barrage & Transmission line. In Petitioner's case, out of project cost of ₹3497.38 Cr, barrage cost is claimed to be ₹117 Cr and Transmission line cost is ₹61 Cr. So comparative Project Cost = ₹3497.38-₹117-₹61=₹3319.38 Cr. and Per MW cost=₹3319.38/500=₹6.63 Cr/MW, which is still much higher than that of Chhabra TPS. It is humbly prayed that benchmark for 250 MW plants may kindly be evolved. Till such time the benchmark are specified by MPERC, the benchmark specified by CERC for plants of 500 MW and above capacity may be considered at arriving at a just and reasonable capital cost. The cost of Satpura TPS is also much lower at ₹6.065 Cr/MW without barrage & transmission lines. A comparative statement showing the per MW cost of plants of similar capacity, which have been commissioned recently, is given

below:

Name of Plant	Capacity	Organization	Date of Commercial Operation	Cost per MW (₹ in Cr)
Bakreshwar (U#4 & 5)	2 X 210 MW	WBPDC	iv-06.03.09 v-27.06.09	4.04
Sagardighi (U#1 & 2)	2 X 300 MW	WBPDC	I- 07.09.08	4.45
Parichha Extn. Stage 2	2 X 250 MW	UPRVUNL	Provisional	4.71
Santaldih TPS Extn	1 X 250 MW	WBPDC	Apr-09	4.97
New Parli TPS	2 X 250	MSPGCL	I - 01.11.07 II -31.07.10	5.07
ROSA Stage-1	2 X 300 MW	Reliance Power	I - 10.02.10 II- 28.03.12	5.19
Harduaganj TPS Extn. U# 8	1 X 250 MW	UPRVUNL	Sep-11	5.21
New Paras TPS	2 X 250 MW	MSPGCL	I - 31.03.08 II- 31.08.10	5.32
JPVL, Bina (Phase-1)	2 X 250 MW	JPVL	I- 31.08.12 II-07.04.13	6.99

Therefore, it can be seen that the per MW cost, either approved earlier or claimed now by the Petitioner, is on very high side and not in line with other plants of similar capacity. It is humbly requested that the capital cost of JPVL Bina TPS may be approved/ revised on the basis of ROSA Stage-1, which was commissioned in 2012, the same year in which JPVL, Bina was commissioned.

Petitioner's Reply

"The contents of above para is vague as the tariff Determination is subject to the prudence check of the Hon'ble Commission and the Respondent No.1. prouer in facts has no role to play in the said prudence check."

12. **Comment:** That, it is humbly submitted that the quantity of coal received from CCL and SECL is not sufficient to provide contracted energy to the Respondent. The Petitioner has to buy coal from open market at a much higher cost. Hon'ble Commission is also not inclined to accept the use of other sources of high cost coal for supply of power to the Respondent which would be a burden to the end consumers in the state. It is, therefore, humbly requested that while arranging coal from other sources, prior consent of Respondent should be obtained by the Petitioner. The consent shall be conveyed depending upon the demand matrix at the time and fixed charge, as applicable, shall be paid to the Petitioner.

Petitioner's Reply

"That the above contention of the respondent No.1 is specifically denied for the following reasons:

1.1 *It is submitted that in the current coal scenario, as explained in the Tariff Petition on the overall coal materialization from CCL and SECL, the shortfall in supply of coal has to met by procurement from private sources. Further, the Government of India has even permitted generators supplying under Section 63 route to import coal. Also, the scheme of the Act or the PPA does not provide for prior approval being taken from the Procurer before Coal is sourced. Hence, such a contention is baseless and is liable to be rejected. It is also pertinent to mention herein that the said condition was also subject matter of the decision of the Hon'ble Commission in Review Petition No.81 of 2012 dated 06.02.2013 wherein the Hon'ble Commission has already relied upon prior- approval of the procurer for sourcing coal not being required under the PPA. Hence, the said issue has also attained finality and the Respondent cannot raise the same herein. Moreover, the contention of the Respondent if to be accepted would amount to amendment into a statutorily approved PPA which cannot be done in the present proceedings, Te Relevant extracts of the order dated 06.02.2013 is being reproduced as follows:-*

"10. The second objection of the petitioner is regarding the Commission's direction dated 7th September, 2012 that is would have to seek the concurrence of the procurer to the terms and conditions etc. of the FSA. The Petitioner believes that the amendment directed by the Commission would confer on the procurer an extra right to walk out of a duly executed PPA at its on pleasure. The petitioner believes that giving such right to one party will violate the balance of the responsibility and authority inherent in any agreement between parties. The Petitioner fees that this makes the agreement unequal and can, at the hand of procurer, adversely impact the long term prospects of the power generation venture. Such a PPA would also raise doubts in the minds of the lenders who could demand unaffordable guarantees to cover unforeseen and indeterminate risks. The petitioner would have no objection to

any authority of this kind being vested in the Commission itself but definitely to the way the procurer is sought to be authorized. The petitioner is willing to submit the FSA for examination according to law by the Commission.

11. *Having considered this argument, the Commission find itself in agreement with the Petitioner that the suggested amendment would, in a manner, confer on the procurer a virtual regulatory authority which would not be in order.”*
13. **Comment:** That, it is humbly prayed that the prudence check, carried out by the Hon’ble MPERC, be shared with this respondent and any reasoning/ rationale advanced in support for inclusion of above indicated Costs with the Capital Cost of the Project deserves to be summarily rejected/ ignored. The Respondent also seeks liberty to deal with/ respond to the Case Laws referred/ quoted in this Additional Affidavit at appropriate stage.
14. **Comment:** That, it is further prayed that per MW cost of similar plants in India, which have been commissioned in recent past, may be kept in mind at the time of decision in this instant Petition.
15. **Comment:** That, at this stage the Respondent No. 1 has made above observations on the basis of documents/ information made available by the Petitioner. The Respondent craves liberty to amend, alter and add to the points or make further submissions as may be required at a later stage.

Petitioner’s Reply

“The petitioner submitted that contents of para 13-15 of the Para Wise Reply merit no Rejoinder.”

Comments received from other stakeholder in the public hearing and the Petitioner's response

Objector's Comments

1. I have been on the panel of the Hon'ble Commission as consultant regarding generation matters.
2. I am again enclosing my submission dated 22/9/2014 and it is requested that the same may kindly be considered by Hon'ble Commission. My submission dated 22/9/2014, may also be considered as part of this current submission.

Petitioner's Reply

"That the contents of Para 1 and 2 are vehemently denied for detailed reasons mentioned in Para below-

That the contents are vehemently denied as the Objector in the said paragraph is seeking to raise issues qua the process followed by the Hon'ble Commission in passing the Order dated 26.11.2014 in Petition No. 40 of 2012 and is also seeking to re-agitate issues already raised in Petition No. 40 of 2012. It is most respectfully submitted that both contentions of the Objector are legally untenable due to following reasons: -

(a) *Averments qua the process adopted by the Hon'ble Commission in passing its Final Tariff Order in Petition No. 40 of 2012 –*

- *The Objector in this paragraph has made the averment that its objection, though not filed in time, were not considered by the Hon'ble Commission and further that submissions of the Petitioner were recorded by the Hon'ble Commission. The above averment of the Objector is factually incorrect and is liable to be rejected as the Hon'ble Commission has simply recorded the delay in filing the submission by the Objector and has recorded in Annexure II of the Order the entire submissions of the Objector and the response of the Petitioner at great length. Therefore, the insinuation of the Objector that his submissions were not considered by the Hon'ble Commission while passing the Order dated 26.11.2014 is factually incorrect and is liable to be rejected.*
- *The Objector has also alleged that no public hearing was conducted by the Hon'ble Commission in Petition No. 40 of 2012. The same is baseless as the Objector himself was present on 23.09.2014 when the hearing was held wherein his submissions were duly met by the Petitioner during the*

course of hearing and were therefore rejected by the Hon'ble Commission as the same were devoid of merits.

(b) **Submissions made in Petition No. 40 of 2012 were not considered by the Hon'ble Commission and therefore are being re-agitated-**

The aforesaid averment/plea of the Objector is legally untenable as firstly the said submissions were baseless and were rejected by the Hon'ble Commission in its Order dated 26.11.2014. Further, even if the Objector was aggrieved by the said Order the only remedy available with him would have been to file an Appeal under Section 111 of the Electricity Act, 2003, which the said Objector has not done till date. Hence, in so far as the objections previously raised by the Objector are concerned, the Order dated 26.11.2014 has attained finality and the Objector is barred from raising the same contentions by the legal doctrine of res judicata in the present proceedings. It is humbly submitted that the Objector, without filing an Appeal, is raising grounds which could only be raised by way of an appeal. Such actions, seeking to bypass the statutory mandate, are also against the accepted legal doctrine that a party cannot do indirectly which it cannot do directly. In this regard the Hon'ble Supreme Court in the case of U.P. Coop. Federation Ltd. v. Singh Consultants and Engineers (P) Ltd., (1988) 1 SCC 174 has held as follows:-

“21. In the instant case, the learned Judge has proceeded on the basis that this was not an injunction sought against the bank but this was the injunction sought against the appellant. But the net effect of the injunction is to restrain the bank from performing the bank guarantee. That cannot be done. **One cannot do indirectly what one is not free to do directly.** But a maltreated man in such circumstances is not remedy less. The respondent was not to suffer any injustice which was irretrievable. The respondent can sue the appellant for damages. In this case, there cannot be any basis for apprehension that irretrievable damages would be caused if any. I am of the opinion that this is not a case in which injunction should be granted. An irrevocable commitment either in the form of confirmed bank guarantee or irrevocable letter of credit cannot be interfered with except in case of fraud or in case of question of apprehension of irretrievable injustice has been made out. This is the well settled principle of the law in England. This is also a well settled principle of law in India, as I shall presently notice from some of the decisions of the High Court and decisions of this Court.”

3. **Comment:** Hon'ble Commission passed the tariff order dated 26th Nov 2014. This tariff order was very much favorable to this company and after this order, this company sold entire project to JSW Energy on attractive terms.

Petitioner's Reply


"That the contents of Para 3 are vehemently denied as the Tariff determined by the Hon'ble Commission in Petition No. 40 of 2012 was strictly in accordance with Section 62 read with the extant regulations. The averment of the Objector that the Tariff was 'favourable' to the Petitioner is incomprehensible as by such averment the Objector is in fact casting doubts upon the judicial propriety of the Hon'ble Commission. It is most respectfully prayed that the Hon'ble Commission may take suitable action against the Objector for this reason alone. As for the wild allegation of the Objector that the Petitioner has sold the Bina Project to JSW, the same is factually incorrect as JPVL is still the owner of the Bina Project. Moreover, notwithstanding the present ownership there is no embargo in any law which prohibits a private company to sell its project and therefore, even otherwise the objection/ averment of the Objector is liable to be rejected.

4. **Comment:** It is submitted before Hon'ble Commission that the copy of all MOU, implementation agreement and PPA, signed by this company with Govt. of M.P. may kindly be called and taken on record.
5. **Comment:** M.P. is power surplus state and selling surplus power below ₹3.00 per unit. Hon'ble CERC has also determined vide order dated 25/1/2016 in petition no.15/SM/2015 that cost of purchase of Power for M.P. for FY 2014-15 is only ₹2.32 per unit while the tariff approved by Hon'ble commission to this company is very much on higher side, causing huge loss to consumers of M.P. Therefore, it is very much necessary for Hon'ble Commission to consider all the aspect, to minimize the losses to consumers of M.P. It is requested that Hon'ble Commission may kindly take an SMP on this subject (detailed submission as Annexure I)
6. **Comment:** I would submit before Hon'ble Commission that the platform of this Hon'ble Commission is being misused by MPPMCL and bringing the issues selectively before Hon'ble Commission. MPPMCL is colluding with several private power developers to give benefit to them at the cost of public and public Exchequer. There are several issues which should have been brought by

MPPMCL before Hon'ble Commission and if not, Hon'ble Commission should have taken SMP, but Hon'ble Commission has not preferred to do so, may be due to ignorance of issues. I am bringing several issues into the knowledge of the Hon'ble Commission for consideration to take SMP (Annexure II)

Petitioner's Reply

That the contents of Para 4 to 6 are vehemently denied for detailed reasons mentioned in Para 7 above. It is most respectfully submitted that the said submissions have already been raised by the Petitioner in Petition No. 40 of 2012 which has culminated into the Final Tariff Order dated 26.11.2014 and hence the Objector by the doctrine of res judicata cannot raise such issues again. The Hon'ble Supreme Court on the doctrine of res judicata in the case of Ganpat Roy v. ADM, (1985) 2 SCC 307 has held as follows :-

"2. Under the proviso to Section 16(1), which was inserted by the 1976 Amendment Act, the District Magistrate is required in the  case of a vacancy referred to in sub-section (4) which includes a deemed vacancy under Section 12(2) to give an opportunity to the landlord or the tenant, as the case may be, of showing that Section 12(4) is not attracted to his case before he makes an order of allotment under clause (a) of Section 16(1). Thus, this proviso gives a right of hearing to the tenant before an order of allotment is made. The proviso, however, does not apply in the case of an order of release made under clause (b) of Section 16(1). Even in the case of an application for allotment, it is doubtful whether a tenant whose objections to notification of a deemed vacancy have been negative and thereafter the vacancy has been ordered to be notified could be permitted to reagitate the same contentions because such contentions would be barred by principles analogous to res judicata."

Therefore, once these contentions have duly been considered by the Hon'ble Commission in passing the Order dated 26.11.2014 and since the Objector has not challenged the validity of the said Order, the Objector by the doctrine of res judicata is now barred from re-raising these issues before the Hon'ble Commission in the present True Up proceedings.

- 7. Comment:** The Jaiprakash power Ventures Ltd is engaged in overstating the capacity of its power plants and hence to get higher tariff on artificially enhanced capital cost. This face has come in to open in their karcham Wangtoo power project where the tariff petition was filed before Hon'ble CERC for 1200 MW under section 62, but CEA reduced the capacity to 1000MW only and accordingly

the capital cost of the project was reduced. This was done, based on my several representation to competent authorities (the details are enclosed as Annexure III).

8. **Comment:** Recently, the Hon'ble CERC, took up the SMP No.18/SM/2015 in the matter of Declaration of commercial operation of units 20to 50 of the Mundra Ultra Mega power Project developed by Coastal Gujarat Power Limited and passes the order dated 30/12/2015. This was done on my complaint and I have also been allowed to participate in proceedings (Copy of order enclosed as Annexure IV)

Petitioner's Reply

That the contents of Para 7 and 8 are vehemently denied as the issues raised about other projects of the Petitioner and other Companies facing issues qua commissioning/ installed capacity have no bearing on the present True Up Petition. The Objector has maliciously raised these issues with the sole intent of sensationalizing the present proceedings to misguide the Hon'ble Commission. These issues have no bearing on the present proceedings are they are not even remotely relevant to the true up of the Petitioner's Power Plant and hence should be rejected at the outset with exemplary costs.

9. **Comment:** I have come to know, that in this case, the process of commissioning has been managed, false certificated are issued and COD declared is illegal. The Govt. of India, MOP, notifications no. OM No.3/2/2007/P&P dated 3/9/2009 have been violated and the unit has not completed mandated, 72 hours, continuous running at require rated load and the unit installed is not tested for rated capacity. It is very much possible that under rated capacity power plant is installed. Under these circumstances, this is out of jurisdiction of Hon'ble Commission to pass any tariff order under section 62 without going in to details regarding correct declaration of COD.
10. **Comment:** It is submitted that Hon'ble Commission may kindly take SMP regarding process of commissioning and declaration of COD on the lines of Hon'ble CERC SMP No.18/MP/2015. I may also be included as respondent in that SMP. It is also submitted that proceedings against this petition no 70/2015 may be stayed till decision is taken regarding declaration of COD.

11. **Comment:** Hon'ble Commission allowed the COD on 26th Nov 2014 for unit No.1 of this project. My submission is that Hon'ble Commission may kindly call all the papers related to Commissioning of this unit on the basis of which COD was declared. It is claimed that COD was delayed due to WRLDC and hence Hon'ble Commission may direct WRLDC to submit the facts. The delay in COD has increased the cost of project. The CERC has also called the relevant papers (Para 5 of order dated 30/12/2015 in petition no. 18/SM/2015) and Tata power has submitted all the papers as directed by Hon'ble CERC.

Petitioner's Reply

That the contents of Para 9, 10 and 11 and vehemently denied for detailed reasons mentioned in Para 11 of this Rejoinder above. It is reiterated that the present Petition is for the limited purpose of seeking True up of the Capital Cost of the Petitioner's Power project and the issue of Commissioning being raised by the objector is completely irrelevant. Moreover, the said averment of the Objector is vehemently denied as the said Objector without bringing forward a shred of evidence is making sweeping comments/averments against the entire system by which Commissioning Certificate to power plants is granted. The said averments of the Objector are liable to be rejected with exemplary costs.

12. **Comment:** It is looking simple from Shareholding pattern of this company that JAL has full control over Jaiprakash Power Ventures Ltd and its does not come under the category of group company. The chairman of both the companies is Shri Manoj Gaur. JAL is holding 60.68% of shares of J.P. Power Ventures Ltd and J.P. Ventures Ltd is subsidiary of JAL. Hence, the engagement of JAL as major contractor is highly improper/illegal. Both the companies are listed companies and matter may kindly be refer to SEBI for decision.
13. **Comment:** JAL is basically an EPC company and formed this J.P. Power Ventures Ltd to create business for JAL and divert money from Banks to JAL in the name of business contract.
14. **Comment:** The contract given by Bokaro JAL Limited to JAL was also illegal because it was the joint venture between SAIL and JAL. JAL itself cannot be the contactor for Bokaro LAL Limited. Hence, JAL is working as contractor in Bokaro JAL Limited, is totally illegal.

15. **Comment:** Govt. of M.P. decision regarding inclusion of transmission line cost in the capital cost is illegal. Govt. of M.P cannot take any decision which is contrary to the stand taken by the Respondents. Govt. of M.P. is also can not issue any direction to the Hon'ble MPERC except under section 108 of I E Act 2003. Therefore, Hon'ble Commission was out of Jurisdiction to direct GoMP, Energy Department to decide the issue related to transmission cost incurred on the project. (para 1.21 (a) of order dated 26th Nov' 2014 in petition no. 40 of 2012).

Petitioner's Reply

That the contents of Para 12 to 15 are also vehemently denied for details reasons mentioned above. It is most respectfully submitted that the Petitioner during the course of hearing in Petition No. 40 of 2012 has clearly established the rationale behind granting EPC contract to Jaiprakash Associates Limited which has been duly accepted by the Hon'ble Commission. Therefore, such issues have again attained finality and cannot be raised by the Objector.

16. **Comment:** Hon'ble Commission has the responsibility to have prudence check while deciding the tariff under section 62. Hence, Hon'ble Commission is requested to kindly consider in detail the issues which affect the fixation of tariff. There are several MOU and PPA signed and with several conditions imposed which make the petition no 40 of 2012 and this true up petition ineligible to be decided under section 62 itself.
17. **Comment:** Hon'ble Commission is requested to kindly summoned all the record regarding sale of merchant power from this plant and money realized on per unit basis from merchant power sale. The rate of sale of merchant power may be compared with tariff fixed by Hon'ble Commission.
18. **Comment:** Hon'ble Commission is requested to kindly summon all the record from JSW Energy, regarding due diligence carried out by JSW Energy before finalizing the purchase of this power plant.

Petitioner's Reply

That the contents of Para 16 to 18 are vehemently denied for detailed reasons mentioned above. It is most respectfully submitted that the prayer being sought by the Petitioner in the present proceedings is subject to statutory prudence check by the Hon'ble Commission which in no manner can be disputed. Further, the sweeping

allegation of the Objector that the PPA or the MoU signed between the Petitioner and the Respondents makes the present proceedings legally untenable is vehemently denied. It is most respectfully submitted that the PPA between the parties is the genesis behind present proceedings as only in a regulated approved PPA can the Tariff for a generating Company be determined for supply to state utilities. Further as per the comments of the Objector on the supply of power on merchant basis again has no relevance to the present proceedings and is liable to be rejected.

19. **Comment:** This Company has diverted good amount of money to its promoters at the expense of power consumers of M.P. The promoters themselves worked as contactor which was illegal but allowed by Bankers. The detailed explanation regarding delay in realizing debt by the bankers of this company is also required. Hence, Reserve Bank of India may kindly be asked to order a forensic audit of all the banking transaction/operations of this company. The outcome of RBI audit may also be included in tariff order.
20. **Comment:** There serious differences between petitioner and respondents as mentioned from page 137 to 158 in the order dated 26th Nov' 2014 in petition no.40 of 2012 passed by the this Hon'ble Commission. These enhanced cost of project due to these disputes cannot be included in capital cost of project and to be borne by petitioner and respondent from their profit and loss balance sheet. Hon'ble Commission may take the help of authorities which have competency to decide these type of disputes.
21. **Comment:** The circumstances shows that Jaiprakash Power Ventures Ltd is very much engaged in money laundering, creation of black money, making misuse of section 62 of Act, getting undue favors from Banks, violating SEBI rules and regulations etc and hence causing huge loss to public and public exchequer.
22. **Comment:** This is also evident that JP Power Ventures Ltd is selling its project to other companies, particularly to JSW Energy, after processing the tariff cases under section 62 of Act. These appears to be the nexus between these two companies and Bankers of JSW Energy are extending loans to purchase these assets. Hence, RBI may be asked by this Hon'ble Commission to examine the valuation of these assets and source of funds of JSW Energy to acquire the assets of Jaiprakash Power Ventures Ltd.

Petitioner's Reply

That the Petitioner takes strong umbrage of the averments made in Para 19 and 20 wherein the Objector has made irresponsible and slanderous averments against the Petitioner which have no bearing on the present Petition, and have been raised with the sole intent to sensationalize the present proceedings.