

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

5thFloor, "Metro Plaza", Bittan Market, Bhopal (M.P.) - 462 016



Petition No. 49 of 2018

PRESENT:

Dr. Dev Raj Birdi, Chairman

Mukul Dhariwal, Member

IN THE MATTER OF:

True-up of Generation Tariff of 2 x 250 MW (Phase-I) coal based Thermal Power Station at Bina, District Sagar (M.P.) for FY 2017-18 determined by MP Electricity Regulatory Commission vide Multi Year Tariff Order dated 08th August' 2016.

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 31st May' 2019)

1. M/s Jaiprakash Power Ventures Limited (hereinafter called "the petitioner" or JPVL) has filed the subject petition on 13th November' 2018 for True-up of Generation Tariff for FY 2017-18 in respect of its 2x250MW (Phase I) coal based Thermal Power Station at Bina, determined by the Madhya Pradesh Electricity Regulatory Commission (hereinafter called "the Commission or MPERC") vide Multi Year Tariff Order dated 08th August' 2016.
2. The subject true-up petition has been filed under Section 62 and 86 (1)(a) of the Electricity Act, 2003 and in terms of proviso 8.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 (herein after referred to as "the Regulations' 2015").
3. The Bina Thermal Power Station (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 are as given below:

Table 1: CoD of Unit No.1 and 2

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

Background

4. Vide tariff order dated 26th November' 2014 in petition No. 40 of 2012, the Commission determined final generation tariff for 2 x 250 MW (Phase-I) of Bina Thermal Power Station for FY 2012-13 and FY 2013-14 based on the 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.
5. 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
 - d. Inadequate Recovery of Capacity Charges

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6. Vide order dated 8th May' 2015 in the review petition No. 05 of 2015, 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. Aggrieved with the aforesaid order, the petitioner filed an Appeal No. 25 of 2016 with the Hon'ble Appellate Tribunal for Electricity, New Delhi on the following issues: -
- (i) Pre-Commissioning Fuel Expenses
 - (ii) Double Deduction of Infirm Power
 - (iii) Inadequate recovery of Annual Capacity Charges.
 - (iv) Post Facto adjustment on account of Non-Tariff Income.
7. Hon'ble Appellate Tribunal for Electricity, by its Judgement dated 13th February' 2017 in Appeal No. 25 of 2016 partly allowed the Appeal. Two issues regarding inadequate recovery of capacity charges and post facto deduction of non-tariff income have been decided against the petitioner and the Commission's Order was upheld to the extent of these two issues. However, the Commission's order was remanded back to the Commission on first two issues regarding pre-commissioning fuel expenses and double deduction of revenue earned from sale of infirm power.
8. In terms of the directions of Hon'ble Tribunal in their judgement dated 13th February' 2017, the petitioner M/s JPVL filed a petition No. 11 of 2017 with the Commission for consideration of following two issues: -
- (i) Consider actual Pre-Commissioned Fuel Expenses.
 - (ii) Re-consider double deduction of revenue earn from sale of infirm power.
9. Vide order dated 04th December' 2017 in petition No. 11 of 2017, the Commission had considered the issue of Pre-Commissioning fuel expenses and revised the Capital Cost of the Project accordingly. Regarding the issue of double deduction of revenue earned from sale of infirm power, the Commission had observed that the petitioner was still not able to clarify its stand on this issue. Therefore, the issue of double deduction of revenue from sale of infirm power was not considered by the Commission.
10. Vide order dated 3rd June' 2016, the Commission had issued the true-up order for FY 2014-15 in Petition No. 70 of 2015 based on the Annual Audited Accounts for FY 2014-15.
11. On 1st August' 2016, the petitioner filed a Review Petition No. 47 of 2016, seeking review of the aforesaid order dated 03rd June' 2016 to the extent of disallowed grossing up of the base rate of Return on Equity with MAT. The petitioner also filed an Interlocutory Application in the said Review Petition No. 47 of 2016 raising an additional issue for review on disallowance of O&M expenses for the dedicated transmission lines of the Project.

12. Further, vide order dated 21st June' 2017 in petition No. 62 of 2016, the Commission had issued the true-up order for FY 2015-16 based on the Annual Audited Accounts.
13. Vide order dated 25th September' 2017, in review Petition No. 47 of 2016, the Commission considered the issue regarding grossing up the rate of Return on Equity with MAT and revised the Annual Capacity Charges for FY 2014-15.
14. Further, the Commission issued true-up order for FY 2016-17 on 24th May' 2018 in petition No. 57 of 2018. In the aforesaid true-up order, the Commission had considered the opening figures of Gross Fixed Assets, Equity, Loan, Accumulated Depreciation as per the order dated 4th December' 2017 in petition No. 11 of 2017 issued in compliance with the directives issued by the Hon'ble Tribunal.
15. The Commission vide order dated 08th August' 2016 had issued the MYT order for next control period i.e. FY 2016-17 to 2018-19 based on the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015. The base opening figures of Capital Cost and funding in the aforesaid MYT order were considered from the true-up order for FY 2014-15 issued on 3rd June' 2016. The subject petition is filed for true-up tariff determined for FY 2017-18 vide aforesaid MYT order dated 8th August' 2016. The details of Annual Capacity (fixed) Charges for both the units of Bina Thermal Power Plant for FY 2017-18 determined vide Commission's MYT Order dated 08th August' 2016 are as given below:

Table 2: Annual Capacity (Fixed) Charges for FY 2017-18 Allowed in MYT Order:

Particulars	Amount in Rs. Crore
Return on Equity	162.01
Interest Charges on Loan	200.28
Depreciation	171.42
Operation & Maintenance Expense	143.50
Interest on Working Capital	56.26
Lease Rent Payable	0.00
Annual Capacity (Fixed) Charges	733.47
Less: Non-Tariff Income	(0.50)
Net Annual Capacity Charges	732.97
Annual Capacity (Fixed) charges corresponding to 65% of the installed capacity of the units	476.43

16. In the subject petition, the petitioner has sought true-up of Annual Capacity (fixed) Charges for FY 2017-18 in respect of the additional capital expenditure incurred during FY 2017-18 in

accordance with Regulation 8.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 which provides as under:

“A Generating Company shall file a petition at the beginning of the Tariff period. A review shall be undertaken by the Commission to scrutinize and true up the Tariff on the basis of the capital expenditure and additional capital expenditure actually incurred in the Year for which the true up is being requested. The Generating Company shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred for the period from 1.4.2016 to 31.3.2019, duly audited and certified by the auditor

17. In the subject petition. the petitioner filed the additional capitalization of Rs. 15.77 Crore during FY 2017-18. Based on the aforesaid additional capitalization filed during FY 2017-18, the petitioner claimed the following Annual Capacity (fixed) Charges for Unit No. 1&2 of Bina Thermal Power Station:

Table 3: Annual Capacity charges claimed for FY 2017-18:

S. No.	Particulars	Amount in Rs. Crore
1	Return on Equity	164.04
2	Interest on Loan	201.90
3	Depreciation	180.44
4	Interest on Working Capital	60.66
5	O & M Expenses	143.50
5A	O & M expenses (400kV Transmission Lines & Bay)	0.33
6	Lease Rent Payable	0.31
	Total Annual Capacity (Fixed) Charges	751.18
7	Less:-Non Tariff Charges	10.00
	Net Annual Capacity (Fixed) Charges	741.18
	65% of Capacity charge	481.77

18. The petitioner filed a copy of the Annual Audited Accounts of Jaypee Bina Thermal Power Plant (JBTPP), along with the Consolidated Balance Sheet of Jaypee Power Ventures Limited (JPVL) as on 31st March, 2018 with the subject petition.

19. With the above submission, the petitioner prayed the following:

(a) *True Up Capacity Charges in respect of FY 2017-18 determined by the Commission vide MYT Order dated 08.08.2016 in terms of the Additional Capital Expenditure incurred by the Petitioner.*

(b) *Pass appropriate Orders directing recovery of Capacity Charges worked out by petitioner after addition of Rs 15,77,38,260/- (Rupees Fifteen Crore Seventy Seven Lacs Thirty Eight Thousand Two Hundred Sixty Only);*

20. The Commission has examined the subject petition in accordance with the principles, methodology and the norms specified in the MPERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2015 and Annual Audited Accounts of Jaypee Bina Thermal Power Project for FY 2017-18 besides other documents placed on record by the petitioner. The Commission has also examined the subject true up petition in light of the comments/suggestions offered by the Respondent No. 1 (MPPMCL) and the response of petitioner on the same.
21. In this true-up order, the Commission has considered the opening figures of Gross Fixed Assets, Equity, Loan, Accumulated Depreciation as per last true-up order dated 24th may' 2018 in petition No. 57 of 2017.

Procedural History

22. Motion hearing in the subject true up petition was held on 12th December' 2018. Vide order dated 12th December' 2018, 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 15th January' 2019.
23. Vide Commission's letter dated 21st December' 2018, the information gaps and requirement of additional information on preliminary scrutiny of the petition were communicated to the petitioner seeking its comprehensive reply by 21st January' 2019.
24. By affidavit dated 18th January' 2019, the petitioner filed its reply to the issues communicated to it by the Commission.
25. By affidavit dated 23rd January' 2019, the Respondent No. 1 (M.P. Power Management Co. Ltd.) filed its response/comments on the subject petition.
26. By affidavit dated 29th January' 2019, the petitioner filed its rejoinder to the reply/ comments filed by Respondent No.1. The petitioner's response on each comment offered by the Respondent No.1 are mentioned in **Annexure-I** of this Order.
27. The next hearing in the subject matter was held on 30th January' 2019, wherein the Respondent No. 1 sought time for filing its submission on the rejoinder filed by the petitioner. Accordingly, the Commission allowed Respondent No.1 to file its response on petitioner's

rejoinder filed by the petitioner by 8th February' 2019 after serving a copy of same on other side.

28. By affidavit dated 8th February' 2019, the Respondent No. 1 filed its response on the rejoinder filed by the petitioner. In its response, the Respondent No. 1 has almost reiterated its contention as filed by its affidavit dated 11th February' 2019. The petitioner filed its reply to the response dated 8th February' 2019 filed by Respondent No. 1

29. The public notice for inviting comments/ suggestions from stakeholders was published on 14th January' 2019 in the following newspapers:
 - (i) Dainik Jagran (Hindi), Bhopal,
 - (ii) Dainik Jagran (Hindi), Rewa and
 - (iii) The Times of India (English), Bhopal
 - (iv) The Times of India (English), Indore

30. The public hearing in this matter was held on 12th February' 2019 wherein the representatives of the petitioner and Respondent No. 1 appeared.

Capital Cost as on 1st April' 2017**Petitioner's Submission:**

31. The petitioner filed opening Gross Fixed Asset of Rs. 3519.84 Crore as on 1st April' 2017. The petitioner claimed additional capitalization of Rs.15.77 Crore during FY 2017-18. The details of opening Gross Fixed Assets along with asset additions during FY 2017-18 and closing Gross Fixed Assets as on 31.03.2018 as filed by the petitioner are as given below:

Table 4: Opening Gross Block and Asset Addition claimed: (Rs in Crore)

Particulars	Original Gross Block as on 31.03.2017	Addition during 2017-18	Project Cost as on 31.03.2018
Total	3,519.84	15.77	3,535.61

Provision in Regulations:

32. With regard to capital cost of the existing power project, Regulation 15.3 and 15.6 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provide as under:

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

- (a) *“the capital cost admitted by the Commission prior to 1.4.2016 duly trued up by excluding liability, if any, as on 1.4.2016;*
- (b) *additional capitalization and de-capitalization for the respective year of tariff as determined in accordance with Regulation 20; and*
- (c) *expenditure on account of renovation and modernization as admitted by the Commission in accordance with Regulation 21.*

15.6 *The following shall be excluded or removed from the capital cost of the existing and new projects:*

- (a) *The assets forming part of the project, but not in use;*
- (b) *De-capitalisation of Asset;*
- (c) *In case of hydro generating station any expenditure incurred or committed to be incurred by a project developer for getting the project site allotted by the State government by following a two stage transparent process of bidding; and*
- (d) *The proportionate cost of land which is being used for generating power from generating station based on renewable energy:*

Provided that any grant received from the Central or State Government or any statutory body or authority for the execution of the project which does not carry any liability of repayment shall be excluded from the Capital Cost for the purpose of computation of interest on loan, return on equity and depreciation;”

Commission’s Analysis:

33. In the subject petition, the petitioner claimed Opening Gross Fixed Assets of Rs. 3519.84 Crore as on 1st April’ 2017. On perusal of the Annual Audited Accounts of Jaypee Bina Thermal Power Plant (JBTPP) filed with the petition, it was observed that the opening balance and closing balance of Gross Fixed Assets (GFA) filed in the subject petition (TPS 5B) and those recorded in Note 2 of the Annual Audited Accounts for FY 2017-18 are at variance.
34. Vide Commission’s letter dated 21st December’ 2018, the petitioner was asked to clarify the difference in figures recorded in Annual Audited Accounts and those filed in the petition. The petitioner was also asked to file the reasons for difference in figures approved in last true-up order dated 24th May’ 2018 for FY 2016-17 and those considered in the subject petition.
35. By affidavit dated 18th January’ 2019, the petitioner submitted the following:

*“The Petitioner would humbly submit that the difference between capital cost of Rs. 3510.61 Crores as on 31.03.2017 admitted by the Commission and the Capital Cost of Rs. 3519.84 Crores as on 31.03.2017 submitted by Petitioner is equal to the disallowances of **Rs. 9.23 Crores** in Capital Cost made by the Commission during the proceedings of Petition No.40/2012 & Review Petition No.05/2015 on account of Double Deduction of Infirm Power.*

However, the reconciliation of the difference between Capital Cost as on 31.03.2017 admitted by the Commission and the Capital Cost submitted by the Petitioner is as under:-

S. No.	Particular	Rs. Cr.	Remarks
1.	Gross Fixed Assets as on 31.03.2017	3510.61	As per last True up Order dated: 24.05.2018
2.	Add:- Disallowance made on account of revenue earned from sale of infirm power the Commission vide its Order dated 26 th Nov. 2014 being contested by the petitioner pursuant to disallowance of the same by the Commission vide Remand Petition Order dated 04.12.2017 (Appeal filed with APTEL vide appeal no. 54 of 2018)	9.23	

3.	Gross Fixed Assets as on 01.04.2017	3519.84	Filed with True Up Petition for FY 2017-18, Petition No. 49/2018
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Further, the difference between the figures filed in the TPS 5B of the petition 49 of 2018 (Rs. 3519.84 crores) as on 31.03.2017 and as recorded in Note 2 of the Annual Audited Account (Rs. 3496.11 crores) is reconciled under:

S. No.	Particular	Rs. Cr.	Remarks
1.	Closing Gross Fixed Assets as on 31.03.2017	3,519.84	As filed in the subject Petition
2.	Less: - 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 26 th Nov., 2014.	23.46	
4.	Less: - Gross Block of Lease Hold Land not recognized as Fixed Asset as per Indian Accounting Standards mandatorily applicable w.e.f. 01.04.2016	0.92	
5.	Less: Actual add. capital allowed by commission in the True Up order for FY 2016-17	1.01	
6.	Opening Gross Fixed Assets as on 01-04-2016 as per Annual Audited Accounts for FY 2016-17	3,494.45	As recorded in the Audited Accounts for FY 2016-17 (R/off diff of 0.02 Crores)
7.	Addition during FY 2016-17	1.69	As per audited Balance Sheet for FY 2016-17
8.	Closing Gross Fixed Assets as on 31-03-2017 as per Annual audited Accounts for FY 2016-17	3,496.14	As recorded in the Note-2 of Annual Audited Accounts for FY 2016-17 filed with instant Petition) (R/off diff of 0.03 Crores)

36. In view of the above submission, the Commission observed that the petitioner considered the impact of disallowance made by the Commission in respect of double deduction of infirm power and additional capitalization during FY 2016-17. The petitioner also considered the impact of interest on Debt Component of unallocated costs allowed by the Commission in final tariff order dated 26th November' 2014.
37. The Commission vide order dated 4th December' 2017 in petition No. 11 of 2017 had revised the Capital Cost (in compliance to the directions of Hon'ble Tribunal in Appeal No. 25 of 2015) and an amount of Rs. 4.01 Crore on account of pre-commissioning fuel expenses had been

added in the capital cost. Accordingly, the Commission had considered the opening Gross Fixed Assets of Rs.3509.59 Crore as on 1st April' 2016 as admitted by the Commission (as on 31st March' 2016) in its order dated 4th December' 2017 in petition No. 11 of 2017.

38. Further, the Commission had considered the additional capitalization of Rs. 1.01 Crore in last true-up order dated 24th May' 2018. Accordingly, the Commission has considered the opening Gross Fixed Assets of **Rs. 3510.61 Crore** as on 01st April' 2017 as admitted by the Commission (as on 31st March' 2017) in its true-up order dated 24th May' 2018 in petition No. 57 of 2018.

Additional Capitalization

39. The petitioner filed the additional capitalization of Rs. 15.77 Crore during FY 2017-18. Out of this, Rs. 0.06 Crore pertains to BTG and Rs. 15.66 Crore towards BOP. The petitioner submitted that the assets under BOP are capitalized in coal handling plant wherein the major amount is on capitalization of carpet coal.
40. With regard to the aforesaid additional capitalization claimed in the petition, the petitioner submitted the following:

(i) BTG:

Details of additions in BTG during FY 2017-18 are as follows: -

- *Around Rs. 0.04 Crores were incurred towards the installation of Spirometer to monitor the turbine temperature to safeguard the turbine damage & CCTV cameras in Turbine Generator area to improve security requirement within the premises.*
- *Around Rs 0.02 Crores were incurred towards the procurement of air motor for air preheater to ensure safety of equipment and boiler in case of electrical failure Furthermore, digital vibration meter was procured for vibration measurement of pressure parts of the boiler. This has helped in carrying out condition-based maintenance, monitoring causes of failure and reducing the breakdown and down time of equipment's.*

(ii) BOP:

Details of additions in BOP during FY 2017-18 are as follows: -

- *Rs 15.60 Crores have been capitalized in Coal Handling Plant wherein the major amount is on capitalization of carpet coal and cannot be reclaimed for use. The report of the Independent Inspector is attached as ANNEXURE-1. Furthermore, Coal analyzers were procured for measurement of quality and GCV of coal to ensure the quality control.*

- *It is further respectfully submitted that in for Coal Handling Plant Digital Vibration Meter & Neutron Survey Meter costing around Rs 0.04 Crores were procured. Digital Vibration Meter was procured for measurement of Vibration of equipment to enable pro-active maintenance of running equipments and system, monitor causes of failure and for advance action to save equipment from possible failure. Furthermore, Neutron Survey Meter was also procured to measure nuclear radiation from the nuclear source provided on the Sabia, USA make Coal Analyzer, installed in CHP for online measurement of quality and GCV of coal. The Radiation Meter is statutory requirement and essential to ensure safety.*
- *Around Rs 0.01 Crores were spent on D. M. Plant for procurement and installation of microprocessor viscometer to monitor the viscosity of oil to maintain the component lubrication and check wear and tear of components.*
- *Rs 0.04 Crores were incurred on D. M. Plant towards the procurement of Spectro Photo Meter which has been procured for Boiler Water Analysis to improve the water chemistry which is extremely important to ensure efficiency and performance of the boiler.*
- *Other Equipment's worth Rs 0.014Crores including computers for C&I, Biometric Attendance Machine Desert Water Coolers at various places at Plant to Ensure working efficiency were procured.*

41. Regarding additional capitalization in respect of existing generating station, Regulation 20.3 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:

20.3 "The capital expenditure, in respect of existing generating station incurred or projected to be incurred on the following counts after the cut-off date, may be admitted by the Commission, subject to prudence check:

- (a) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law;*
- (b) Change in law or compliance of any existing law;*
- (c) Any expenses to be incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies of statutory authorities responsible for national security/internal security;*
- (d) Deferred works relating to ash pond or ash handling system in the original scope of work;*
- (e) Any liability for works executed prior to the cut-off date, after prudence check of the details of such un-discharged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc.*

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- (f) Any liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments;
- (g) Any additional capital expenditure which has become necessary for efficient operation of generating station other than coal based stations, the claim shall be substantiated with the technical justification duly supported by the documentary evidence like test results carried out by an independent agency in case of deterioration of assets, report of an independent agency in case of damage caused by natural calamities, obsolescence of technology, up-gradation of capacity for the technical reason such as increase in fault level;
- (h) In case of hydro generating stations, any expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company) and due to geological reasons after adjusting the proceeds from any insurance scheme, and expenditure incurred due to any additional work which has become necessary for successful and efficient plant operation;
- (i) Any capital expenditure found justified after prudence check necessitated on account of modifications required or done in fuel receiving system arising due to non materialization of coal supply corresponding to full coal linkage in respect of thermal generating station as result of circumstances not within the control of the generating station:

Provided that any expenditure on acquiring the minor items or the assets including tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, computers, fans, washing machines, heat convectors, mattresses, carpets etc. brought after the cut-off date shall not be considered for additional capitalization for determination of tariff w.e.f. 1.4.2016:

Provided further that any capital expenditure other than that of the nature specified above in (a) to (d) in case of coal based station shall be met out of Compensation Allowance:

Provided also that if any expenditure has been claimed under Renovation and Modernisation (R&M), repairs and maintenance under (O&M) expenses and Compensation Allowance, same expenditure cannot be claimed under this Regulation.

42. The petitioner claimed additional capitalization of Rs. 15.77 Crore during FY 2017-18 as per Annual Audited Accounts. The Commission has examined the additional capitalization in line of Annual Audited Account, Asset-cum-Depreciation register and provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015. The

Commission has also considered the comments offered by Respondent No. 1 in the subject matter.

43. Vide Commission's letter dated 08th January' 2018, the petitioner was asked to file a comprehensive reply to the various issues related to additional capitalization communicated to it by the Commission. By affidavit dated 27th February' 2018, the petitioner filled its response on each issue raised by the Commission. The issue-wise response filed by the petitioner is summarized below:

Issue

- i) **Whether the addition of assets is on account of the reasons mentioned in Regulation 20.2 and 20.3 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.**

&

- ii) **Whether the assets capitalized during the year are under original scope of work. The petitioner is also required to file detailed break-up of original scope of work for the project. Supporting documents need to be filed by the petitioner in this regard.**

Petitioner's Response:

The Petitioner humbly submits that the additional net capitalization of Rs 15.77 Crores falls within the norms specified under Regulation 20.2 and 20.3 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015.

The Petitioner would humbly like to draw the kind attention of the Commission in the light of the above Regulation that the said additional capitalization is within the original scope of the work of Rs. 3,575/- Crores authorized by the Resolution of Board of Directors dated May 17th, 2014, attached as Annexure-1. The detailed break-up of original scope of work for the project has been attached as Annexure-2.

The detailed reasons of asset additions under suitable provisions of Regulations including the supporting documents is furnished in the format as provided by the Commission and is hereby annexed as Annexure-3.

Issue

- iii) **The reasons for delay in capitalization of all such assets under additional capitalization. The reply should be filed in light of prevailing Financial Accounting Principles.**

Petitioner's Response:

The Petitioner would humbly like to apprise the Commission that all essential works related to Power Generation were executed and completed well before the COD of the project. However, all other ancillary system requirements such as requirement of safety & security equipment's to safeguard the Plant premises, environmental compliance including fulfilling statutory requirement were carried out at later dates.

Issue:

- iv) The asset addition claimed in the petition need to be reconciled with the figures recorded in the Assets cum Depreciation Register.

Petitioner's Response:

The Reconciliation between asset additions of 15.77 Crores Claimed in the petition and Asset-cum-Depreciation Register is as under:

Description	Amount in Rs.
Total addition as per Asset-cum-Depreciation Register filed with the Petition	15,77,38,260/-
Say,	Rs 15.77 Crores
Addition claimed in the Petition	Rs 15.77 Crores
Difference	NIL

Issue:

- v) Whether the petitioner has taken due care in writing-off the assets from the original cost in case of any expenditure on replacement of old asset.

Petitioner's Response:

The Petitioner humbly submits that in the FY 2017-18 there has been no deletion of Asset, hence no assets have been written off during the period.

Issue:

- vi) Reference of any approval if accorded, for the above works by the competent authority, be also submitted

Petitioner's Response:

All the asset that has capitalised during the FY 2017-18 was procured as per company policy and the procurement of the same was done after taking approval of Competent Authority. We hereby attaching Purchase order SOP along with the Purchase Orders and in connection with Carpet Coal a duly certified Extract of the Minutes of the Meeting dated: 05th May 2018 are annexed as Annexure-4.

Issue:

- vii) **Approved funding pattern and actual funding of aforesaid additional capitalization along with supporting documents, be filed. Copy of the bills/invoices of all such assets under additional capitalization need to be filed.**

Petitioner's Response:

The petitioner would like to humbly submit that funds for the entire assets that has capitalised during the FY 2017-18 have been met from revenues generated during the year/internal resources. Copy of the bills of all the assets capitalised during the FY 2017-18 are attached as Annexure-5.

Issue

- viii) **Proviso of Regulation 20.3 (i) of MPERC Generation tariff Regulations, 2015 provides as under:**

“Provided that any expenditure on acquiring the minor items or the assets including tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, computers, fans, washing machines, heat convectors, mattresses, carpets etc. brought after the cut-off date shall not be considered for additional capitalization for determination of tariff w.e.f. 1.4.2016:”

In view of the above, the petitioner is required to justify its claim of additional capitalization on accounts of minor assets mentioned in para 13 of the petition

Petitioner's Response:

The Petitioner would humbly like to draw the kind attention of the Commission in the light of the above Regulation that the said additional capitalization is within the original scope of the work of Rs. 3,575/- Crores, However, capitalisation of minor assets as mentioned in para 13 of the petition have been done to maintain ideal and efficient working environment and to enhance the higher safety and security of the plant premises.

44. By affidavit dated 23rd January' 2019, Respondent No. 1 (MPPMCL) filed its response on the subject petition. The response filed by Respondent No. 1 (MPPMCL) is summarized as below:

- i) *“On the examination of the ‘Regulation 20.3,’ it may kindly be seen that, the ‘Regulation 20.3’ only permits the Additional Capital Expenditure on very specific and limited counts*

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- after the cutoff date such as liability to meet out award of arbitration, decree of court of law, change in law, deferred work relating to ash pond liability for works executed prior to cut-off date. But, on perusal of the details of Additional Capitalization claim submitted by the petitioner, it is observed that almost all the counts for which, the approval of Additional Capital expenditure incurred has been requested are not covered under 'Regulation 20.3'. Therefore, the answering respondent opposes each and every Additional Capital Expenditure claimed by the petitioner as they are not covered under 'Regulation 20.3' of the 'Regulation 2015' and request to the Commission, that not to allow any Additional Capital Expenditure claimed by the petitioner.
- ii) Without prejudice to the above, the expenditure-wise comments of the answering Respondent is as follows. The petitioner under 'para 13' of the petition has claimed following additional Capital Expenditures –
- (A) Under the head BTG –
- Installation of SPIROMETER, Rs. 0.04 Crores.
 - Procurement of air motor for air preheater, Rs. 0.02 Crores.
- (B) Under the head BOP –
- Capitalization of Carpet Coal, Rs. 15.60 Crores.
 - Digital Vibration Meter & Neutron Survey Meter, Rs. 0.04 Crores.
 - Installation of microprocessor viscometer Rs. 0.01 Crores.
 - Procurement of Spectro Photometer, Rs. 0.04 Crores.
 - Other Equipment, Rs. 0.01 Crores.
- iii) The project was commissioned on 07.04.2013 and the cut-off date of the project i.e. 31.03.2016 has already been passed. It is respectfully submitted that not a single expenditure claimed by the petitioner under 'Para 13' of the petition is admissible under Regulation 20.3 of the regulations 2015. Therefore, it is prayed to the Commission that not to allow any such expenditure.
- iv) Further, the petitioner, most surprisingly and without any Regulatory provisions made an additional capitalization claim of Rs. 15.60 Crores towards capitalization of Carpet coal that too on the basis of certificate provided by a Private Ltd. Company. The Carpet Coal is not a capital asset and expenditure on it is not admissible under any Regulatory provisions and as such it is respectfully prayed to the Commission, that not be allowed such claim.
- v) That, the petitioner under 'Para 16' of the petition prayed for the reimbursement of loss amounting to Rs, 3.989 Crores incurred on account of Controllable Parameter. It is

respectfully submitted that, the Regulation 8.9 of Regulations' 2015 only provides for sharing of financial gains by a Generating Company on account of controllable parameters. As such, the claim is not admissible and shall not be allowed.

- vi) Further, on examination of the forms submitted by the petitioner it is observed that in the form no. TPS-15, the Transportation charges under the head "Transportation charges by rail/ ship/ road transport" is shown as "Nil" whereas the Generator has claimed Rs. 39.13 Crores towards Transportation Charges in the monthly bills submitted to the answering respondent. A statement in support is annexed as Annexure-I.
- vii) As per Regulation 8.8 (iii) of the Tariff Regulations' 2015, it is required that the Commission shall carry out truing up of tariff of generating station based on the performance of the "Primary Fuel Cost". It is therefore, respectfully prayed to the Commission to call all record related to 'Primary Fuel cost' and carry out the truing up of the 'Primary Fuel Cost' and True-up the tariff accordingly.
- viii) It is respectfully submitted that the Commission may kindly consider the aforesaid submission of the answering Respondent and –
- No to allow any Additional Capitalization claimed by the petitioner.
 - Carry out the truing up of the "Primary Fuel Cost" as per provisions of Regulation 8.8(iii).
 - Carry out the truing up of the "Controllable Parameters" as per provisions of Regulation 8.7.

45. Further, by affidavit dated 8th February, 2019, the Respondent No. 1 reiterated its contention filed on 23rd January' 2019.

Commission's Analysis:

46. On perusal of the details regarding additional capitalization filed in the subject petition vis-à-vis additional submission, the Commission observed that out of the total additional capitalization of Rs. 15.77 Crore, an amount of Rs. 15.60 Crore pertains to carpet coal capitalized during the year and balance Rs, 0.17 Crore pertains to other minor assets.
47. Let us scrutinised the additional capitalization claimed by the petitioner in light of the Annual Audited Accounts, Asset-cum-Depreciation register, response/comments filed by the Respondent No.1 in the subject matter, provisions under the Regulations and original project cost approved by the BoD of the petitioner generating company.

-
48. On perusal of the details and documents submitted by the petitioner, it is observed that the additional capitalization of Rs 15.77 Crore as claimed by the petitioner is capitalized and recorded in Note-2 of the Annual Audited Accounts of Jaypee Bina Thermal Power Plant for FY 2017-18. In the aforesaid Note of the Annual Audited Accounts, amount of Rs. 15.72 Crore capitalized under Plant and Machinery, Rs.0.0487 Crore under office equipment and Rs. 15,250 under vehicles.
49. Further, on perusal of the Asset-cum-depreciation register filed by the petitioner, it is observed that the assets of Rs. 15.77 Crore capitalized during the year have been recorded in Asset-cum-depreciation register for FY 2017-18. It is also observed that out of the total capitalization during the year, asset of Rs. 15.60 Crore recorded in the head of coal handling plant.
50. In view of the above, it is found that the Additional Capitalization of Rs. 15.77 Crore claimed by the petitioner is reconciled with the Annual Audited Accounts and Asset-cum-depreciation register of the Bina Thermal Power Station.
51. While scrutinizing the additional capitalization claimed in the subject petition, it need to be ascertain first whether the additional capitalization claimed is within the cut-off date of the project or beyond the cut-off date.
52. Regarding the Cut-off date of the project, Regulation 4.1 (I) of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:
- ‘Cut-off Date’ means 31st March’ of the year closing after two years of the year of commercial operation of whole or part of the project, and in case the whole or part of the project is declared under commercial operation in the last quarter of a year, the cut- off date shall be 31stMarch of the year closing after three years of the year of commercial operation:*
53. The Bina thermal Power Project (Phase-I) achieved its CoD on 7th April’ 2013, therefore, the cut of date of the project shall be 31st March’ 2016 in accordance with aforesaid Tariff Regulations, 2015. The Commission has observed that the additional capitalization filed by the petitioner is **beyond the cut-off date of the project**. Therefore, the claim of additional capitalization has been examined in light of the Regulation 20.3 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015
54. Regarding the additional capital expenditure beyond the cut-off date, Regulation 20.2 of Tariff

Regulations, 2015 provides that the capital expenditure incurred in new project “**within the original scope of work**” after the cut-off date may be admitted by the Commission, subject to prudence check. Therefore, vide Commission’s letter dated 21st December’ 2018, the petitioner was asked to file inform that whether the assets capitalized during the year are under original scope of work. The petitioner was also asked to file the detailed break-up of original scope of work for the project.

55. By affidavit dated 18th July’ 2019, the petitioner informed that the additional capitalization claimed in the subject petition is within the original scope of work of Rs. 3575 Crore approved by the BoD vide Resolution dated 17th May’ 2014. In annexure 2 of the aforesaid submission, the petitioner filed the detailed break-up of original scope of work for the project along with the actual expenditure as on 31st March’ 2018 on each capital cost component of the power station and same is summarized as follows:

Break-up of Project Cost:**Rs. Crore**

S. No	Capital Cost Components	Original project Cost approved by BoD	Actual expenditure as on 31.03.2018
1	Land and site development	6.86	6.86
2	Plant and Equipment	2360.41	2301.32
3	Civil Works	453.97	450.27
4	Over Heads	253.05	253.05
5	IDC and Financing Charges	522.47	524.11
Total Capital Cost		3596.76	3535.61

56. In view of the above, it is observed that the additional capitalization during the year claimed by the petitioner is within the project cost approved by the BoD of petitioner’s company.
57. In annexure 3 of the additional affidavit dated 18th July’ 2019, the petitioner filed the list of capitalized during the year along with the amount and reasons for each asset under additional capitalization. A list of the additional asset as filed by the petitioner is as given below:

List of Assets under Additional Capitalization:

S. No	Particulars	Asset Additions (Rs.)	Detailed Reasons of Asset Addition filed by the petitioner
1	Coal Handling Plant	15,60,59,744	In the standard practice followed all over in the field of coal based thermal power generating station, this carpet coal is written off once in the life time and the cost of such coal is booked in the profit and loss account of the Company

2	Air Motor	1,85,785	Air motor was procured for air pre heater, this is normally run with electrical motor. In the event of failure of electrical motor or electrical supply, air pre heater can fail. So, to ensure safety of equipment and boiler, air motor has been procured and installed to run air pre heater on measure electrical failure
3	Digital Vibration Meter	52,211	Digital vibration meter is procured for measurement of vibration of equipment to enable pro-active maintenance of running equipment's and system, monitor causes of failure and for advance action to save equipment from possible failure.
4	Microprocessor Viscometer	1,14,117	Microprocessor viscometer is installed to monitor the viscosity of oil.
5	Digital Vibration Meter	53,100	Digital vibration meter is procured for measurement of vibration of equipment to enable pro-active maintenance of running equipments and system, monitor causes of failure and for advance action to save equipment from possible failure.
6	Grass Cutting Machine	16,800	To maintain cleanliness sanitation and cleanliness within the plant premises
7	Neutron Survey Meter	3,52,820	Neutron survey meter is procured to measure nuclear radiation from the nuclear source provided on the Sabia, coal Analyzer installed in CHP for online measurement of quality and GCV of coal. The radiation meter is statutory requirement and essential to ensure safety.
8	Spectro Photo Meter	4,01,200	This equipment has been procured for boiler water analysis. The water chemistry is extremely important to ensure efficiency and performance of the boiler.
9	Cycle	3,750	Cycles have been provided to enhance the efficiency
10	Cycle	3,750	
11	Cycle	3,750	
12	Cycle	3,750	
13	EPSON Printer	8,190	Equipment's have been provided to enhance the efficiency and safety of the data/ information
14	Computer	11,235	
15	Computer	11,235	
16	Water Cooler	24,800	For providing cold water to the staff
17	Water Cooler	24,800	
18	PFT Machine (Spirometer)	82,294	Spirometer is installed to monitor the temperature of turbine
19	DVR Standalone (CCTV Camera)	4,602	CC TV cameras are installed in TG for security requirement
20	DVR Standalone (CCTV Camera)	4,602	

21	Mobile Phone	15,238	Biometric Attendance Machine and communication equipments have been provided for better administrative control
22	Biometric Attendance Machine	21,830	
23	CCTV Camera	60,380	CC TV cameras are installed in TG for security requirement
24	CCTV Camera	102,808	
25	CCTV Camera	69,124	
26	CCTV Camera	32,296	
27	Desert Cooler	4,600	Desert Coolers have been provided for temperature control to ensure working efficiency
28	Desert Cooler	4,600	
29	Desert Cooler	4,600	
	TOTAL	15,77,38,260	

58. The petitioner was asked to file the Regulation under which each component of additional capitalization claimed in the subject petition. In response to the above, the petitioner submitted that the assets at Sr. No. 2 to 29, claimed under Regulation 20.2 and 20.3 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015. In para 13 of the petition, the petitioner stated the reasons for addition of assets during FY 2017-18. Regarding the asset addition of Rs. 15.60 Crore capitalized in coal handling plant in respect of carpet coal, the petitioner submitted the following:

“There is no specific Regulations in respect of recovery of carpet coal. However, proviso 56.4 of MPERC Tariff Regulation 2015 states that: “Nothing in these Regulations shall, expressly or impliedly, bar the Commission dealing with any matter or exercising any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.” In light of aforesaid regulation, JPVL humbly requests the Commission to kindly provide suitable direction in the matter.

59. Out of total additional capitalization mentioned in para 57, the additional capitalization is of minor assets of Rs. 0.17 Crore at Sr. No. 2 to 29 of the aforesaid table. First proviso of Regulation 20.3(i) of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 provides the following for all such items:

“Provided that any expenditure on acquiring the minor items or the assets including tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, computers, fans, washing machines, heat convectors, mattresses, carpets etc. brought after the cut-off date shall not be considered for additional capitalization for determination of tariff w.e.f. 1.4.2016:”

60. In light of the aforesaid provision under Regulations, the additional capitalization claimed for the following minor assets/instruments are not considered in this order:

Particulars	Asset Additions (Rs.)
Air Motor	1,85,785
Digital Vibration Meter (2 Nos.)	1,05,311
Microprocessor Viscometer	1,14,117
Grass Cutting Machine	16,800
Neutron Survey Meter	3,52,820
Spectro Photo Meter	4,01,200
Cycle (4 Nos.)	15,000
EPSON Printer	8,190
Computer (2 Nos.)	22,470
Water Cooler (2 Nos.)	49,600
PFT Machine (Spirometer)	82,294
Mobile Phone	15,238
Biometric Attendance Machine	21,830
Desert Cooler (3 Nos.)	13,800
TOTAL	14,04,455

61. With regard to additional capitalization of Rs. 2,73,812 towards procurement and installation of CCTV cameras in TG area, by affidavit dated 18th January' 2019, the petitioner stated that the aforesaid expenses are covered under Regulation 20.3 (c) of tariff Regulations, 2015, which provides as under:

“Any expenses to be incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies of statutory authorities responsible for national security/internal security;”

62. In light of above provisions under Regulations, the aforesaid expenses of **Rs. 2,73,812** towards procurement and installation of CCTV system in TG area in order to ensure safety and security of material and machine are considered under Regulation 20.3 (c) of Generation Tariff Regulations, 2015 in this order.
63. Regarding the additional capitalization towards capitalization of carpet coal of Rs. 15.60 Crore capitalized during the year, the petitioner has filed a report of independent inspector as supporting documents in this regard. Vide letter dated 21st December' 2018, the petitioner was asked to submit/explain the following issues related to carpet coal claimed in the subject petition:

Issue:

- i. **The petitioner has claimed the capitalized amount for carpet coal after the cut-off date of the project. The reasons for claiming aforesaid cost be explained in light of provisions**

of MPERC (Terms and Conditions for determination of generation Tariff) Regulations, 2015.

Petitioner's Response:

The petitioner would like to bring the kind attention of the Commission towards the fact that billing of Energy Charges (Variable Charges) is made by JPVL in accordance with proviso 28 of MPERC Regulation 2015. For this purpose, the Landed price of Coal is considered as per Proviso 29 of said Regulations.

The petitioner would also like to submit that though there are no specific Regulations in respect of recovery of carpet coal. However, proviso 56.4 of MPERC Tariff Regulation 2015 states that: "Nothing in these Regulations shall, expressly or impliedly, bar the Commission dealing with any matter or exercising any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit."

The Commission in Petition No. 11 of 2014 in the case of True up of Generation Tariff of MPPGCL's Power Stations for FY 2011-12 vide its order dated 01.10.2014 has considered the issue of write off of Carpet Coal after the cut-off date and based on the genuine facts of the case has allowed the same.

In light of aforesaid regulation and humble submissions, JPVL humbly requests the Commission to kindly consider and allow the write off and capitalisation of carpet coal.

Issue:

ii. Whether the aforesaid claim towards capitalization of carpet coal is one time only?

Petitioner's Response:

The petitioner would like to submit that capitalization of carpet coal is of one time only.

Issue:

iii. The documents with regard to experience and competence / authorization of firm carried out the work for calculating the quantity/volume of carpet coal be submitted.

Petitioner's Response:

The petitioner would like to submit that M/s. Mitra SK Private Limited, Katni has vast exposure and experience in the field of physical stock verification and estimation. A brief company profile and list of job performed in different organisation are placed as Annex.-6.

Issue:

-
- iv. All documents regarding contract awarded to the above firm and the complete report submitted by the firm for arriving at the quantity/volume of carpet coal be submitted.

Petitioner's Response:

The petitioner would like to submit that copy of order placed for carrying out physical survey/verification of coal stock and report submitted thereon is placed as Annexure-7 & 8 respectively.

Issue:

- v. Whether the carpet coal in the subject petition has been write-off in the Books of Accounts of the petitioner's power plant?

Petitioner's Response:

The petitioner would like to humbly submit that the carpet coal has been written off in the books of accounts and the equivalent amount of carpet coal has been reduced from the inventory & capitalised into Fixed Assets.

Issue:

- vi. If so, the principles and methodology adopted for writing off the carpet coal be submitted.

Petitioner's Response:

The petitioner would like to humbly submit that the ground of the coal yard of power stations is generally not leveled and coal is stored on the ground before commissioning of the units. The coal coming in contact with ground gets mixed with soil due to its own weight, rains and movement of dozers etc. Over the passage of time, the volatile matter of coal in contact with the land surface at the coal yard gets evaporated and that particular layer of coal over the ground does not remain useful for firing and generation of power. This layer of coal is termed as carpet coal which usually does not change unless there is change in area of Coal Handling Plant. In the standard practice followed all over in the field of coal based thermal power generating stations, this carpet coal is written off once in the life time and the cost of such coal is capitalized, being a sunk cost of unusable coal. The methodology to quantify the carpet coal may be described as follows:

"For quantification of carpet coal, average depth of Carpet, total area of coal yard and average density of carpet coal is required to be measured. The depth of carpet can only be measured in an area where coal is not stocked. A hole is dug into the ground until the pure soil is reached out. The depth of coal carpet is then measured. Similar digging is carried out at various places in the coal yard at regular intervals and average depth is then arrived at. Thereafter, average density of carpet is calculated. For determination of density of carpet

coal, heap of carpet coal is prepared in a box of 1m x 1m x 1m, which is then weighed and density is calculated by dividing the weight by the volume. Similar procedure is repeated for various areas of coal yard. The density thus arrived is multiplied by the area of the respective yards and the average depth of carpet for assessing the quantity of carpet coal.”

Issue

- vii. **What would be the treatment to carpet coal after its being write-off in the Books of Accounts.**

Petitioner’s Response:

The petitioner would like to humbly submit that the quantity of coal stock under the carpet, which is unusable, is physically available but it has no value or any other use except to be utilized as a carpet for stacking fresh usable coal. For this reason, the value of carpet coal has been written off (capitalized) in the Books of Accounts.

Issue:

- viii. **The principles and methodology adopted for working out the carpet coal be explained.**

Petitioner’s Response:

The petitioner would like to submit that reply to query has already been made in point vi.

Issue

- ix. **How the amount of carpet coal has been worked out with respect to quantity/volume of carpet coal. &**
x. **Landed cost of coal considered while calculating the amount of carpet coal.**

Petitioner’s Response:

The petitioner would humbly like to take the liberty to reply to Para ix. & x simultaneously since the two are closely linked, it is to submit that the quantity of coal has been taken in to account from the report submitted by the M/s. Mitra S K Pvt. Limited, Katni and weighted average price of the coal as on the commissioning date of the station i.e. 06.04.2013 (COD of 11th unit) has been considered as the landed cost of coal.

64. On examination of the petitioner’s response on each issue raised by the Commission regarding the carpet coal, response filed by the Respondent No. 1 vis-a-vis provisions under Regulation 20.3 of the Tariff Regulations, 2015, the Commission has observed the following:

- i. The petitioner has capitalized the amount of Rs. 15.60 Crore towards carpet coal beyond the cut-off date of the project.
- ii. Respondent No. 1 (MPPMCL) in its response on the subject petition has submitted that *the* Regulation 20.3 only permits the Additional Capital Expenditure on very specific and limited counts after the cut-off date such as liability to meet out award of arbitration, decree of court of law, change in law, deferred work relating to ash pond liability for works executed prior to cut-off date.
- iii. The petitioner has failed to mention the Regulation under which the additional capitalization towards carpet coal is claimed by it. The petitioner has mentioned that there is no specific Regulations in respect of recovery of carpet coal. The petitioner is simply relying on the proviso 56.4 of MPERC Tariff Regulation 2015 which states that: "*Nothing in these Regulations shall, expressly or impliedly, bar the Commission dealing with any matter or exercising any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit*" In light of aforesaid regulation, the petitioner has requested the Commission to provide suitable direction in the matter.
- iv. While making its claim towards capitalization of carpet coal, the petitioner has referred Commission's order dated 1st October' 2014 in Petition No. 11 of 2014 for true up of Generation Tariff of MPPGCL's Power Stations wherein, the issue of write off of Carpet Coal after the cut-off date was dealt with and considered by the Commission.
- v. With regard to the aforesaid contention of the petitioner, it is pertinent to mention that in Commission's aforesaid order dated 1st October' 2014, the cost of carpet coal was allowed to MPPGCLs old thermal power stations which were commissioned prior to 1st April' 2009, when the provision of cut-off date was not applicable. In MPPGCL's old power stations, the quantity of carpet coal pertains till 1999-2000. The cut-off date of thermal power stations first time made applicable by CERC in its tariff Regulations, 2009. Therefore, the MPERC had also included the same in its Regulations, 2009 and onward.

In view of the above, the expenses claimed by the petitioner towards capitalization of carpet coal of Rs. 15.60 Crore being beyond the cut-off date and not covered in any provisions under the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015, hence not considered in this order.

65. Accordingly, the Commission has considered the following additional capitalization of Rs. 0.0273 Crore during FY 2017-18. The opening Gross Fixed Assets, addition during the year and closing Gross Fixed Assets as considered by the Commission in this order are as given below:

Table 5: Capital Cost**(Rs. in Crore)**

Opening Capital cost as on 01.04.2017 as per last true-up order dated 24.05.2018	Additions during FY 2017-18	Closing Capital Cost as on 31.03.2018 considered in this order
3510.61	0.027	3510.637

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

66. Regarding the sources of funding for additional capitalization of Rs. 15.77 Crore claimed in the subject matter, the petitioner in TPS 10 has mentioned the sources of funding is entirely from the equity / internal resources. Thus, for the purpose of computation of ROE and Interest on loan, the petitioner has considered the funding of additional capitalization in the ratio of 70:30. i.e. Rs. 11.04 Crore by normative loan component and Rs. 4.73 Crore by equity component.

Provision in Regulation:

67. Regulation 25 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:

25.1 For a project declared under commercial operation on or after 1.4.2016, the debt-equity ratio would be considered as 70:30 as on COD. If the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan:

Provided that:

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

Explanation.- *The premium, if any, raised by the generating company while issuing share capital and investment of internal resources created out of its free*

reserve, for the funding of the project, shall be reckoned as paid up capital for the purpose of computing return on equity, only if such premium amount and internal resources are actually utilised for meeting the capital expenditure of the generating station.

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

25.3 *In case of the generating station declared under commercial operation prior to 1.4.2016, debt- equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2016 shall be considered.*

25.4 *In case of the generating station declared under commercial operation prior to 1.4.2016, but where debt: equity ratio has not been determined by the Commission for determination of tariff for the period ending 31.3.2016, the Commission shall approve the debt- equity ratio based on actual information provided by the generating company.*

25.5 *Any expenditure incurred or projected to be incurred on or after 1.4.2016 as may be admitted by the Commission as additional capital expenditure for determination of tariff, and renovation and modernisation expenditure for life extension shall be serviced in the manner specified in clause 25.1 of this Regulation.*

Commission's Analysis

68. Regarding opening debt & equity funding of capital cost, Regulation 25.3 of the Tariff Regulations, 2015 stated that “ *in case of the generating station declared under commercial operation prior to 1.4.2016, debt – equity ratio allowed by the Commission for determination of tariff for the period ending 31.03.2016 shall be considered.*” The Commission vide order dated 24th May’ 2018 approved the following Debt & Equity as on 31st March’ 2017. The same figures are considered as opening balance in this order.

Table 6: Opening Debt and Equity

(Rs. in Crore)

Sr. No.	Particular	FY 2017-18
1	Opening Capital Cost	3510.61
2	Opening Equity	1053.18
3	Opening Loan	1727.63

69. With regard to funding of additional capitalization of Rs.0.0273 Crore, Regulation 25.1 of the Tariff Regulations, 2015 provides that “if the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan.” In light of the aforesaid Regulation, the Commission has considered the excess equity i.e. above 30% of additional capitalization, as normative loan in this order.
70. The detail of additional capitalization during the year and its corresponding debt and equity as admitted by the Commission for FY 2017-18 is as follows:

Table 7: Source of Funding**(Rs. in Crore)**

Particulars	Addition and Source of Funding Admitted for FY 2017-18		
	Addition	Loan Addition	Equity Addition
Addition Capitalisation and funding	0.0273	0.0191	0.0082

Annual Capacity (fixed) Charges:

71. The tariff for supply of electricity from a thermal generating station shall comprise two parts, namely, capacity charge (for recovery of annual fixed cost consisting of the components as specified in Regulation 27 of these Regulations) and energy charge (for recovery of primary and secondary fuel cost). The Annual Capacity (fixed) Charges consist of:
- Return on Equity;
 - Interest on Loan Capital;
 - Depreciation;
 - Interest on Working Capital;
 - Operation and Maintenance Expenses:

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

72. While claiming the Return on Equity, the petitioner considered the base rate of return on equity as 15.50%. The petitioner in form 1(II) of the petition claimed the Return on Equity for FY 2017-18 as given below:

Table 8: Return on Equity claimed by the petitioner:

Sr. No.	Particular	Unit	FY 2017-18
1	Opening Equity	Rs. Crore	1055.95
2	Equity Additions (Normative)	Rs. Crore	4.73
3	Closing Equity	Rs. Crore	1060.68

4	Average Equity	Rs. Crore	1058.32
5	Base Rate of Return On Equity	%	15.50%
6	Tax rate considered MAT	%	0.00%
7	Rate of Return on Equity	%	15.50%
	Return on Equity	Rs. Crore	164.04

Provision in Regulations:

73. Regulation 30 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, provides as under:

30 Return on Equity:

30.1 Return on equity shall be computed in rupee terms, on the equity base determined in accordance with Regulation 25.

30.2 Return on equity shall be computed at the base rate of 15.50% for thermal generating stations and hydro generating stations:

Provided that:

- (a) in case of projects commissioned on or after 1st April, 2016, an additional return of 0.5 % shall be allowed, if such projects are completed within the timeline specified in Appendix-I:
- (b) the additional return of 0.5% shall not be admissible if the project is not completed within the timeline specified above for reasons whatsoever:
- (c) the rate of return of a new project shall be reduced by 1% for such period as may be decided by the Commission, if the generating station is found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO)/ Free Governor Mode Operation (FGMO):
- (d) as and when any of the above requirements are found lacking in a generating station based on the report submitted by the respective SLDC/ RLDC, ROE shall be reduced by 1% for the period for which the deficiency continues:

31. Tax on Return on Equity:

31.1 The base rate of return on equity as allowed by the Commission under Regulation 30 shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid in the respective financial year in line with the provisions of the relevant Finance Acts by the concerned generating company. The actual income tax on other income stream including deferred tax i.e., income of non generation business shall not be considered for the calculation of "effective tax rate".

31.2 Rate of return on equity shall be rounded off to three decimal places and shall be computed as per the formula given below: Rate of pre-tax return on equity = Base rate / (1-t)

Where "t" is the effective tax rate in accordance with Clause 31.1 of this Regulation and shall be calculated at the beginning of every financial year based on the estimated profit and tax to be paid estimated in line with the provisions of the relevant Finance Act applicable for that financial year to the company on pro-rata basis by excluding the income of non-generation business and the corresponding tax thereon. In case of generating company paying Minimum Alternate Tax (MAT), "t" shall be considered as MAT rate including surcharge and cess.

For example:- In case of the generating company paying

- (i) Minimum Alternate Tax (MAT) @ 20.96% including surcharge and cess:
Rate of return on equity = $15.50 / (1 - 0.2096) = 19.610\%$
- (ii) In case of generating company paying normal corporate tax including surcharge and cess:
 - (a) Estimated Gross Income from generation business for FY2016-17 is Rs. 1000 crore.
 - (b) Estimated Advance Tax for the year on above is Rs. 240 crore.
 - (c) Effective Tax Rate for the year 2016-17 = Rs. 240 Crore / Rs.1000 Crore = 24%
 - (d) Rate of return on equity = $15.50 / (1 - 0.24) = 20.395\%$

31.3 The actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2016-17 to 2018-19 on actual gross income of any financial year shall be trued-up every year. However, penalty, if any, arising on account of delay in deposit or short deposit of tax amount shall not be claimed by the generating company. Any under-recovery or over-recovery of grossed up rate on return on equity after truing up, shall be allowed to be recovered or refunded to beneficiaries on year to year basis.

Commission's Analysis:

- 74. For the purpose of determining the Return on Equity, the normative closing equity as on 31st March' 2017 as admitted in the true-up order for FY 2016-17 dated 24th May' 2018 is considered as the opening equity as on 1st April' 2017 in this order.
- 75. The petitioner filed the additional capitalization of Rs. 15.77 Crore. The petitioner mentioned that the aforesaid additional capitalization has been funded through equity or internal sources. Accordingly, the petitioner claimed corresponding normative equity infusion of Rs

4.73 Crore (i.e. 30% of additional capitalization as per the provision of the Regulations, 2015) during the year. The Commission has considered the normative equity of 30% in the admitted additional capitalization i.e. 30% of Rs 0.0273 (Rs 0.0082 Crore).

76. Further, the petitioner claimed Return on Equity by grossing up the base rate on return by 15.50%. Accordingly, the Return on equity for FY 2017-18 is worked out as given below:

Table 9: Annual Return on Equity for FY 2017-18 considered

Sr. No.	Particular	Unit	FY 2017-18
1	Opening Normative Equity	Rs. Cr.	1053.18
2	Normative Equity addition during the year	Rs. Cr.	0.01
3	Closing Normative equity	Rs. Cr.	1053.19
4	Average equity	Rs. Cr.	1053.18
5	Base rate of Return on Equity	%	15.50
6	Tax rate	%	0.00
7	Rate of return on equity	%	15.50
8	Annual Return on equity	Rs. Cr.	163.24

b. Interest on loan capital:

Petitioner's Submission:

77. The petitioner submitted the detailed break-up of opening loan balances, 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 10: Interest on Loan Claimed for FY 2017-18

Sr. No	Particulars	Unit	FY 2017-18
1	Gross Normative Loan - Opening	Rs. Crore	2463.89
2	Cumulative Repayment of Normative Loan upto Previous Year	Rs. Crore	731.05
3	Net Normative Loan-Opening	Rs. Crore	1732.84
4	Loan Additions during the year	Rs. Crore	11.04
5	Repayment During the year	Rs. Crore	180.44
6	Closing Loan	Rs. Crore	1563.45
7	Average Loan-Normative	Rs. Crore	1648.15
	Weighted average Rate of Interest on actual Loans	%	12.25%
	Interest on Normative loan	Rs. Crore	201.90

Provision in Regulations:

78. Regulation 32 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations 2015, provides as under:

32.1 *The loans arrived at in the manner indicated in Regulation 25 shall be considered as gross normative loan for calculation of interest on loan.*

32.2 *The normative loan outstanding as on 1.4.2016 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2016 from the gross normative loan.*

32.3 *The repayment for each of the year of the tariff period 2016-19 shall be deemed to be equal to the depreciation allowed for the corresponding year/period. In case of de-capitalization of assets, the repayment shall be adjusted by taking into account cumulative repayment on a pro rata basis and the adjustment should not exceed cumulative depreciation recovered upto the date of de-capitalisation of such asset.*

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

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

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

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

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

32.7 *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.*

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

32.9 *In case of dispute, any of the parties may make an application in accordance with the Madhya Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, as amended from time to time.*

Provided that the beneficiaries shall not withhold any payment on account of the interest claimed by the generating company during the pendency of any dispute arising out of re-financing of loan.

Commission's Analysis:

79. For the purpose of determination of interest on term loan, normative closing loan balance as on 31st March' 2017 as admitted in the true-up order dated 24th May' 2018 for FY 2016-17 is considered as the opening loan balance as on 1st April' 2017.

80. The petitioner mentioned that the asset under additional capitalization has been funded through equity component. Accordingly, the petitioner claimed corresponding normative loan i.e. 70% of net additional capitalization.

81. With regard to weighted average rate of interest filed in the petition, vide letter dated 21st December' 2018, the petitioner was asked to file the detailed computation of the weighted average rate of interest on the basis of the actual loan portfolio.

82. By affidavit dated 18th January' 201, the petitioner submitted the following:

The Petitioner would humbly like to submit that the actual interest rates corresponding to actual loan portfolio for each bank has been taken into account to calculate the Weighted Average Rate of Interest for bank-wise normative loan balance which is reflected in TPS 13 and the clubbed weighted average rate of interest all these interest rates are reflected in TPS 13A. However, to substantiate the Rate of Interest, a summary of Actual amount of monthly interest paid, rate of interest along with the true copy of bank statement showing payment thereof has been attached herewith as Annexure-9.

83. In view of the above, the interest on loan is worked out by the Commission based on the following:

- (a) Gross normative opening loan of Rs. 1727.63 Crore has been considered as per Order dated 24th May' 2018.

- (b) Net Addition of normative loan amount of Rs. 0.0191 Cr. (70% of additional capital expenditure admitted) is considered.
- (c) Annual repayment of loan equal to annual depreciation is considered.
- (d) Weighted average rate of interest @ 12.25% filed by the petitioner based on the actual loan portfolio is considered.

84. Based on the above, the interest on loan is worked out as given below:

Table 11: Annual Interest on Loan Allowed

Sr. No.	Particular	Unit	True-up FY 2017-18
1	Opening Loan	Rs. Cr.	1727.63
2	Loan addition during the year	Rs. Cr.	0.0191
3	Repayment during the year considered	Rs. Cr.	179.16
4	Closing Loan	Rs. Cr.	1548.49
5	Average Loan	Rs. Cr.	1638.06
6	Weighted average rate of interest	%	12.25
7	Annual Interest amount	Rs. Cr.	200.66

c. Depreciation:

Petitioner's Submission

85. The petitioner submitted the break-up of opening Gross Fixed Assets, addition, during the year, closing Gross Fixed Assets, depreciation rates as per MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 depreciation rate schedule and depreciation in form TPS 11 of the petition is as given below:

Table 12: Depreciation on Assets (Rs. in Crore)

<i>Financial Year</i>	<i>FY 2017-18</i>
<i>Opening Capital Cost</i>	<i>3,519.84</i>
<i>Closing Capital Cost</i>	<i>3,535.61</i>
<i>Average Capital Cost</i>	<i>3,527.73</i>
<i>Rate of Depreciation</i>	<i>5.10%</i>
<i>Depreciation on Capital Cost</i>	<i>180.44</i>
<i>Cumulative Depreciation at the end of the period</i>	<i>911.48</i>

Provision in Regulations:

86. Regulation 33 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:

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

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

33.2 *The value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission. In case of multiple units of a generating station, weighted average life for the generating station shall be applied. Depreciation shall be chargeable from the first year at the commercial operation.*

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

Provided that in case of hydro generating station, the salvage value shall be as provided in the agreement signed by the developers with the State Government for development of the Plant: Provided further that the capital cost of the assets of the hydro generating station for the purpose of computation of depreciated value shall correspond to the percentage of sale of electricity under long-term power purchase agreement at regulated tariff:

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

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

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

33.5 *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 effective date of commercial operation of the station shall be spread over the balance useful life of the assets.

- 33.6 *In case of the existing projects, the balance depreciable value as on 1.4.2016 shall be worked out by deducting the cumulative depreciation as admitted by the Commission upto 31.3.2016 from the gross depreciable value of the assets.*
- 33.7 *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%.*
- 33.8 *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.*
- 33.9 *The generating company shall submit the details of proposed capital expenditure during the fag end of the project (five years before the useful life) along with justification and proposed life extension. The Commission based on prudence check of such submissions shall approve the depreciation on capital expenditure during the fag end of the project.*
- 33.10 *In case of de-capitalization of assets in respect of generating station or unit thereof, the cumulative depreciation shall be adjusted by taking into account the depreciation recovered in tariff by the de-capitalized asset during its useful services.*

Commission's Analysis:

87. For the purpose of computation of Depreciation, the closing Gross Fixed Assets as on 31st March' 2017, as admitted in the true-up order dated 24th May' 2018 for FY 2016-17, is considered as the opening Gross Fixed Assets as on 1st April' 2017.
88. The petitioner filed the additional capitalization of Rs.15.77 Crore during the year which the Commission has considered addition to fixed assets of Rs. 0.0273 Crore in this order.
89. The petitioner has filed the Assets cum Depreciation Register, wherein the weighted average depreciation rate of 5.10% is worked out based on the depreciation rates provided in the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.
90. Depreciation on average Gross Fixed Assets is worked out by considering the weighted average rate of depreciation as filed by the petitioner as per Regulations, 2015 as given below:

Table 13: Annual Depreciation allowed

Sr. No.	Particular	Unit	FY 2017-18
1	Opening Gross Block	Rs. Cr.	3510.61
2	Addition during the year	Rs. Cr.	0.03
3	Closing Gross Block	Rs. Cr.	3510.64
4	Average Gross Block	Rs. Cr.	3510.62
5	Weighted average rate of depreciation	%	5.10
6	Annual Depreciation amount	Rs. Cr.	179.16
7	Opening Cumulative Depreciation	Rs. Cr.	729.79
8	Closing Cumulative Depreciation	Rs. Cr.	908.95

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

91. The petitioner claimed the interest on working capital in form TPS 13B of the petition as given below:

Table 14: Interest on Working Capital Claimed

Sr. No.	Particulars	Norms	Units	FY 2016-17
1	Cost of Coal/Lignite	60 days' coal stock	Rs. Crore	152.75
2	Cost of Main Secondary Fuel Oil	2 months of sec oil purchase	Rs. Crore	2.63
3	O & M expenses	1 month of O&M Expenses	Rs. Crore	11.25
3A	O & M expenses (Transmission Lines & Bay)	1 month of O&M Expenses	Rs. Crore	0.03
4	Maintenance Spares	20% of O&M Expenses	Rs. Crore	27.00
4A	Maintenance Spares (Transmission Line & Bay)	20% of O&M Expenses	Rs. Crore	0.06
5	Receivables	2 months of total Revenue	Rs. Crore	292.09
6	Total Working Capital		Rs. Crore	485.81
7	Rate of Interest		%	12.80%
8	Interest on Working Capital		Rs. Crore	62.18

Provision in Regulations:

92. Regulation 34 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 regarding working capital for coal based generating stations provides that:

-
- 34.1 *The working capital shall cover:*
- (1) *Coal-based thermal generating stations*
- (a) *Cost of coal towards stock, if applicable, for 15 days for pit-head generating stations and 30 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal stock storage capacity whichever is lower;*
- (b) *Cost of coal for 30 days for generation corresponding to the normative annual plant availability factor;*
- (c) *Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil;*
- (d) *Maintenance spares @ 20% of operation and maintenance expenses specified in Regulation 35;*
- (e) *Receivables equivalent to two months of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor; and*
- (f) *Operation and maintenance expenses for one month.*
- 34.2 *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 three months preceding the first month for which tariff is to be determined and no fuel price escalation shall be provided during the tariff period.*
- 34.3 *Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.4.2016 or as on 1st April of the year during the tariff period 2016-17 to 2018-19 in which the generating station or a unit thereof, is declared under commercial operation, whichever is later.*
- 34.4 *Interest on working capital shall be payable on normative basis notwithstanding that the generating company has not taken loan for working capital from any outside agency.*

Commission's Analysis:

93. In the above-mentioned provision under Regulations, 2015, 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, 2015 as given below:
- (i) Cost of coal for 2 months as considered vide MYT Order dated 08th August' 2016.
- (ii) Cost of secondary fuel of main oil for two months' equivalent to normative plant availability factor as considered in MYT Order dated 08th August' 2016 as stated below is considered:

Particulars	FY 2017-18 (Rs in Cr.)
Cost of Coal for two Months	136.37
Cost of Secondary Fuel Oil for two Months	0.89

- (iii) Maintenance spares as considered in MYT Order dated 08th August' 2016 as stated below is considered:

Particulars	FY 2017-18 (Rs in Cr.)
Maintenance Spares (20% of O&M Expenses)	28.70

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

Particulars	FY 2017-18 (Rs in Cr.)
Variable Charges- 2 Months	139.37
(As considered on Order dated 8 th August, 2016.)	
Annual Fixed Charges- 2 Months	123.72
(Worked out in this Order)	
Total	263.09

- (v) O&M expenses for one month for the purpose of working capital as considered in MYT Order dated 08th August' 2016 is considered:

Particulars	FY 2017-18 (Rs in Cr.)
O & M Expenses for One Month	11.96

94. The State Bank of India Base rate applicable/ prevailing as on 1st April 2017 plus 350 basis point is 12.60%.

95. Considering the above, the interest on working capital worked out by the Commission for FY 2017-18 in this true-up order is as given below:

Table 15: Interest on Working Capital Allowed

Sr. No	Particulars	Norms	Unit	FY 2017-18
1	Cost of Coal/Lignite	2 months of coal purchase	Rs. Crore	136.37
2	Cost of Main Secondary Fuel Oil	2 months of sec oil purchase	Rs. Crore	0.89
3	O & M expenses	1 month of O&M	Rs. Crore	11.96
4	Maintenance Spares	20% of O&M	Rs. Crore	28.70
5	Receivables	2 months of total revenue	Rs. Crore	263.09

6	Total Working Capital		Rs. Crore	441.00
7	Rate of Interest (SBI PLR)*		%	12.60
8	Interest on Working Capital		Rs. Crore	55.57

e. **Operation and Maintenance expenses:**

Petitioner's Submission:

96. The petitioner filed the Operation and Maintenance expenses for generating units in the petition as given below:

Table 16: O&M Expenses claimed for generating unit (Rs. in Crore)

Phase – 1	Particulars	FY 2017-18
Unit I & II	O & M Expenses	143.50

97. The petitioner also filed the Operation & Maintenance expenses on its dedicated Transmission lines & Bay in the petition as given below:

Table 17: O&M Expenses of Transmission Line & Bay (Rs. in Crore)

Particulars	Particular	FY 2017-18
400kV Transmission Line and bay	O & M Expenses	0.33

Provision in Regulations:

98. Regarding the Operation and Maintenance expenses of thermal power stations commissioned on or after 01.04.2012, Regulation 35.8 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, provides the following norms:

Table 18: O&M Norms for Thermal Generating (Rs in Lakh/MW)

Units (MW)	FY 2017-18
45	34.09
200/210/250	28.70
300/330/350	23.96
500	19.22
600 and above	17.30

Commission's Analysis:

99. For Thermal Power Station, the Commission worked out the annual operation and maintenance expenses as per the above Regulations. Accordingly, the operation and maintenance expenses for generating Units for FY 2017-18 are determined as given below:

Table 19: Operation & Maintenance Expenses admitted (Rs in Crore)

Sr. No.	Phase - 1	Capacity	Normative O & M Expenses	Annual O&M Expenses as per norms
		MW	Rs In Lack/MW	Amount in Rs Crore
1	Unit I & II	2 X 250	28.70	143.50

100. With regard to operation & maintenance expenses on Transmission lines & Bay, vide Commission's letter dated 21st December' 2018, the petitioner was asked to justify its claim in this regard in light of the MPERC (Terms and Condition for Determination of Generation Tariff) Regulations, 2015. The petitioner was also asked to file the actual operation and maintenance expenses for FY 2017-18 recorded in Annual Audited Accounts for the same year.

101. By affidavit dated 18th January' 2019, 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 same provided on the Page No.T-3 of the subject petition. The same is being reproduced as under:-

Statement of O&M Expenses of Transmission Line & Bay: (Rs. In Crore)

Sl. No.	Particulars	FY 2016-17
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	0.33

	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	<u>39.294</u>	ckt km

Note:-

(1) As per MPERC Tariff Guidelines, O&M Expenses of 400 kV Transmission Line @ 32.00 Lacs Per 100 ckt km Per Annum is allowable for 2016-17, @ 33.32 Lacs Per 100 ckt km Per Annum is allowable for 2017-18 & @ 34.70 Lacs Per 100 ckt km Per Annum is allowable for 2018-19.

(2) As per MPERC Tariff Guidelines, O&M Expenses of 400 kV Bay @ 9.58 Lacs Per Bay Per Annum is allowable for 2016-17, @ 9.98 Lacs Per Bay Per Annum is allowable for 2017-18, @ 10.39 Lacs Per Bay Per Annum is allowable for 2018-19.

102. With regard to O&M expenses of transmission line, the Commission has already dealt with the same in earlier true up orders wherein the commission has disallowed the O&M expenses of transmission line with the following observation:

“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.”

103. Further, the petitioner filed a review petition no. 47/2016 for review of the Commission’s order dated 6th June’ 2016 (in petition No. 70/2016 for true-up of FY 2014-15) to the extent allowing grossing up of ROE by MAT and “O&M expenses for dedicated transmission line”.

Vide order dated 25th September' 2017 the Commission has not considered the O & M Expenses for dedicated transmission line.

The petitioner has filed several Appeals before Hon'ble Appellate Tribunal for electricity on this issue of O&M expenses of dedicated transmission line and all the Appeals are subjudice before Hon'ble Tribunal.

104. In view of the aforesaid, the claim of petitioner for O&M expenses of dedicated transmission line is not considered in this order.

f. Lease Rent: -

105. In the subject true up petition, the petitioner filed Rs. 0.31 Crore as yearly lease rent payable for FY 2017-18.

Commission's Analysis:

106. The petitioner has claimed Rs. 0.31 Cr. against lease rent payable for land during the year. Whereas, the lease rent of land is Rs. 842,595/- recorded in Note 30 of the Annual Audited Accounts. Vide Commission's letter dated 21st December 2018, the petitioner was asked to justify its claim towards lease rent for the land in light of the amount recorded in Annual Audited Accounts for FY 2017-18.

107. By affidavit dated 18th January' 2019, the petitioner submitted that Lease Rent of Rs 5,81,059/- (Rs 5,20,512 + Rs 60,547) & Railway Land Lease Rent of Rs 25,63,969/-, totalling Rs 31,45,028/-. Both these figures are grouped under "Other Expenses" (Note-30 of P&L A/c) and are recorded against the head "Lease rent of land" and "Taxes & fees". The petitioner further submitted that the amount recorded against "Lease rent of land" and "Taxes & fees" also includes certain other expenses, due to which the figures were reflected as 8,42,595/- and 2,34,13,322/- respectively under Note-30 of P&L A/c. The petitioner filed the documents in support of lease rent payment in this regard.

108. In view of the above submission filed by the petitioner, the Commission has considered the lease rent payment of Rs. 0.31 Crore as claimed by the petitioner for FY 2017-18 in this order.

g. Non-Tariff Income:

109. In the subject true-up petitioner, the petitioner filed Rs. 10.00 Crore as non-tariff income during the year.

Provision in Regulations:

110. Regulation 53 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:

53.1 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 decapitalized/ written off assets, income from advertisements, interest on advances to suppliers/contractors, income from sale of fly ash/rejected coal, and any other miscellaneous receipts other than income from sale of energy shall constitute the non-tariff/other income.

53.2 The amount of Non-Tariff /Other 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:

111. Aforesaid provision under the Regulations, 2015 provides that the non-tariff income shall also be trued up based on the Audited Accounts. On perusal of the details note 24 and 25 of the Annual Audited Accounts for FY 2017-18, it was observed that the other income of Rs. 7.38 Crore recorded in Note-25 and income of Rs. 2.96 Crore from sale of fly ash recorded in Note-24 of the Annual Audited Accounts. Therefore, the total non-tariff income as per Annual Audited Accounts is Rs. 10.34 Crore. In view of the above, vide letter dated 21st December, 2018, the petitioner was asked to reconcile the non-tariff income with the Annual Audited Accounts,
112. By affidavit dated 18th January' 2019, the petitioner filed the reconciliation of non-tariff income with Annual Audited Accounts of FY 2017-18 as given below:

S. No.	Particulars	Amount Rs.
1	Note 24 Other operating revenues Sale of fly ash	2,95,85,638/-
2	Note 25 Other income	7,38,07,576/-
3	Less: Note 25 Other Income Excess provision written back	34,29,565/-
	Total	9,99,63,649/-

	AS claimed in Petition 49 of 2018	10.00 Crores
	Difference	NIL

113. In view of the above, it is observed that the petitioner claimed the non-tariff income of Rs. 10.00 Crore, as recorded in Note-24 & 25 of the Annual Audited Accounts for FY 2017-18 after deducting the excess provision of Rs. 34,29,565. Therefore, the total non-tariff income of Rs. 10.00 Crore as claimed by the petitioner is considered by the Commission in this order. The break-up of non-tariff income considered is as given below;

Table 20: Non-tariff Income during FY 2017-18: (Amount in Rs)

Sr. No.	Particulars	FY 2017-18
1	Sale of Fly Ash	2,95,85,638/-
2	Interest from bank Deposits	197,625/-
3	Other Income	13,811,773/-
4	Insurance Claim Receipts	19,072,507/-
5	Miscellaneous Income	37,296,106/-
6	Less: Excess Provision written back	(3,429,565)
	Total Non Tariff Income	9,99,63,649

Summary of Annual Capacity (fixed) charges:

114. The details of the Annual Capacity (fixed) Charges for FY 2017-18 allowed in this true-up order vis-a-vis those determined in the MYT Order dated 8th August, 2016 at normative Plant Availability Factor are summarized in the following table:

Table 21: Head wise Annual Capacity Charges at normative availability: - (Rs in Crore)

S. No.	Particulars	MPERC Order dated 8 th August' 2016 for FY 2017-18	Allowed in this true up order FY 2017-18	True-up amount at Normative Availability
		A	B	C=B-A
1	Return on Equity	162.01	163.24	1.23
2	Interest on Loan	200.28	200.66	0.38
3	Depreciation	171.42	179.16	7.74
4	O&M Expenses	143.50	143.50	0.00
5	Interest on Working Capital	56.26	55.57	-0.69
6	Lease Rent	-	0.31	0.31
7	Total Annual Capacity (Fixed) Charges	733.47	742.45	8.97
8	Less: -Non-tariff Income	0.50	10.00	9.50

9	Net Annual Capacity (Fixed) Charges	732.97	732.45	-0.53
10	Annual Capacity charges corresponding to 65% of the installed capacity of the units	476.43	476.09	-0.34

115. The Annual Capacity (fixed) Charges as determined above for FY 2017-18 are at Normative Availability and these charges are based on Annual Audited Accounts of Jaypee Bina Thermal Power Plant for FY 2017-18.

116. In para 16 of the petition, the petitioner submitted that it has incurred a loss of Rs. 3.98 Crores during FY 2017-18 on account of controllable parameters. Details of the Energy Charges at normative parameters vis-à-vis actual parameters as filed by the petitioner are given below:

<i>Particular</i>		<i>ECRN</i>	<i>ECRA</i>
ECR Formulae	$ECR = \{(GHR - SFC \times CVSF) \times LPPF / CVPF + SFC \times LPSFi\} \times 100 / (100 - Aux)$	2.801	2.837
<i>GHR</i>	<i>Gross station heat rate kcal/kwh</i>	2450	2486
<i>SFC</i>	<i>Specific Fuel Oil Consumption in ml/kwh</i>	0.500	0.250
<i>CVSF</i>	<i>Calorific Value of Secondary Fuel in ml/Kwh</i>	10	10
<i>LPSFi</i>	<i>Weighted Average Landed Price of the Secondary Fuel in Rs. per ml.</i>	0.040	0.040
<i>LPPF</i>	<i>Weighted Average Landed Price of the Primary Fuel in Rs per Kg.</i>	4.084	4.084
<i>CVPF</i>	<i>Gross Calorific Vaue of the Primary Fuel as Received in Kcal/Kg</i>	3927.67	3927.67
<i>Aux</i>	<i>Normative Auxiliary Energy Consumption Percentage</i>	8.50	8.59

<i>ECRN</i>	<i>Normative Energy Charge Rate computed on the basis of norms specified for Station Heat Rate, Auxiliary Consumption and Secondary Fuel Oil Consumption.</i>	2.801
<i>ECRA</i>	<i>Actual Energy Charge Rate computed on the basis of actual SHR, Auxiliary Consumption and Secondary Fuel Oil Consumption</i>	2.837
	<i>Net Gain/(Loss) per Unit</i>	<i>(0.036)</i>

Energy sold to MPPMCL during FY 2017-18

1108.140 MUs

Net Loss incurred by Petitioner during FY 2017-18

Rs 3.983 Crores

With the above submission, the petitioner requested that the loss incurred by the it on account Controllable Parameters be reimbursed to the Petitioner.

117. Respondent No. 1 (MPPMCL) in its response on the subject petition, has contended that Regulation 8.9 of MPERC Tariff Regulations, 2015 provides for sharing of financial gains only

by a generating company on account of controllable parameters. Therefore, the petitioner's claim for loss incurred on account of controllable parameters is not admissible and shall not be allowed. MPPMCL also requested to carry out the truing up of the controllable parameters as per provisions of Regulation 8.7 of Regulations, 2015.

118. Regarding the performance-based truing-up of energy charges on account of controllable parameters, Regulations 8.7, 8.8 and 8.9 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 provide as under;

8.7 *"The generating company shall carry out truing up of tariff of generating station based on the performance of following Controllable parameters:*

Controllable Parameters:

- i) Station Heat Rate;*
- ii) Secondary Fuel Oil Consumption; and*
- iii) Auxiliary Energy Consumption;*

8.8 *The Commission shall carry out truing up of tariff of generating station based on the performance of following Uncontrollable parameters:*

- i) Force Majeure;*
- ii) Change in Law; and*
- iii) Primary Fuel Cost.*

8.9 ***The financial gains by a generating company on account of controllable parameters shall be shared between generating company and the beneficiaries on monthly basis with annual reconciliation. The financial gains computed as per following formulae in case of generating station on account of operational parameters as shown in Clause 8.7 (i) to (iii) of this Regulation shall be shared in the ratio of 2:1 between generating company and beneficiaries:***

Net Gain = (ECRN- ECRA) x Scheduled Generation

Where,

ECRN – Normative Energy Charge Rate computed on the basis of norms specified for Station Heat Rate, Auxiliary Consumption and Secondary Fuel Oil Consumption.

ECRA – Actual Energy Charge Rate computed on the basis of actual SHR, Auxiliary Consumption and Secondary Fuel Oil Consumption for the month:-----"

(Emphasis Supplied)

119. In view of the above Regulations, it was observed by the Commission that the generating company shall carry out the truing-up of tariff of generating station based on the controllable performance parameters like Station Heat Rate, Secondary fuel oil consumption and Auxiliary

Energy consumption. Vide letter dated 21st December' 2018, the petitioner was asked to file the monthly details of aforesaid performance parameters actually achieved vis-à-vis normative parameters under the Regulations, 2015. The petitioner was also asked to file the details of financial gain if any, on account of controllable parameters and shared with the beneficiaries in light of the Regulations 8.9 of the Regulations, 2015.

120. In response to above, by affidavit dated 18th January' 2019, the petitioner submitted the following:

"In line with the Regulation 8.7 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015, the Petitioner would humbly like to submit that the Petitioner has incurred a loss of Rs. 4.00 Crores approximately on account of Controllable Performance Parameters including Station Heat Rate; Secondary Fuel Oil Consumption; and Auxiliary Energy Consumption.

The month wise detailed comparison of aforesaid performance parameters actually achieved vis-a-vis normative parameters is attached as Annexure-12".

121. On perusal of the details filed by the petitioner, it is observed that the petitioner incurred loss of Rs. 4.005 Crore on account of the inferior performance and poor actual operating parameters achieved by it during FY 2017-18. The petitioner worked out the Energy charges on yearly basis however, after query in additional submission this worked out to Rs. 2.683/kWh on normative parameters whereas, the actual Energy charges worked out to Rs. 2.719/kWh. The petitioner has incurred Per unit loss of Rs. 0.036/kWh in respect of Energy charges.
122. However, the Regulation 8.8 of the Tariff Regulations, 2015 provides that the financial gains by a generating company on account of controllable parameters shall be shared between generating company and the beneficiaries in the ratio of 2:1 on monthly basis with annual reconciliation. The aforesaid Regulations do not provide for sharing of loss incurred by the generating company. Therefore, the loss incurred by the petitioner shall not be passed on to the beneficiary.

Implementation of the order

123. 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' 2017 to 31st March' 2018.

124. The petitioner is also directed to provide information to the Commission in support of having complied with this Order. The amount under-recovered or over-recovered 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 Regulation 8.15 of MPERC (Terms and Condition for Determination of Tariff) Regulations, 2015 in six equal monthly instalments during FY 2019-20 from the date of this order.

With the above directions, this Petition No. 49 of 2018 is disposed of.

Sd/-
(Mukul Dhariwal)
Member

SD/-
(Dr. Dev Raj Birdi)
Chairman

Date: 31st May' 2019

Place: Bhopal

Annexure I:
Petitioner's response on the comments offered by the Respondent No. 1:

MPPMCL Comment:

Additional Capital Expenditure after Cut-off date:

Additional Expenditure incurred and capitalized after the cut-off date of the Project for the purpose of Tariff determination for FY 2017 - 18 should not be allowed.

Petitioner's Response:

The above contention of MPPMCL is completely flawed, baseless and incorrect for the following reasons: -

- i. The present Petition has been filed under Regulation 8.4 and Regulation 20.3 of the MPERC Tariff Regulation 2015.*
- ii. Regulation 8.4 of the MPERC Tariff Regulation 2015 is reproduced as below: -*

'8.4 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 1.4.2016 to 31.3.2019, duly audited and certified by the auditors'.

- iii. In terms of Regulation 8.4 this Commission can True-up the Tariff of Bina TPP on account of '**Capital Expenditure**' and '**Additional Capital Expenditure**' actually incurred in the Year for which the true up is sought. Therefore, if the Generating Company has actually incurred any form of expenditure as envisaged under Regulation 20, than its Tariff for that particular year can be Trued-up. It is submitted that the Petitioner has incurred Additional Capital Expenditure relating to Boiler, Turbine and Generator (BTG) of the Plant and Balance of Plant (BOP) in the FY 2017-2018 and hence sought for True-up of the Tariff for the said year.*

- iv. Regulation 20 of the MPERC Tariff Regulation 2015 is reproduced as below: -*

*20.1 The capital expenditure in respect of the new project or an existing project 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 the cut-off date may be admitted by the Commission, subject to prudence check:*

(i) Un-discharged liabilities recognized to be payable at a future date;

(ii) Works deferred for execution;

(iii) Procurement of initial capital spares within the original scope of work, in accordance with the provisions of Regulation 19;

(iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law; and

(v) Change in law or compliance of any existing law:

Provided that the details of works asset wise/work wise included in **the original scope of work** along with estimates of expenditure, liabilities recognized to be payable at a future date and the works deferred for execution shall be submitted along with the application for determination of tariff.

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

(i) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law;

(ii) Change in law or compliance of any existing law.;

(iii) Deferred works relating to ash pond or ash handling system in the original scope of work; and

(iv) Any liability for works executed prior to the cut-off date, after prudence check of the details of such un-discharged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc.

20.3 The capital expenditure, in respect of existing generating station incurred or projected to be incurred on the following counts after the cut-off date, may be admitted by the Commission, subject to prudence check:

(a) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law;

(b) Change in law or compliance of any existing law;

(c) Any expenses to be incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies of statutory authorities responsible for national security/internal security;

(d) Deferred works relating to ash pond or ash handling system in the original scope of work;

(e) Any liability for works executed prior to the cut-off date, after prudence check of the details of such un-discharged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc.;

(f) Any liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments;

(g) Any additional capital expenditure which has become necessary for efficient operation of generating station other than coal based stations, the claim shall be substantiated with the technical justification duly supported by the documentary evidence like test results carried out by an independent agency in case of deterioration of assets, report of an independent agency in case of damage caused by natural calamities, obsolescence of technology, up-gradation of capacity for the technical reason such as increase in fault level;

(h) In case of hydro generating stations, any expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company) and due to geological reasons after adjusting the proceeds from any insurance scheme, and expenditure incurred due to any additional work which has become necessary for successful and efficient plant operation;

(i) Any capital expenditure found justified after prudence check necessitated on account of modifications required or done in fuel receiving system arising due to non-materialisation of coal supply corresponding to full coal linkage in respect of thermal generating station as result of circumstances not within the control of the generating station:

Provided that any expenditure on acquiring the minor items or the assets including tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, computers, fans, washing machines, heat convectors, mattresses, carpets etc. brought after the cut-off date shall not be considered for additional capitalization for determination of tariff w.e.f. 1.4.2016:

Provided further that any capital expenditure other than that of the nature specified above in (a) to (d) in case of coal-based station shall be met out of Compensation Allowance:

Provided also that if any expenditure has been claimed under Renovation and Modernisation (R&M), repairs and maintenance under (O&M) expenses and Compensation Allowance, same expenditure cannot be claimed under this Regulation.”

- v. Capital Expenditure or Additional Capital Expenditure incurred by the Generating Station after the cut-off date of the Project, are admissible under Regulation 20.3. Unit - I of Bina TPP achieved its Commercial Operation Date ('COD') on 31.08.2012 and Unit – II achieved its COD on 07.04.2013 respectively. Therefore, in terms of the MPERC Tariff Regulation the cut-off date for JBTPP is 31.03.2015.
- vi. The Petitioner has claimed Additional Capital Expenditure incurred in FY 2017-18, which is evidently after the cut-off date of the Project and the claims made under the present Petition would be covered under the different heads of Regulation 20.3.

Regulation 20.3 specifically covers capital Expenditure incurred by the Generating Station beyond its cut-off date.

- vii. *Regulation 20.1 as well as Regulation 20.2 is restricted to works covered under the Original Scope of Work of the Project, which is evident from the recital of the said Regulations. However, Regulation 20.3 is not subjected to the phrase 'within the original scope of work' and hence it seeks to allow expenditure/cost related to work, which are not even covered under Original Scope of the Work of the Project. This important aspect of Regulation 20.3 makes it much broader and comprehensive in its scope.*
- viii. *In view of the above it is submitted that: -*
 - (a) *The claim of the Petitioner is admissible under Regulation 20.3 since the Petitioner has filed the present Petition seeking True-up of Tariff in relation to cost incurred after the cut-off date of the Project.*
 - (b) *Regulation 20.3 is comprehensive in nature as it seeks to allow cost for works which are not even covered under the original scope of work of the Project.*
- ix. *It is well settled position of law that the State Commission is bound by its own regulations as held by a Constitution Bench in the matter PTC India Limited Vs Central Electricity Regulatory Commission(2010) 4 SCC 603 and also held by the Hon'ble Appellate Tribunal vide its order dated 01.03.2012 in Appeal No.131 of 2011 in the case of Haryana Power Generation Corporation Ltd. vs. Haryana Electricity Regulatory Commission.*
- x. *In addition to the above it is submitted that the estimated cost of completion of the Project as approved under the Resolution passed by the Board of Directors is Rs. 3,575.00 Crores. It is submitted that as on 31.03.2018 the Petitioner has incurred and claimed only Rs. 3,535.61 Crores towards the capital cost of the Project. The aforesaid fact has been intimated to the Hon'ble Commission from time to time and the Hon'ble Commission being cognizant of the aforesaid fact has always Trued up the Additional Capital Expenditure claimed by the Petitioner. Therefore, the Petitioner till date has not exceeded the estimated cost that was prudently approved by the Board of Directors. Present Petition pertains to additional cost as BTG and BOP, which were all part of the original scope of work already approved by this Hon'ble Commission. Therefore, alleged contentions of MPPMCL that the claims of the Petitioner made in the Petition are not admissible, baseless and unsustainable under law.*
- xi. *It is most respectfully submitted that 'True Up' proceedings are necessary as the projections at the beginning of the year and actual expenditure and revenue received differ due to one reason or the other. The same has been upheld by the Hon'ble Appellate Tribunal in its Judgment dated 04.12.2007 in Appeal*

No.100 of 2007 in the matter of 'Karnataka Power Transmission Company Limited V/s Karnataka Electricity Regulatory Commission'. The relevant extract of the Judgment is reproduced as below: -

*"28. We have heard contentions of the rival parties. Basic issue that has to be decided is: whether or not the Commission was correct in carrying out the truing up of revenue requirements and revenues of KPTCL for the tariff period 2000-01 to 2005-06. **Invariably, the projections at the beginning of the year and actual expenditure and revenue received differ due to one reason or the other. Therefore, truing up is necessary.** Truing up can be taken up in two stages: Once when the provisional financial results for the year are compiled and subsequently after the audited accounts are available. The impact of truing up exercises must be reflected in the tariff calculations for the following year."*

[Emphasis Added]

- xii. *Therefore, the expenditure for works claimed under the present Petition may have not been projected earlier, however the same have been made necessary on account of efficient operation of the Plant and hence the Petitioner was constrained to incur such expenditure.*
- xiii. *It is respectfully submitted that once the asset is put to use for generation, its capitalization is to be allowed. The servicing of the capital expenditure through tariff is not to be deferred after the asset is put to use and the assets put to use optimize the plant performance. The benefit of such improved performance goes to the beneficiaries immediately, as held by the Appellate Tribunal in its judgment dated 06.09.2013 in Appeal No. 2 of 2013 in the case of Haryana Vidyut Prasaran Nigam Ltd. Vs. Haryana Electricity Regulatory Commission & Ors. It is respectfully submitted that aforesaid asset put to use is giving benefit to the beneficiaries only and therefore, ultimately reducing burden on the consumers in the State of MP.*

MPPMCL Comment:

Expenditure Towards Carpet Coal

MPPMCL submitted that without any Regulatory provisions an amount of Rs. 15.60 crores has been capitalised that too on the basis of certificate provided by a Pvt. Ltd. Company.

Petitioner's Response:

The above contention of MPPMCL is specifically denied for the following reasons: -

With regard to the above the petitioner would like to submit that there is no specific Regulation in respect of recovery of carpet coal. However, proviso 56.4

of MPERC Tariff Regulation 2015 states that: "Nothing in these Regulations shall, expressly or impliedly, bar the Commission dealing with any matter or exercising any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit."

This Hon'ble commission in Petition No. 11 of 2014 in the case of True up of Generation Tariff of MPPGCL's Power Stations for FY 2011-12 vide its order dated 01.10.2014 has considered the issue of write off of Carpet Coal after the cut off date and based on the genuine facts of the case has allowed the same.

Further, as far as the contention of MPPMCL about capitalisation of carpet coal on the basis of certificate provided by a M/s. Mitra SK Pvt. Ltd. is concerned, the petitioner would like to submit that the said company has vast experience in executing the similar nature of work furthermore has had list of reputed companies in his portfolio who have been a pioneer in Indian production and manufacturing sector.

Further, would like to draw kind attention of MPPMCL & Hon'ble Commission towards the fact that while referring to the case of M. P. Power Generating Company Limited (MPPGCL) in Petition No. 11 of 2014 wherein this commission has approved the valuation of carpet coal carried out by M/s. AF Ferguson & Co. which is also a Pvt. Limited Company.

In light of aforesaid regulation and the precedent set by Hon'ble Commission in Petition No. 11 of 2014 and humble submissions, JPVL humbly requests the Hon'ble Commission to kindly consider and allow the write off and capitalisation of Carpet Coal.

MPPMCL Comment:

Reimbursement of Loss on account of Controllable Parameter:

It is the contention of MPPMCL that since the Regulation 8.9 of MPERC Tariff Regulations 2015 do not allow the re-imburement of loss on account of Controllable Parameter but allows only sharing of financial gains by a Generating Company. Therefore the Petitioner should not be allowed the re-imburement of loss amounting to Rs. 3.983 Crores on account of Controllable Parameter.

Petitioner's Response:

The above contention of MPPMCL is specifically denied for the following reasons: -

With regard to the above the petitioner would like to submit that as stated in Regulation 8.9 of MPERC Tariff Regulations 2015, the regulation provides only for sharing of financial gains by generating company on account of controllable parameter. However, it is pertinent to note that JBTPP has been facing a problem

of erratic scheduling from MPPMCL over the years. This has forced the Generator i.e. JBTPP to operate the plant at partial loading wherein it had been a difficult scenario to maintain the technical minimum of the plant and operate the plant efficiently which would have enabled JBTPP to earn financial gain on account of controllable parameters, if any.

However, such has not been the case for JBTPP and on account of continued erratic scheduling during the FY 2017-18, JBTPP continued to face operational losses on account of controllable parameters without being at fault.

In the issue of providing the re-imbursement of loss on account of controllable parameter, The Petitioner would also like to bring in your kind notice that the same issue is subjudice in APTEL as Appeal No. 282/2017 and suitable directions in the matter are still awaited.

Without prejudice to the above mentioned facts, the basic premise of Regulation 8.7 formulated by the Hon'ble Commission takes into account the the fact that any financial gain can only be achieved by any generating station on account of optimum and ideal operational condition of the power plant or to say that all other variables being constant, the plant is operating at a steady load. Since JBTPP had been facing a precarious situation wherein operating the plant at ideal conditions has proved to be difficult owing to the erratic scheduling being provided over the years. This has resulted in JBTPP to bear year on year operational losses on account of controllable parameters.

The Regulations entitles the Procurer and allows for recovery of financial gains on account of such operational efficiency, if any. The Petitioner having taken the cognisance of same Regulation and underlying situation in which JBTPP operates owing to strained operations being achieved on account erratic scheduling, has prayed the Hon'ble Commission to allow for the reimbursement for losses on account of controllable parameters.

MPPMCL Comment:

Transportation Charges shown as "NIL" in TPS-15:

It is the contention of MPPMCL that the Petitioner has shown the transportation charges by Rail/Ship/road as 'NIL' in TPS -15 whereas the generator has claimed an amount of Rs. 39.13 Crores towards Transportation Charges in the monthly bills submitted.

Petitioner's Response:

With regard to the above the Petitioner would like to submit that the cost of transportation charges has been taken into consideration in TPS-15 under the head 'Amount Charged by the Coal/Lignite Company'. However, it is not shown separately under the head 'Transportation Charges by rail/ship/road transport'.

MPPMCL Comment:

On the examination of the 'Regulation 20.3,' it may kindly be seen that, the 'Regulation 20.3' only permits the Additional Capital Expenditure on very specific and limited counts after the cutoff date such as liability to meet out award of arbitration, decree of court of law, change in law, deferred work relating to ash pond liability for works executed prior to cut-off date. But, on perusal of the details of Additional Capitalization claim submitted by the petitioner, it is observed that almost all the counts for which, the approval of Additional Capital expenditure incurred has been requested are not covered under 'Regulation 20.3.' Therefore, the answering respondent opposes each and every Additional Capital Expenditure claimed by the petitioner as they are not covered under 'Regulation 20.3' of the 'Regulation 2015' and request to this Hon'ble Commission, that not to allow any Additional Capital Expenditure claimed by the petitioner.

Without prejudice to the above, the expenditure-wise comments of the answering Respondent is as follows. The petitioner under 'para 13' of the petition has claimed following additional Capital Expenditures -

(A) under the head BTG –

- (i) Installation of SPIROMETER, Rs. 0.04 Crores.**
- (ii) Procurement of air motor for air preheater, Rs.0.02 Crores.**

(B) under the head BOP –

- (i) Capitalization of Carpet Coal, Rs. 15.60 Crores.**
- (ii) Digital Vibration Meter & Neutron Survey Meter, Rs. 0.04 Crores.**
- (iii) Installation of microprocessor viscometer Rs. 0.01 Crores.**
- (iv) Procurement of Spectro Photometer, Rs. 0.04 Crores.**
- (v) Other Equipment, Rs. 0.01 Crores.**

The project was commissioned on 07.04.2013 and the cut-off date of the project i.e. 31.03.2016 has already been passed. It is respectfully submitted that not a single expenditure claimed by the petitioner under 'Para 13' of the petition is admissible under Regulation 20.3 of the regulations 2015. Therefore, it is prayed to the Hon'ble Commission that not to allow any such expenditure.

Further, the petitioner, most surprisingly and without any Regulatory provisions made an additional capitalization claim of Rs. 15.60 Crores towards capitalization of Carpet coal that too on the basis of certificate

provided by a Private Ltd. Company. The Carpet Coal is not a capital asset and expenditure on it is not admissible under any Regulatory provisions and as such it is respectfully prayed to the Hon'ble Commission, that not be allowed such claim.

Petitioner's Response:

That the contents of Sub Para IV & V under Para 3 of the reply as stated are wrong and denied to the extent are contrary to the submissions of the Petitioner. It is wrong and denied that any expenditure incurred after the cut-off date cannot be capitalised for the purpose of tariff determination. It is respectfully submitted that capitalisation of expenditure incurred by Petitioner beyond cut-off date is permissible in terms of Regulation 20.3 the MPERC Tariff Regulations, 2015 which specifically provides for "capital expenditure, in respect of existing generating station incurred or projected to be incurred on the following counts after the cut-off date, may be admitted by the Commission." Thus, any contentions and averments of the MPPMCL to the contrary are wrong and denied. Petitioner reiterates the preliminary submissions hereinabove same are not reiterated for sake of brevity.

Further, The Petitioner has humbly prayed the Hon'ble Commission to allow for the capitalisation of Carpet Coal keeping in view the fact that this commission has already taken a stand in similar matter under the special powers assigned to the Commission. Thus, any contentions and averments of the MPPMCL to the contrary are wrong and denied.

In view of the submissions made above, it is most respectfully prayed that reply of the Respondent, MPPMCL is devoid of merits and seeks to misdirect the proceedings before this Hon'ble Commission. It is, therefore, most respectfully prayed that the present petition may kindly be allowed by this Hon'ble Commission.