

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

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



Petition No. 44 of 2020

PRESENT:

S.P.S Parihar, Chairman

Mukul Dhariwal, Member

Shashi Bhushan Pathak, Member

IN THE MATTER OF:

Determination of Multi-Year Tariff for 2x250MW (Phase-I) Coal Based Power Project at Bina, District Sagar, Madhya Pradesh for the control period of FY 2019-20 to FY 2023-24 under Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.

AND IN THE MATTER OF:

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

Petitioner

Versus

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

Respondents

ORDER

(Passed on this day of 30th April' 2021)

1. M/s Jaiprakash Power Ventures Ltd. (hereinafter called “the petitioner” or “JPVL”) has filed the subject petition on 18th June' 2020 for determination of generation tariff under the Multi-year Tariff framework in respect of its 2X250 MW (phase-I) Coal Based Thermal Power Station at Bina, District Sagar, Madhya Pradesh for the control period from 1st April' 2019 to 31st March' 2024 under Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 {RG-(IV) of 2020}.
2. The subject petition has been filed under Section 62 and Section 86(1) (a) of the Electricity Act, 2003 and the petition is based on MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.
3. Madhya Pradesh Electricity Regulatory Commission (hereinafter referred to as “the Commission or MPERC”) issued MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 {RG-(IV) of 2020} (hereinafter referred to as “the Regulations” 2020) for the new control period i.e. FY 2019-20 to FY 2023-24. These Regulations were notified in the gazette of Madhya Pradesh on 20th February' 2020.
4. The Jaypee Bina Thermal Power Plant (Phase-I) under the subject petition comprises of two generating units of 250 MW each. Date of Commercial Operation (CoD) of both the units of the petitioner’s power plant are as given below:

Table 1: CoD of Unit No.1 & 2

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

5. The petitioner executed long term Power Purchase Agreement (PPA) on 5th January' 2011 with Madhya Pradesh Power Management Company Ltd., (hereinafter called “MPPMCL” or “Respondent No. 1”) for supply of 65% power of the installed capacity of the Project for 25 years at regulated tariff determined by the Commission. The petitioner also entered into another PPA on 20th July, 2011 with Government of Madhya Pradesh for supply of 5% of net generated power at variable cost only.

6. A brief background of the subject petition is given below:
- i) 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 based on the Annual Audited Accounts.
 - ii) 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.
 - iii) Vide order dated 8th May' 2015 in the review petition No. 05 of 2015, the Commission revised the Annual Capacity (fixed) charges on account of revision in only one issue i.e. interest and finance charges on loan. Aggrieved with the aforesaid order dated 08th May' 2015, the petitioner filed an Appeal No. 25 of 2016 with the Hon'ble Appellate Tribunal for Electricity, New Delhi (APTEL) on the following issues: -
 - a. Pre-Commissioning Fuel Expenses
 - b. Double Deduction of Infirm Power
 - c. Inadequate recovery of Annual Capacity Charges.
 - d. Post Facto adjustment on account of Non-Tariff Income.
 - iv) 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.

- v) In terms of the directions of Hon'ble Tribunal in 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: -
 - a. Consider actual Pre-Commissioned Fuel Expenses.
 - b. Re-consider double deduction of revenue earn from sale of infirm power.

- vi) Vide order dated 04th December'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.

- vii) Aggrieved with the aforesaid order dated 4th December' 2017 in petition No 11 of 2017, the petitioner filed an Appeal No 54 of 2018 before the Hon'ble Appellate Tribunal for Electricity challenging the issue of double deduction of revenue earned from sale of infirm power.

- viii) Vide judgement dated 23rd April' 2019 in Appeal No 54 of 2018, Hon'ble Appellate Tribunal for Electricity has disposed of the matter with certain direction to the Commission.

- ix) In accordance with the aforesaid order of Hon'ble APTEL, the Commission reviewed its final capital cost on the issue i.e., double deduction of revenue earn from sale of infirm power. The impact of double deduction of revenue realization from sale of infirm power has been taken into account. Accordingly, vide order dated 10th January' 2020, the Commission had revised the Capital Cost and Annual Capacity Charges, accordingly.

- x) Subsequently,vide order dated 08th August' 2016 in Petition No 05 of 2016, the Commission issued the MYT order for control period FY 2016-17 to 2018-19 based on the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015. Subsequently, the Commission also determined the true-up of generation tariff for FY 2014-15, FY 2015-16, FY 2016-17 and FY 2017-18. All the aforesaid orders are challenged by the petitioner on certain common issues before Hon'ble APTEL.

- xi) The Commission vide order dated 16th December' 2020 in Petition No 47 of 2019 determined the true-up of generation tariff of the project for FY 2018-19 based on the Annual Audited Accounts for FY 2018-19.
7. The element- wise Annual Capacity (fixed) charges claimed by the petitioner for both the units in the subject petition for the control period from FY 2019-20 to FY 2023-24 are as given below:

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

Sno	Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Depreciation	182.48	182.70	182.70	182.70	182.70
2	Interest on Loan	160.56	138.58	116.20	93.82	71.44
3	Return on Equity	197.07	197.31	197.31	197.31	197.31
4	Interest on Working Capital	57.17	53.32	53.28	53.25	53.21
5	O & M Expenses	164.80	170.60	176.55	182.80	189.20
6	O & M Expenses (400 kV Transmission Line & Bay)	0.36	0.37	0.38	0.40	0.41
7	Lease rent payable for Land (yearly)	0.36	0.36	0.36	0.36	0.36
8	Annual Capacity Charges	762.80	743.24	726.78	710.64	694.63
9	No of days applicable for the year	366.00	365.00	365.00	365.00	366.00
10	Total Capacity Charges for applicable days	762.80	743.24	726.78	710.64	694.63
11	Less:-Non-Tariff Income	0.00	0.00	0.00	0.00	0.00
12	Net Capacity Charges	762.80	743.24	726.78	710.64	694.63
	Annual Capacity (fixed) Charges for contracted capacity (65% of the installed capacity)	495.82	483.11	472.41	461.92	451.51

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

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

Financial Years	Energy Charges
FY 2019-20	3.405
FY 2020-21	3.405
FY 2021-22	3.405
FY 2022-23	3.405
FY 2023-24	3.405

9. With the above submission, the petitioner prayed the following:
- (a) *Determine the Generation Tariff of the Project for FY 2019-20, FY 2020-21, FY 2021-22, FY 2022-23 and FY 2023-24 as required under the PPA dated 05.01.2011;*
 - (b) *Allow the recovery of the Court Fees paid to the Commission for filing instant Petition and also the publication expenses from the beneficiaries.*
 - (c) *Energy Development Cess on energy supplied to MPPMCL and Plant Auxiliary Consumption*
 - (d) *Electricity Duty on Plant Auxiliary Consumption*
 - (e) *Water Charges paid to Water Resources Department, Government of MP*
 - (f) *Other Statutory Charges incidental to billing.*
10. The subject MYT petition has been examined by the Commission in accordance with the principles, methodology and the norms specified in the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 and other supplementary submissions filed by the petitioner in response to the additional information / details sought by the Commission alongwith all other documents placed on record by the petitioner. The Commission has also examined the subject MYT petition in light of the comments/ suggestions offered by the Respondent No.1 and other stakeholder and the response of the petitioner on the same.
11. In this order, the Commission has considered the same opening figures of capital cost, funding and cumulative depreciation of the project which were admitted as closing figures by the Commission in its last true-up order for FY 2018-19 issued on 16th December' 2020 in petition No. 47 of 2019.

Procedural History

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

September' 2020.

14. Vide letter dated 28th September' 2020, the petitioner sought time extension of three weeks for filing its reply due to outbreak of Covid-19.
15. Considering the request, vide Commission's letter dated 5th October' 2020, the petitioner was directed to file response on the subject petition by 16th October' 2020.
16. By affidavit dated 19th October' 2020, the petitioner filed its response on the issues raised by the Commission.
17. By affidavit dated 16th December' 2020, Respondent No. 1 filed its comments/response on the subject petition. By affidavit dated 28th December' 2020, the petitioner filed rejoinder to the reply/comments filed by Respondent No. 1. The petitioner's responses on each comment offered by the Respondent No. 1 along with the observations is mentioned in the **Annexure- I** annexed with this order.
18. The public notice for inviting comments/suggestions from stakeholders was published on 30th November' 2020 in the following newspapers:
 - i. Dainik Jagran (Hindi), Bhopal
 - ii. Dainik Jagran (Hindi), Rewa
 - iii. Central Chronical(English), Bhopal
19. Last date for offering comments/suggestions was 20th December' 2020. The comments/objections from only one stakeholder was received in this matter on 12th December' 2020. By affidavit dated 28th December' 2020, the petitioner filed its response on each comment offered by the stakeholder. The response of the petitioner on the comments/objections filed by the stakeholder along with observation is mentioned in **Annexure II** annexed with this order.
20. The public hearing in the subject petition was held on 05th January' 2020 through video conferencing wherein the representatives of the petitioner, Respondent No.1 and the stakeholder, who offered comments appeared.

Capital Cost

Petitioner's submission

21. The details of Gross Fixed Assets as submitted in true up petition for FY 2018-19 as on 1st April' 2018, proposed additional capitalization during FY 2018-19 and Gross Fixed Assets as on 31st March' 2019 as filed by the petitioner in true-up Petition No. 47 of 2019 for FY 2018-19 are given below:

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

Particulars	Amount
Opening GFA as on 1.04.2018 as submitted in True up Petition for FY 2018-19	3,535.47
Additional Capitalization proposed during FY 2018-19 in P-47/2019	23.97
Opening GFA as on 1.04.2019 filed by the petitioner in the subject MYT Petition	3,559.45

22. Considering the above, the petitioner in form TPS 5K of the petition filled the following capital cost for the control period:

Table 5: Capital cost filed during the control period: (Rs.in Crore)

Particular	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Opening Gross Block amount (after adjustmnet of IDC)	3,559.45	3,568.05	3,568.05	3,568.05	3,568.05
Addition in Gross Block amount during the period	8.60	-	-	-	-
Closing Gross block	3,568.05	3,568.05	3,568.05	3,568.05	3,568.05

Provisions Under Regulations

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

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

- (i) the capital cost admitted by the Commission prior to 1.4.2019 duly trued up by excluding liability, if any, up to last true-up order issued by the Commission;*
- (ii) additional capitalization and de-capitalization for the respective year of tariff as determined in accordance with these Regulations;*

- (iii) capital expenditure on account of renovation and modernization as admitted by the Commission in accordance with these Regulations;
- (iv) capital expenditure on account of ash disposal including handling and transportation facility;
- (v) capital expenditure incurred towards railway infrastructure and its augmentation for transportation of coal upto the receiving end of generating station but does not include the transportation cost and any other appurtenant cost paid to the railway; and
- (vi) capital cost incurred or projected to be incurred by a thermal generating station, on account of implementation of the norms under Perform, Achieve and Trade (PAT) scheme of Government of India shall be considered by the Commission subject to sharing of benefits accrued under the PAT scheme with the beneficiaries.”

24. With regard to capital cost of the project, the Respondent No. 1 submitted the following:

“The Commission vide order dated 31.05.2019 passed in P. No. 49 of 2018 (True Up for FY 2017-18) has approved the Capital Cost of the project as on 31.03.2018 as Rs. 3510.63 Crores. The petition no. 47 of 2019 for the true up for FY 2018-19 is pending before the Commission. This Commission, vide order dated 10.01.2020 passed in P. No. 11 of 2017 has approved the revised Capital Cost of the project as on 31.03.2018 as Rs. 3519.87 Crores which is the last admitted cost of the Project. However, the petitioner in form TPS -5K (Statement of Capital Cost) has taken Opening Gross Block for FY 2018- 19 as 3535.47 Crores, which is incorrect as per provisions of Regulation 6.2 of Tariff Regulations 2020. Therefore, last admitted closing Capital cost as on 31.03.2018 may please be considered as Rs. 3519.87 Crores only.”

Commission’s Analysis

25. Regulation 6.2 of the Tariff Regulations, 2020 provides that in case of an existing generating station or unit thereof, the application for determination of Multi-year tariff shall be made by the generating company based on admitted capital cost including additional capital expenditure already admitted in last true up order of the Commission and estimated additional capital expenditure for the respective years for the tariff period 2019-24 in accordance with the the Tariff Regulations, 2020.

26. The petitioner has filed the opening capital cost of Rs 3559.45 Crore as on 01st April' 2019 for the project same as the closing capital cost filed by the petitioner in its true-up petition for FY 2018-19 (Petition 47 of 2019) as on 31st March' 2019.
27. Based on Annual Audited Accounts for FY 2018-19, the Commission issued last true-up order for FY 2018-19 on 16th December' 2020 in this matter.
28. To work out the opening capital cost as on 1st April' 2019, the Commission has considered the closing Gross Fixed Assets of **Rs 3519.89 Crores** as on 31st March' 2019 as admitted in last true up order dated 16th December' 2020 for FY 2018-19 in Petition No 47 of 2019 as the base figure of capital cost in this order.

Additional capitalization

Petitioner's Submission:

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

"It is submitted that the amount of Additional Capitalization made during FY 2019-20 since Balance Sheet as on 31-03-2020 is yet to be approved by shareholder Annual General Meeting. However, from the point of view of calculations of Capacity Charges for FY 2019-20, the summarized provisional details of additional capitalization is as under:-

(Rs in Crs)

S. No.	Particulars	Addition in Generating Station			Total Addition
		Addition	Adjustments/ Deletions	Net Addition	
1.	Additional Capitalization	8.85	0.24	8.61	8.61

Additional Capital Cost incurred/proposed to be incurred by the Petitioner in the Financial Year from FY 2020-21 to FY 2023-24.

The major infusion/investment of Capital Cost shall be carried out on account of installation of Fuel Gas De-sulphurisation (FGD) which is required to be installed in compliance of the Revised Emission Norms Notified by MOEF & CC vide its notification dated 7th December 2015 and 28th June 2018 (Notifications) amended the Environment (Protection) Rules, 1986. In this connection, we would like to submit the following:

- a. MOEF & CC, vide notifications dated 7th December 2015 and 28th June 2018 (Notifications) amended the Environment (Protection) Rules, 1986 thereby introducing new standards / parameters applicable to all existing as well as future thermal power plants.
- b. The said new environment norms have brought about modifications in the existing norms related to air emissions including Oxides of Nitrogen (NO_x), Sulphur Dioxide (SO₂), Particulate Matter, Mercury, quantum of water use, and waste water discharge.
- c. The notification dated 28.06.2018 also stipulates the stack heights for thermal power plants post Fuel Gas De-sulphurisation (FGD) for abatement of Sulphur Dioxide emissions. A final amendment for stack height post FGD under Schedule I of the 1968 Rules, was brought about on 28.06.2018.
- d. Further, any additional capitalization due to enforcement of any new notification(s) is covered under the Article/Clause "Change in Law" as per PPA dated: 05.01.2011 executed between the Generator & Procurer.

Change in Law under the PPA

Article 12 of the PPA dated 05.01.2011 deals with Change in Law and the consequences thereof. As per Article 12.1.1 of the PPA dated 05.01.2011, the definition of Change in Law is as follows:

"The occurrence of any of the following events after the date, which is seven (7) days prior to the execution of this PPA, resulting into any additional recurring/non- recurring expenditure by the Company or any income to the Company---"

- e. As per Article 12.3.2 of the PPA dated 05.01.2011, The Petitioner has duly notified the Respondents of the 'Change in Law' event i.e. amendment of the 1986 Rules and the consequently changed environment norms, vide its notice dated 06.05.2019.
- f. In this connection, the petitioner had filed a petition no. 32/2019 seeking in-principal approval for acknowledgement and approval of the promulgation of the new Environment rules and Regulation Notified on 7thDecember 2015 and 28th June 2018, as a Change in Law event under Article 12 of the PPA and for ad hoc / provisional relief under Article 12.4 of the PPA dated 05.01.2011 for capital cost, variable cost and Additional Operation & Maintenance expenses on account of said Change in Law Events. The Petitioner has also served the copy of the petition to all Respondents in the subject matter.

- g. For installation of FGD system a Feasibility Report in the month of February 2019 was prepared by the Tata Consulting Engineers for Bina Station. Copy of Feasibility Report is already made available to the Hon'ble Commission in the said petition.*
- h. In this regard, the Commission vide its Order dated: 27/12/2019 in the Petition No. 32/2019 allowed the liberty to Petitioner to approach the Commission for approval of additional capitalization on account of revised emission standards in terms of provisions under applicable Tariff Regulations at the appropriate stage based on the actual expenditure incurred duly reconciled with the Annual Audited Accounts.*
- i. In view of the above, Petitioner shall file the True up in the corresponding/respective year along with the details and supporting of actual Additional Capital Expenditure on account of installation of FGD in line with the prevailing MPERC Regulation.*
- j. In addition to the above, **the Petitioner is not submitting any figures for the Additional Capitalization for F.Y 2020-21 to 2023-24.** Further, it is respectfully submitted that Petitioner shall approach the Hon'ble Commission to claim any other Additional Capital Expenditure incurred, if any, during the proceedings of True up of respective Financial Years in line with Provisions of MPERC Regulations, 2020.*

Provisions under Regulations

30. With regard to additional capitalization beyond the original scope of work and after cut-off date of the project, Regulation 28.1 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020 provides as under:
- 28.1 *The capital expenditure in respect of existing generating station incurred or projected to be incurred on the following counts beyond the original scope, may be admitted by the Commission, subject to prudence check:*
- (a) Liabilities to meet award of arbitration or for compliance of the order or directions of the any statutory authority, or order or decree of any court of law;*
 - (b) Change in law or compliance of any existing law;*
 - (c) Force Majeure Events;*
 - (d) Any capital expenditure to be incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies or statutory authorities responsible for national security/ internal security;*
- Deferred works relating to ash pond or ash handling system in addition to the original scope of work, on case to case basis:*

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

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

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

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

31.1 *A generating company requiring to incur additional capital expenditure in the existing generating station for compliance of the revised emission standards shall share its proposal with the beneficiaries and file a petition before Commission for undertaking such additional capitalization.*

31.2 *The proposal under clause above shall contain details of proposed technology as specified by the Central Electricity Authority, scope of the work, phasing of expenditure, schedule of completion, estimated completion cost including foreign exchange component, if any, detailed computation of indicative impact on tariff to the beneficiaries, and any other information considered to be relevant by the generating company.*

31.3 *Where the generating company makes an application for approval of additional capital expenditure on account of implementation of revised emission standards, the Commission may grant approval after due consideration of the reasonableness of the cost estimates, financing plan, schedule of completion, interest during construction, use of efficient technology, and such other factors as may be considered relevant by the Commission.*

31.4 After completion of the implementation of revised emission standards, the generating company shall file a petition for determination of tariff. Any expenditure incurred or projected to be incurred and admitted by the Commission after prudence check based on reasonableness of the cost and impact on operational parameters shall form the basis of determination of tariff.

32. On additional capitalization claimed by the petitioner, the Respondent No. 1 submitted the following:

It is submitted that the Petitioner has sought Additional Capex of Rs 8.60 Crore for FY 2019-20, in terms of Regulation 27 and 28 of the Tariff Regulations. It is pertinent to note that no break-up has been provided as to what items were part of the original scope and what items were beyond the original scope. The Petitioner has considered net Additional Capitalisation for the FY 2019-20 (Rs. 8.60 Crores) the accounts for which are yet to be finalised. It is prayed to the Commission that as per provisions of Regulation 6.2, "additional capital expenditure already admitted in last true-up order" may be considered for determination of Tariff. It is submitted that the entire capitalisation therefore needs to be disposed-off.

Since no clarity has been provided in the petition about any of the items, the answering respondent is not in position to comment on (a) whether the same was part of the original scope and (b) the prudence of such capital expenditure; and prays that the cost be disallowed.

Commission's Analysis

33. It is observed from the aforesaid submission that the petitioner has filed the estimated additional capitalization of Rs. 8.85 Crore for FY 2019-20 towards cost of land & site development, DM Water Plant, Fuel Handling & Storage System, Coal Handling Plant, Transformers Package and some other minor works. The petitioner has also filed de-capitalization of Rs. 0.24 Crore during FY 2019-20, therefore, net additional capitalization of Rs. 8.61 Crore is claimed by the petitioner. In form TPS 9 of the petition, the petitioner has filed the break-up of proposed additional capitalization during FY 2019-20 as given below:

Table 6: Additional Capitalization and Funding claimed during FY 2019-20
(Rs in Crores)

S. No.	Head of Work/Equipment	Regulations under which Add. Cap. claimed	Actual Additional Expenditure Claimed
1	Cost of Land and Site Development	Regulation 20.3	3.160
2	Turbine Generator Island		0.860
3	DM water Plant		0.001
4	Fuel Handling & Storage system		0.237
5	Coal Handling Plant		0.870
6	Other Equipments		0.415
7	Transformers Package		0.004
8	Switch Yard Package		0.003
9	Township & Colony		2.986
10	Road & Drainage		0.068
11	External Water Supply		0.000
	Total		8.60

34. In para 15 of the petition, the petitioner mentioned that it has chosen to refrain from submitting any conclusive amount of Additional Capitalization made during FY 2019-20 since Balance Sheet as on 31.03.2020 is yet to be approved by shareholder Annual General Meeting. During FY 2020-21 to FY 2023-24, no additional capitalization in Bina power station is claimed by the petitioner.
35. With regard to the additional capitalization filed in the subject petition, vide Commission's letter dated 02nd September' 2020, the petitioner was asked to file a comprehensive reply to the following issues with all relevant supporting documents:
- i. Whether the assets capitalized during the year are under original scope of work. If so, all supporting documents establishing that the assets capitalized are under scope of work be filed. The petitioner is also required to explain that the addition of assets is on account of the reasons mentioned in Regulation 27.1 of the Tariff Regulations, 2020.
 - ii. The information of additional capitalization like detailed reasons of asset additions, provision of Regulations under which the additional capitalization filed along with supporting.
 - iii. If the assets capitalized beyond the original scope of work, the petitioner is required to explain that the addition of assets is on account of the reasons mentioned in Regulation 28.1 of the Tariff Regulation, 2020.

- iv. Whether the petitioner has taken due care in writing -off the assets from the original cost in case of any expenditure on replacement of old asset.
 - v. In case of any delay in completion of works from contractor's side, the details of penalty if any, imposed on the contractor be informed.
 - vi. Copy of the bills / invoices of all such assets under additional capitalization with a statement indicating all such details of works / assets, bill amount, invoice / bill no. date of the invoice / bill etc. be also filed.
36. In response to above, by affidavit dated 19th October' 2020, the petitioner submitted the following:

(i&ii) It is respectfully submitted that Petitioner has claimed the additional capitalisation under the provisions of Regulation 27 of the MPERC Tariff Regulations, 2020.

Further, Petitioner would humbly like to state that additional capitalization is well within the original scope of work duly authorized/approved by the Board of Directors vide Board Resolution dated 17/05/2014 (may refer ANNEXURE-3).

The information of additional capitalization in the prescribed format is annexed hereto and marked as ANNEXURE-6.

- (iii) The petitioner would like to humbly submit that all assets capitalized during the FY 2019-20 are well within the original scope of work. In this connection reply to para 5 & 6 (i) may please be referred.*
- (iv) The petitioner hereby confirms that all due care has been taken to reduce the amount of de-capitalization from the original cost. The same can be confirmed from the TPS 5B, TPS 11 and TPS 12, wherein it can be seen that the amount of de-capitalization have been taken into consideration while preparing all the details.*
- (v) The petitioner would humbly like to submit that no penalty has been imposed on contractor during the FY 2019-20.*
- (vi) A Statement indicating details of work, bill amount, invoice no, etc. alongwith copies of bills are attached at annexure-7.*

37. On perusal of the details and documents filed by the petitioner, the Commission observed that the reply filed by the petitioner regarding the provisional/proposed additional capitalization during FY 2019-20 require detailed examination on several counts specified in the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 as well as duly reconciliation with the Annual Audited Accounts of FY 2019-20.
38. With regard to truing-up exercise, Regulation 9.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 provides that:
- “A generating company shall file a petition at the beginning of the Tariff period. A review shall be undertaken by the Commission to scrutinize and true up the Tariff on the basis of the capital expenditure and additional capital expenditure actually incurred in the Year for which the true up is being requested. The generating company shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred for the period from 1.4.2019 to 31.3.2024, duly audited and certified by the auditors.”*
39. In view of the above, the additional capitalization filed by the petitioner during the control period is required to be examined on several counts specified in the Regulations 2020. Based on the information made available by the petitioner, this exercise shall be carried out while undertaking true-up for the respective year based on Annual Audited Accounts and other requisite details in this regard. The petitioner shall be at liberty to approach the Commission for approval of additional capitalization at the appropriate stage based on the actual expenditure incurred duly reconciled with the Annual Audited Accounts.
40. Accordingly, the opening Gross Fixed Assets (GFA) as on 1st April' 2019 will remain same in this order as considered by the Commission as on 31st March' 2019, in last true up order (in P. No 47 of 2019) dated 16th December' 2020 for FY 2018-19 The same shall remain unchanged during the control period in this order.
41. With regard to additional capitalization towards compliance of the environmental norms, the petitioner submitted that it shall file the true up in the corresponding/respective year along with the details and supporting documents of actual Additional Capital Expenditure on account of installation of FGD in line with the prevailing MPERC Regulation.

Debt: Equity:

Petitioner's Submission

42. The petitioner has filed the opening loan and equity balance as on 1st April' 2019 by considering the closing balance of equity and loan as on 31st March' 2019 as filed in the true up petition for FY 2018-19 in Petition No 47 of 2019. The petitioner has also filed normative loan and equity addition (70 : 30) towards proposed/provisional additional capitalization filed during FY 2019-20 in terms of the provision under Regulations, 2020. The petitioner has not filed any additional capitalization during FY 2020-21 to FY 2023-24.

43. Accordingly, for proposed additional capitalization during FY 2019-20, the petitioner considered normative debt:equity ratio i.e. 70:30 in terms of Regulations' 2020 as given below:

(Rs. In Crore)	
Particulars	FY 2019-20
Provisional Additional Capitalization Claimed	8.85
Loan	6.19
Equity	2.65

Provisions under Regulations

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

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

Provided that:

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

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

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

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

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

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

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

Commission's Analysis

45. Regulation 33.3 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations' 2020 provides that "in case of generating station declared under Commercial Operation prior to 01st April' 2019, the debt equity ratio allowed by the Commission for determination of tariff for the period ending 31st March' 2019 shall be

considered". Therefore, the Commission has considered the opening equity and opening loan as on 01st April' 2019 same as closing loan and equity admitted in true-up order for FY 2018-19 issued on 16th December' 2020 in Petition No 47/2019.

46. The Commission has not considered the proposed/projected additional capitalization during FY 2019-20 filed by the petitioner in this order and the same shall be dealt with in true-up order for the FY 2019-20 based on the Annual Audited Accounts. Further, The petitioner has not filed any additional capitalization during FY 2020-21 to FY 2023-24. Therefore, no addition of loan and equity is considered during the MYT control period.
47. Therefore, the equity balance of Rs. 1055.97 Crore and loan balance of Rs. 1372.40 Crore as on 31st March' 2019 as approved by the Commission in true-up order dated 16thDecember' 2020 for FY 2018-19 shall remain the same as on 01st April' 2019.

Annual Capacity (fixed) Charges

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

Return on Equity

Petitioner's Submission

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

Table 7: Return on Equity Claimed

Sr. No	Particulars	Unit	2019-20	2020-21	2021-22	2022-23	2023-24
1	Opening Equity	Rs. Cr.	1067.83	1070.42	1070.42	1070.42	1070.42
2	Equity addition during year	Rs. Cr.	2.65	0.00	0.00	0.00	0.00
3	Less: de-capitalization during the year	Rs. Cr.	0.07	0.00	0.00	0.00	0.00
4	Closing Equity	Rs. Cr.	1070.42	1070.42	1070.42	1070.42	1070.42

5	Average Equity	Rs. Cr.	1069.12	1070.42	1070.42	1070.42	1070.42
6	Base Rate of ROE	%	15.50%	15.50%	15.50%	15.50%	15.50%
7	Tax rate considered MAT	%	15.91%	15.91%	15.91%	15.91%	15.91%
8	Pre-Tax Rate of ROE	%	18.43%	18.43%	18.43%	18.43%	18.43%
9	Return on Equity	Rs. Cr.	197.07	197.31	197.31	197.31	197.31

Provisions in the Regulation:

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

34 . Return on Equity:

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

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

Provided that

- (a) in case of a new project, the rate of return of a new project shall be reduced by 1.00% for such period as may be decided by the Commission, if the generating station is found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO)/ Free Governor Mode Operation (FGMO):*
- (b) in case of existing generating station any of the above requirements are found lacking based on the report submitted by the respective SLDC/RLDC, RoE shall be reduced by 1% for the period for which the deficiency continues.*
- (c) in case of a thermal generating station, with effect from 1.04.2020:*
 - (a) rate of return on equity shall be reduced by 0.25% in case of failure to achieve the ramp rate of 1% per minute:*
 - (b) an additional rate of return on equity of 0.25% shall be allowed for every incremental ramp rate of 1% per minute achieved over and above the ramp rate of 1% per minute, subject to ceiling of additional rate of return on equity of 1.00%:*

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

51. Regarding Tax on Return on Equity, Regulation 35 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 further provides that:

35. Tax on Return on Equity:

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

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

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

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

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

Rate of return on equity = $15.50 / (1 - 0.2096) = 19.61\%$

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

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

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

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

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

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

Commission’s Analysis:

52. Regulation 33.3 of the Regulations, 2020 provides that, in case of the generating station declared under commercial operation prior to 1.4.2019, debt- equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2019 shall be considered. In accordance with the aforesaid Regulation, equity balance as on 31st March’ 2019 as admitted by the Commission in the true-up order dated 16th December’ 2020 for FY 2018-19 is considered as the base figures for opening equity balance as on 01st April’ 2019 for the project. Further, the Commission has not considered the proposed/projected additional capitalization during FY 2019-20 and its corresponding equity in this order. Therefore, the equity balance as on 01st April’ 2019 shall remain unchanged during the control period.
53. The petitioner has claimed Return on Equity during the control period by grossing up the base rate of return with Minimum Alternate Tax (MAT). Vide letter dated 02nd September’ 2020, the petitioner was asked to explain the basis of claiming Return on Equity by grossing up with MAT in light of the Regulation 35 of the Tariff Regulations, 2020. The petitioner was also asked to file supporting documents like Annual Audited Accounts for FY 2019-20 in this regard.

54. By affidavit dated 19th October’ 2020, the petitioner submitted the following:

“It is submitted that the petitioner has grossed up RoE for JP Bina Project in terms of Regulation 34 and 35 of the Tariff Regulations 2020.

Further, the petitioner has considered JP Bina on standalone basis for the purpose of Tariff determination in terms of various Judgments passed by the Hon’ble APTEL. The

same is on account of the fact that non-payment of tax by JPVL is due to loss suffered by the other Generating Station(s) of the petitioner which results in the overall loss suffered by JPVL, which cannot be a reason to deny grossing up of Tax with ROE in respect of JP Bina Project. Therefore, while grossing up of RoE the tax payable by JP Bina Project may be taken into consideration. By this approach Regulation 34 and 35 of the Tariff Regulations, 2020 are interpreted harmoniously to ensure the objective of Section 61 of the Electricity Act, 2003 is not defeated. The approach of the petitioner is in consonance with the settled tariff principle that tariff of an entity is to be computed on a standalone basis in a water tight compartment.”

55. On perusal of the aforesaid submission, the Commission observed that the generating company M/s Jaiprakash Power Ventures Limited (JPVL) has not paid Tax due to loss by the other Generating Station(s) of the petitioner which results in the overall loss suffered by JPVL. Further, Regulation 35.1 of the Regulations, 2020 provides that the base rate of return on equity shall be grossed up with the effective tax rate of the respective financial year. Therefore, the base rate of return on equity has not been grossed up with MAT in this order. The Commission shall examine the actual tax payment in light of the Annual Audited Accounts of M/s JPVL and Bina thermal power project at the time of trueing up exercise in the true-up petitions for respective year of the control period.
56. In compliance to Regulation 34.2 of the Regulations, 2020, the petitioner submitted that the petitioner’s project has been duly operating under RGMO/ FGMO. The petitioner further submitted that the Project have been operating with the ramp rate of over 1% per minute. In this regard, for reference purpose a confirmation from State Load Dispatch Center (SLDC) has been filed by the petitioner with the additional submission.
57. Accordingly, Return on Equity has been worked out for the control period FY 2019-20 to FY 2023-24 considering the base rate of return as given below:

Table 8 : Return on Equity considered in this Order

Sr. No.	Particular	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening Equity	Rs. Cr.	1055.97	1055.97	1055.97	1055.97	1055.97
2	Equity Additions	Rs. Cr.	0.00	0.00	0.00	0.00	0.00
3	Closing Equity	Rs. Cr.	1055.97	1055.97	1055.97	1055.97	1055.97
4	Average Equity	Rs. Cr.	1055.97	1055.97	1055.97	1055.97	1055.97

5	Base Rate of Return on Equity	%	15.50%	15.50%	15.50%	15.50%	15.50%
6	Tax rate considered	%	0.00	0.00	0.00	0.00	0.00
7	Applicable Rate of Return on Equity	%	15.50%	15.50%	15.50%	15.50%	15.50%
8	Annual Return on Equity	Rs. Cr	163.68	163.68	163.68	163.68	163.68

58. The petitioner is directed to approach the Commission with details of the actual applicable tax payment during each year of the control period in true-up petition for the respective year.

Interest on Loan Capital

Petitioner's submission:

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

Table 9: Interest on Loan claimed

Sr. No.	Particulars	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening Loan	Rs. Cr.	1398.90	1222.61	1039.91	857.20	674.50
2	Add: Normative Loan	Rs. Cr.	6.19	0.00	0.00	0.00	0.00
3	Less: Decrease due to capitalization	Rs. Cr.	0.17	0.00	0.00	0.00	0.00
4	Less: Repayment during the year	Rs. Cr.	182.48	182.70	182.70	182.70	182.70
5	Closing Normative Loan	Rs. Cr.	1222.44	1039.91	857.20	674.50	491.79
6	Average Loan	Rs. Cr.	1310.67	1131.26	948.55	765.85	583.14
7	Wt. average Rate of Interest of actual Loans	%	12.25%	12.25%	12.25%	12.25%	12.25%
8	Interest on loan	Rs. Cr.	160.56	138.58	116.20	93.82	71.44

Provisions in Regulation

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

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

36.2 The normative loan outstanding as on 1.4.2019 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2019 from the gross normative loan. The repayment for each of the year of the tariff period 2019-

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

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

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

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

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

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

Commission's analysis:

61. Regulation 36.2 of the Regulations, 2020 provides that the normative loan outstanding as on 1.4.2019 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2019 from the gross normative loan. In accordance with the aforesaid Regulation, loan balance (as on 31st March' 2019) admitted in the last True-up order for FY 2018-19 dated 16th December' 2020 issued by the Commission is considered as the base figures for opening loan balance as on 01st April' 2019. Further, the Commission has not considered the proposed/projected additional capitalization during the control period in this order therefore, the loan balances for each financial year is worked out accordingly by considering the normative repayment equivalent to depreciation for the respective year.

62. In form TPS 13 of the petition, the petitioner has submitted the weighted average rate of interest @12.25% which has been worked out by the petitioner based on actual loan portfolio as on 31.03.2019.
63. On perusal of the above, the petitioner was asked to file detailed calculation of actual weighted average rate of interest during FY 2019-20 along with supporting documents in respect of actual weighted average rate of interest claimed in the petition.
64. In response to above, by affidavit dated 29th October' 2020, the petitioner submitted the following:

“JPVL has implemented 300MW Baspa II HEP, 400MW Vishnuprayag HEP, 1000MW Karcham, Wangtoo HEP, 500MW BINA TPP and 1320MW NIGRIE STPP. Nigrie STPP was set up based on the dedicated coal mines namely from Amelia (North) & Dongri Tal - II coal mines. The operation of the company had been satisfactory till FY 2014-15. However, the operation of the company had been unsatisfactory for FY 2015-16 onwards and had not been able to pay the dues to its lenders in respect of Interest and Principal. The unsatisfactory operations of the Company primarily have been on account of loss in Nigrie STPP due to following reasons:

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

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

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

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

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

- (iii) Under-recovery of variable fuel costs: As mentioned above, the Company bid for and secured the Amelia (N) coal block against stiff competition at a negative bid of INR 712/- per metric tonne. Due to the negative bid and certain other bid conditions which were imposed at the time of securing the Amelia (North) coal block, the Company, while continuing to be operating, is being unable to fully recover the cost of coal for Nigrie STPP from the sale of power generated under the PPA with MPPMCL / GoMP; and*
- (iv) Low merchant /un-remunerative power tariff.*

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

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

In April 2019, a resolution plan was accepted by the Lenders inter alia including conversion of part debt into CCPS payment of interest @ 9.5% p.a. till the operations of JPVL are stabilized and also restating the repayment schedule of

outstanding loan interalia subject to Lenders having right to recompense for the sacrifice made by them in accordance with the RBI guidelines. The said resolution plan on completion of all CP's have become effective from December, 2019.

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

“RIGHT TO RECOMPENSE

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

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

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

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

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

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

65. On perusal of the above submission, the Commission observed the following:
- i. The operation of the petitioner's company had been unsatisfactory from FY 2015-16 onwards and had not been able to pay the dues to its lenders. As per the

- petitioner submission, the unsatisfactory operations of the petitioner's company primarily have been on account of loss in Nigrie STPP.
- ii. Further, the petitioner's company divested two of its Hydro Project, the proceeds were utilized mainly to pay dues of the lenders. The petitioner submitted that the above situation required re-structuring loan of JPVL and Lenders initiated Resolution Plan/Debt Restructuring from July, 2016.
 - iii. In April 2019, a resolution plan was accepted by the Lenders including conversion of part debt into CCPS payment of interest @ 9.5% p.a. till the operations of the petitioner's company are stabilized and also restating the repayment schedule of outstanding loan subject to Lenders having right to recompense for the sacrifice made by them in accordance with the RBI guidelines.
 - iv. The resolution plan on completion of all CP's have become effective from December, 2019.
 - v. Lowering of Interest @ 9.5% p.a. was necessary to ensure the lenders did not have to convert a higher amount into Equity/CCPS. Therefore, to ensure servicing of the debt with the assumption that since this lowering of interest is not resultant of credit up gradation of the Company, JPVL will continue to realize tariff based at documented rate of interest and pay only @ 9.5% p.a. for the time being, subsequently Lenders under the recompense clause will recover the amount foregone by them at this stage.
66. The petitioner has submitted that the rate of interest for computation of tariff will be on the basis of last available weighted average rate of interest i.e. rate of interest applicable at the time of True Up Petition for FY 2017-18 and FY 2018-19. However, the petitioner is actually paying interest @ 9.5%, therefore, the actual weighted average rate of interest @ 9.5% is provisionally considered in this order. The petitioner is directed to file actual weighted average rate of interest in the true up petitions for respective year of the control period.
67. Considering the above, the interest on loan capital has been worked out during the control period as under:
- i. Opening loan balance as on 01.04.2019 is considered same as admitted by the Commission as on as on 31.03.2019 in the last true-up order for FY 2018-19.
 - ii. No loan addition/deduction of loan is considered during the control period;
 - iii. Normative repayment equal to depreciation in accordance to Regulations is

considered;

- iv. Weighted average rate of interest @ 9.5% based on the re-structuring debt plan.
- v. The aforesaid weighted average rate of interest shall be subject to true-up on actual weighted average rate of interest for each year of the control period.

68. Based on the above, the interest on loan worked out during the control period is as given below:

Table 10: Interest on Loan Allowed

Sr. No.	Particular	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening Loan Balance	Rs. Cr.	1372.40	1192.18	1011.96	831.74	651.53
2	Loan Addition during year	Rs. Cr.	0.00	0.00	0.00	0.00	0.00
3	Repayment of Loan equal to depreciation	Rs. Cr.	180.22	180.22	180.22	180.22	180.22
4	Closing Loan Balance	Rs. Cr.	1192.18	1011.96	831.74	651.53	471.31
5	Average Loan	Rs. Cr.	1282.29	1102.07	921.85	741.64	561.42
6	Weighted Average Rate of Interest considered	%	9.5%	9.5%	9.5%	9.5%	9.5%
7	Annual Interest amount on Loan	Rs. Cr.	121.82	104.70	87.58	70.46	53.33

69. The petitioner is directed to file actual weighted average rate of interest in the true up petitions for respective year of the control period.

Depreciation

Petitioner's submission:

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

Table 11: Depreciation Claimed

(Rs in Crore)

Sr. no.	PARTICULARS	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening Capital Cost	3,559.45	3,568.05	3,568.05	3,568.04	3,568.04
1A	Asset Additions During the year	8.85	-	-	-	-
1B	Decapitalization during the year	0.24	-	-	-	-
2	Closing Capital Cost	3,568.05	3,568.05	3,568.04	3,568.04	3,568.03
3	Average Capital Cost	3,563.75	3,568.05	3,568.05	3,568.04	3,568.04
4	Rate of Depreciation (%)	5.12%	5.12%	5.12%	5.12%	5.12%
5	Depreciation during the year	182.48	182.70	182.70	182.70	182.70
6	Cumulative Depreciation	1,275.19	1,457.90	1,640.60	1,823.31	2006.01

Provisions of the Regulation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Commission's Analysis:-

72. Regulation 37.2 stated that the value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission. In accordance to the aforesaid Regulation, Gross Fixed Assets as on 31st March' 2019 admitted by the Commission in the True-up Order for FY 2018-19 dated 16th December' 2020 is considered as the base opening figure of capital cost as on 01st April' 2019. Further, the proposed additional capitalization during FY 2019-20 is not considered in this order. Therefore, the capital cost as on 01st April' 2019 shall remain same for the entire control period.
73. Vide letter dated 2nd September' 2020, the petitioner was asked to file the basis of the rate of depreciation claimed in the petition in light of Asset-Cum-Depreciation register maintained as on date vis-à-vis the addition of assets claimed in the subject petition.

74. By affidavit dated 19th October' 2020, the petitioner submitted that the depreciation @ 5.12% being claimed in the instant petition has been considered based on the calculations submitted under Petition No. 47 of 2019 for true up of FY 2018-19. In form TPS 11 of the petition, the petitioner worked out the weighted average rate of depreciation for each year of the control period based on the depreciation rates as per Depreciation Rate Schedule provided under the Regulations, 2020.
75. However, the Commission is not considering additional capitalization during the control period in this order and same shall be dealt with in true-up petition for respective year based on the Annual Audited Accounts. Therefore, the Commission has considered the same weighted average rate of depreciation of 5.12% as considered in the last true-up order for FY 2018-19 and claimed by the petitioner in this order.
76. Cumulative depreciation as on 31st March' 2019 admitted in true-up order dated 16th December' 2020 is considered as opening cumulative depreciation in this order. Based on above, the depreciation is worked out in this order as given below:-

Table 12: Annual Depreciation

Sr. No.	Particular	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Opening GFA	Rs Cr.	3519.89	3519.89	3519.89	3519.89	3519.89
2	Assets Addition during the year	Rs Cr.	0.00	0.00	0.00	0.00	0.00
3	Closing GFA	Rs Cr.	3519.89	3519.89	3519.89	3519.89	3519.89
4	Average GFA	Rs Cr.	3519.89	3519.89	3519.89	3519.89	3519.89
5	Weighted Average Rate of Depreciation (%)	%	5.12%	5.12%	5.12%	5.12%	5.12%
6	Annual Depreciation	Rs Cr.	180.22	180.22	180.22	180.22	180.22
7	Cumulative Depreciation	Rs Cr.	1271.50	1451.72	1631.94	1812.15	1992.37

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

Operation & Maintenance Expenses

Petitioner's Submission

78. The petitioner filed the Operation and Maintenance expenses for its 2x250 MW Bina thermal power project for the control period from FY 2019-20 to FY 2023-24 as given below:

Table 13: Operation & Maintenance Expenses claimed (Rs. in Crore)

Particular	Units	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Annual O&M expenses	Rs in Crore	164.80	170.60	176.55	182.80	189.20

Provision in Regulations:-

79. The norms for Operation and Maintenance Expenses for thermal generating units commissioned on or after 01/04/2012 are prescribed under Regulation 40.2 of the Regulations, 2020 for the generating Unit of “200/210/250 MW” for control period of FY 2019-20 to FY 2023-24 are as given below:

Table 14: Norms for O&M Expenses (Rs. lakh/MW/Year)

Units (MW)	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
200/210/250	32.96	34.12	35.31	36.56	37.84

Commission’s Analysis

80. For Thermal Power Station, the annual Operation and Maintenance expenses worked out by the Commission as per the norms prescribed under aforesaid Regulations, 2020 for the control period FY 2019-20 to FY 2023-24 are as given below:

Table 15: O& M Expenses for Generating Unit

Particular	Units	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Installed Capacity	MW	250	250	250	250	250
Per MW O&M Expenses Norms	Rs in Lakh/MW	32.96	34.12	35.31	36.56	37.84
Annual O&M expenses	Rs Cr.	164.80	170.60	176.55	182.80	189.20

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

Table 16: Statement of O & M expenses of Transmission Line & Bay (Rs. in Crores)

Sl. No.	Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	O&M Expenses of 400kV Transmission Line 161x2=322 ckt km	0.14	0.15	0.15	0.16	0.16

2	O&M Expenses of 400kV Bay	2 Nos of 400kV Bay	0.22	0.22	0.23	0.24	0.25
	Total O&M Expenses		0.36	0.37	0.38	0.40	0.41

82. On perusal of the aforesaid claim, the Commission observed that despite of disallowance of O&M expenses on transmission line and Bay by the Commission in past orders, the petitioner claimed separate O&M expenses of transmission lines & Bay on the basis of norms prescribed under MPERC (Terms & Condition for determination of Transmission Tariff) Regulations. The petitioner also filed several Appeals with Hon'ble Appellate Tribunal for Electricity on this issue of disallowance of O&M expenses on transmission line and Bay.

83. With regard to separate O&M expenses on transmission line and Bay over and above the normative O&M expenses claimed by the petitioner, the Respondent No. 1 submitted the following:

"It is submitted, that the petitioner has claimed O & M expenses for Transmission Lines & bay. In terms of the Tariff Regulations 2020, the O & M expenses for Transmission Lines & bay is not permissible. Similar claim of the petitioner has been rejected in previous petitions and since the provisions of Tariff Regulations 2020 is similar to the previous Regulations, the additional O&M cannot be allowed. It is submitted that the regulations framed are binding on all stakeholders, therefore, no separate expenses can be allowed on account of O&M of transmission line and bays."

84. Vide Letter dated 02nd September' 2020, the petitioner was asked to explain the reasons for claiming separate O&M expenses of such a dedicated transmission line, the cost of which has been appropriately considered in the capital cost of its power plant in accordance to the applicable Generation Tariff Regulations.

85. In response to above, by affidavit dated 19th October' 2020, the petitioner submitted the following:

It is humbly submitted that each control period/tariff period gives rise to separate cause of action to the Petitioner and each claim is required to be determined in light of the extant regulatory and statutory framework. The issue is sub-judice before the Hon'ble APTEL in so far as the facts relating to Bina Plant is concerned and as such has not attained finality and the Petitioner is bona-fide in claiming O&M Charges as part of the Fixed Charges of JP Bina TPP.

Therefore, in light of the above, the Hon'ble Commission may consider the issue of O&M expense of dedicated transmission lines as the same is being sought under the control period FY 2019-24 and the same is independent of the matter sub-judice before the Hon'ble APTEL.

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

- (a) Regulation is not pre-condition to exercise power by this Commission:

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

- (b) In terms of Article 4.8 of the PPA, it was the obligation of the Petitioner to construct the Dedicated Transmission Line. However, primary obligation under the PPA of operation and maintenance of such a line is vested with MPPMCL. The said Dedicated Transmission Lines are required for evacuation of power from the generating station of the Appellant. Therefore, any cost incurred with regards to such activity must be adequately recovered so that the Generator can effectively run its business of power generation.
- (c) O&M Expenses of dedicated transmission lines may be allowed in view of the objective of the Electricity Act: It is well settled position of law which has been time and again affirmed by the Hon'ble Tribunal in catena of judgments that in a cost plus Tariff the

State Commission must allow all the reasonable expenditures to the Generator after prudence check. It is also pertinent to mention that all Section 62 Generating Stations are in fact governed by principles enumerated under Section 61 of the Electricity Act. Further, Section 61 (c), (d) and (e) clearly mandate that there should be reasonable recovery of the cost of electricity. Therefore, Petitioner is entitled to reimbursement of all legitimate costs incurred by it in generation and supply of power to MPPMCL.

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

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

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

52. The petitioner has submitted that out of the 7 no. of bays for associated transmission system, 3 no. of bays fall within the side of the petitioner and the rest 4 no. of bays fall within the Raipur sub-station of Power Grid Corporation of India (PGCIL) for connection to the double bus scheme. The petitioner has also submitted that the assets included in the 4 bays at Raipur sub-station belonged to the petitioner and it has awarded the O&M contract to PGCIL for O&M of these 4 bays. The submission of the petitioner is found to be in order and the O&M expenses claimed is allowed. Accordingly, the total O&M expenses allowed for

the generating station and transmission system is as under:"

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

Therefore, in view of the above, it is requested to the to kindly allow O&M expenses of dedicated transmission line.

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

Interest on Working Capital

Petitioner's submission

89. The petitioner filed the interest on working capital for the control period from FY 2019-20 to FY 2023-24 in accordance with the Regulations, 2020. The rate of interest on working capital has been taken on normative basis and considered as the bank rate

as on 01st April of the year during the tariff period from FY 2019-20 to FY 2023-24(MCLR as on 1st April of the year specified by State Bank of India+ 350 bps). Accordingly, the Interest on Working Capital as filed by the petitioner is given below :-

Table 17: Interest on Working Capital claimed (Rs. In Crores)

Sr. No.	Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Cost of Coal/Lignite	189.50	189.50	189.50	189.50	189.50
2	Cost of Secondary Fuel Oil	1.33	1.33	1.33	1.33	1.33
3	Maintenance Spares	32.96	34.12	35.31	36.56	37.84
4	Maintenance Spares (Transmission Lines & Bay)	0.07	0.07	0.08	0.08	0.08
5	O&M Expenses	13.73	14.22	14.71	15.23	15.77
6	O & M expenses (Transmission Lines & Bay)	0.03	0.03	0.03	0.03	0.03
7	Receivables	236.81	234.65	232.63	230.64	228.43
8	Total Working Capital	474.43	473.92	473.59	473.37	472.98
9	Interest on allowed Working Capital	12.05%	11.25%	11.25%	11.25%	11.25%
10	Total Interest on Working Capital	57.17	53.32	53.28	53.25	53.21

Provisions in Regulation:

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

38.1 “The Working Capital shall cover:

- (1) Coal- based thermal generating stations
 - (a) Cost of coal towards stock, if applicable, for 15 days for pit-head generating stations and 30 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal stock storage capacity whichever is lower;
 - (b) Advance payment for 30 days towards cost of coal for generation corresponding to the normative annual plant availability factor;
 - (c) Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil;
 - (d) Maintenance spares @ 20% of operation and maintenance expenses specified in Regulation 39 and 40 of these Regulations;

- (e) *Receivables equivalent to 45 days of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor; and*
- (f) *Operation and maintenance expenses for one month.*

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

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

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

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

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

Commission's analysis:

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

(a) Cost of coal for two months

92. The petitioner's power station is non pit-head station therefore, the cost of coal for 60 days (30 days towards stock and 30 days towards advance payment) for generation corresponding to the normative annual plant availability factor is considered for working

capital purpose. The weighted average rate of coal is worked out as per the details filed by the petitioner for the preceding three months i.e., January, February and March' 2019 in accordance to the Regulations.

93. GCV of coal has been considered as per the information filed by the petitioner on 'received basis' for the preceding three months i.e., January, February and March' 2019. The Petitioner also filed the laboratory test reports for GCV of coal on received basis for aforesaid preceding three months in this regard. Accordingly, the 60 days cost of coal for working capital is worked out as under:

Table 18: Cost of Coal for 60 Days stock for working capital

Particular	Units	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Installed Capacity	MW	500	500	500	500	500
Gross Station Heat Rate	kCal/kWh	2450.00	2450.00	2450.00	2450.00	2450.00
Gross Generation	MUs	3733.20	3723.00	3723.00	3723.00	3733.20
GCV of Coal	kCal/Kg	3859.19	3859.19	3859.19	3859.19	3859.19
Sp. Coal Consumption	kg/kWh	0.6387	0.6387	0.6387	0.6387	0.6387
Annual Coal Consumption	MT	2384253	2377739	2377739	2377739	2384253
60 Days Coal Stock	MT	390861	390861	390861	390861	390861
Rate of Coal	Rs./MT	4838.27	4838.27	4838.27	4838.27	4838.27
Coal Cost (for 60 Days)	Rs in Cr.	189.11	189.11	189.11	189.11	189.11

(b) Secondary Fuel Oil Cost

94. The petitioner filed the cost of secondary fuel oil based on the fuel oil procured during Nov-2018, Jan-2019 and Mar-2019'. The petitioner submitted the details of different fuel oil procured and worked out the weighted average rate of secondary fuel oil.
95. Regulation 38.1 of the Regulations, 2020 provides that in case of use of more than one secondary fuel oil, cost of fuel oil stock shall be provided for the main secondary fuel oil. In view of the above provision, the petitioner was asked to confirm along with details that the cost of only main fuel is considered while determining the working capital.
96. By affidavit dated 19th October' 2020, the petitioner informed that while computing the annual working capital requirement, the petitioner has claimed the cost of High Furnace Oil only as main secondary fuel oil for two months as per Regulation 38.1 of the MPERC Tariff Regulations, 2020.

97. The petitioner has worked out the weighted average rate of oil as Rs. 44,771.87/KL for the control period based on the landed price of secondary fuel oil purchased during the year. The same weighted average rate of oil is considered by the Commission in this order. Accordingly, the cost of two months' main fuel oil stock at normative availability is worked out as given below:

Table 19: Cost of Main Secondary Fuel Oil for 2 Months availability

Particular	Units	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Installed Capacity	MW	500	500	500	500	500
NAPAF	%	85.00%	85.00%	85.00%	85.00%	85.00%
Gross Generation	MUs	3733.20	3723.00	3723.00	3723.00	3733.20
Normative Specific Oil Consumption	ml/kWh	0.50	0.50	0.50	0.50	0.50
Quantity of Sec Fuel Oil required	KL	1866.60	1861.50	1861.50	1861.50	1866.60
Two months' stock of main fuel oil (HFO)	KL	311.10	310.25	310.25	310.25	311.10
Weighted Avg. Rate of Main Fuel Oil	Rs./KL	44,771.87	44,771.87	44,771.87	44,771.87	44,771.87
Oil Cost (Two Months Stock)	Rs. in Crores	1.39	1.39	1.39	1.39	1.39

(c) O&M Expenses

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

Table 20: O&M Expenses for 1 Month (Rs. in Crore)

Particular	Units	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Annual O&M Expenses	Rs. in Crore	164.80	170.60	176.55	182.80	189.20
O&M Expenses for 1 Month	Rs. in Crore	13.73	14.22	14.71	15.23	15.77

(d) Maintenance Spares

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

Table 21: Maintenance Spares (Rs. in Crore)

Particular	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Annual O&M Expenses	164.80	170.6	176.55	182.80	189.20
20% of Annual O&M Expenses	32.96	34.12	35.31	36.56	37.84

(e) Receivables

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

Table 22: Receivables for 45 Days (Rs. in Crores)

Particular	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Variable Charges- 45 days	142.95	142.95	142.95	142.95	142.95
Fixed Charges- 45 days	84.15	82.48	81.11	79.78	78.24
Receivables- 45 days	227.10	225.43	224.06	222.72	221.19

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

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

Further, Regulation 3.1(7) reads as under:

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

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

Table 23: Rate of Interest on Working Capital claimed (%)

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

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

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

Table 24: Rate of Interest on Working Capital allowed

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

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

Table 25: Interest on Working Capital Allowed

Sr. No.	Particular	Norms	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Cost of Coal for 60 Days	Rs. Cr.	189.11	189.11	189.11	189.11	189.11
2	Cost of Main Secondary Fuel Oil 2 months	Rs. Cr.	1.39	1.39	1.39	1.39	1.39
3	O&M Expenses for One Months	Rs. Cr.	13.73	14.22	14.71	15.23	15.77
4	Maintenance Spares 20% of O&M expenses	Rs. Cr.	32.96	34.12	35.31	36.56	37.84
5	Receivables for 45 days	Rs. Cr.	227.10	225.43	224.06	222.72	221.19
6	Total Annual Working Capital	Rs Cr	464.41	464.38	464.70	465.13	465.42
7	Rate of Interest on Working Capital	%	12.05	11.25	11.25	11.25	11.25
8	Annual Interest on working Capital	Rs Cr.	55.96	52.24	52.28	52.33	52.36

Non-Tariff Income

Provisions in Regulation:

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

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

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

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

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

107. On non-tariff income, the Respondent No. 1 submitted the following:

“The Petitioner has projected non-tariff income as ‘Zero’ for the entire control period; whereas during the last control period non-tariff income was accruing to the Petitioner in all the previous years. No reason for the same has also been provided. It is submitted that Regulation 58 of the tariff regulations mandate sharing of non-tariff income in the ratio of 50: 50. The petitioner may be directed to furnish reasons for none receipt of any non-tariff income in the entire control period.”

108. The aforesaid Regulation provides that the Generation Company shall submit full details of its forecast of Non-Tariff Income to the Commission. On perusal of the petition, it was observed that the petitioner had not filed projected non-tariff income for the control period. Vide Commission’s letter dated 02nd September’ 2020, the

Commission asked the petitioner to file projected non-tariff/other income during the control period FY 2019-20 to FY 2023-24 in accordance to the Regulation 58.1 of MPERC Generation Tariff Regulations, 2020.

109. By affidavit dated 19th October' 2020, the petition has submitted the following regarding Non-tariff Income:

The petitioner would humbly like to submit that looking into the past trend where most of the time plant is being operated on part load/technical minimum. Hence, there would be less generation of Fly Ash, a major contributor of Non-Tariff Income. However an estimated figure considering the simple average of last 2 years is as under:

S. No.	Particulars	FY 2019-20	FY 2018-19
1	Sale of Fly Ash(Note 24)	2,39,33,738/-	3,31,54,441/-
2	Add: Other Income (Note 25)	2,58,96,919/ (2,59,17,376-20,457)	3,56,18,680/-
3	Less: Ind. AS Adjustment (Note 25)	87,34,046/-	1,38,11,773/-
TOTAL		4,10,96,611/-	5,49,61,348/-
Average		4,80,28,980/-	
SAY		Rs. 4.80 Crs.	

Relevant pages of Annual Audited Accounts for Note 24 & 25 are annexed hereto and marked as ANNEXURE-10. In view of the above, approximate details of non-tariff income for FY 2019-20 to 2023-24 are as under:

S. No.	FY	Non-Tariff income (Approx)	Remarks
1	2019-20	Rs. 4.11 Crs	As per annual audited accounts
2	2020-21	Rs. 4.80 Crs	Simple average of FY 2018-19 & 2019-20
3	2021-22	Rs. 4.80 Crs	
4	2022-23	Rs. 4.80 Crs	
5	2023-24	Rs. 4.80 Crs	

110. In view of the above, the Commission has provisionally considered the following non-tariff income as filed by the petitioner, which is subject to true-up based on Annual Audited Accounts of each year of the control period.

Table 26: Non-Tariff Income

(Rs. in Crore)

Year	Non-Tariff Income	50% of the Non-Tariff Income
FY 2019-20	4.11	2.06
FY 2020-21	4.80	2.40
FY 2021-22	4.80	2.40
FY 2022-23	4.80	2.40
FY 2023-24	4.80	2.40

Lease/Hire Purchase Charges

111. In the subject petition, the petitioner claimed Rs. 0.36 Crore towards yearly lease rent payable for the year during control period FY 2019-20 to FY 2023-24.
112. The Respondent No. 1 submitted that the Lease Rent cannot be claimed separately and needs to be recovered only as part of the O&M Expenses.
113. On examination the Commission observed that there is no provision under Regulations, 2020 for consideration of lease rent. Vide Commission’s letter dated 02nd September’ 2020 the petitioner was asked to inform under what provisions of MPERC Tariff Regulations, 2020, these expenses are claimed by the petitioner.
114. By affidavit dated 19th October’ 2020 in response to the queries raised by the Commission, the petitioner submitted the following:

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

“However, the expenditure towards transportation of fly ash from the generating station to the place of users is an expenditure of a revenue nature. There is no corresponding provision under the 2014 Tariff Regulations for allowing the revenue expenses /expenses of O&M nature under „Change in Law“. It is pertinent to

mention that the Hon'ble Supreme Court in *PTC India Limited V CERC & ors*{(2010) 4 SCC 603}, had held that regulatory power can be exercised only when there is no provision in the regulations framed under section 178 of the Act. The relevant observations of the Hon'ble Supreme Court are extracted as under:

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

Therefore, in view of the above, it is submitted that this Commission may exercise its regulatory power and allow the expenditure on account of lease rent. Further, even the Tariff Regulations, 2020 envisages the provisions of ‘Power to Relax’ and ‘Power to Remove Difficulty’. Accordingly, considering the nature of the said expenditure, it is humbly prayed to allow Rs. 0.36 Crores incurred/to be incurred by the Petitioner for lease rent.

115. On perusal of the aforesaid submission filed by the petitioner, it is observed that the petitioner has not justified its claim towards lease rent to be payable during the control period in accordance with the Regulations, 2020. Since, there is no provision in the tariff Regulations, 2020 for recovery of lease rent therefore, the petitioner submitted

that the Commission may exercise its regulatory power and allow the expenditure on account of lease rent under the provisions of 'Power to Relax' and 'Power to Remove Difficulty'.

116. In view of the above, the Commission has not considered the expenditure towards lease rent payable by the petitioner in this order. The petitioner is at liberty to approach the Commission in true-up petitions for respective year on actual payment basis as per Annual Audited Accounts.

Normative Annual Plant Availability Factor

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

Summary of Annual Capacity (fixed) Charges

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

Table 27: Summary of Annual Capacity (Fixed) Charges (Amount in Rs Crore)

S. No	Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Return on Equity	163.68	163.68	163.68	163.68	163.68
2	Interest on Loan	121.82	104.70	87.58	70.46	53.33
3	Depreciation	180.22	180.22	180.22	180.22	180.22
4	Interest on Working Capital	55.96	52.24	52.28	52.33	52.36
5	O & M Expenses	164.80	170.60	176.55	182.80	189.20
6	Annual Capacity (fixed) Charges	686.47	671.43	660.30	649.48	638.79
7	Less: Non-Tariff Income	2.06	2.40	2.40	2.40	2.40
8	Net AFC (after adjusting Other Income)	684.41	669.03	657.90	647.08	636.39
9	Capacity Charges corresponding to 65% of the installed capacity	444.87	434.87	427.63	420.60	413.65

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

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

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

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

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

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

Energy (Variable) Charges

Petitioner's submission:

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

Table 28: Energy Charges Rate Claimed

Particular	Unit	FY 2019-20 to FY 2023-24
Capacity	MW	500
NAPAF	%	85
Gross Generation at Generator Terminals	MUs	3733.00
Net generation at ex- bus	MUs	3518.54
Gross Station Heat Rate	kCal/kWh	2450
Sp. Fuel Oil Consumption	ml/kWh	0.50
Aux. Energy Consumption	%	5.75%

Transit Loss	%	0.80
Weighted average GCV of Oil	kCal/ltr.	10000.00
Price of oil(field)	Rs/ltr	51620.17
Weighted average GCV of Coal (on received basis) less 85Kcal/kg	kCal/kg	3859.19
Weighted Average landed price of Coal	Rs./MT	4877.19
Heat Contributed from HFO	kCal/kWh	5.00
Heat Contributed from Coal	kCal/kWh	2445.00
Specific Coal Consumption	kg/kWh	0.635
Sp. Coal Consumption including Transit Loss	kg/kWh	0.639
Energy Charge from Coal	Rs Crore	3.090
Rate of Energy Charge from Oil	Rs./kWh	0.026
Total Energy Charges	Rs./kWh	3.116
Rate of Energy Charge at ex-bus	Rs./kWh	3.405

Provisions in Regulation:

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

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

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

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

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

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

43.2 Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the following formula:

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

Where,

AUX = Normative auxiliary energy consumption in percentage.

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

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

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

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

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

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

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

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

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

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

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

Commission's analysis:

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

Gross Station Heat Rate:

127. On perusal of the details regarding Energy charges filed with the petition, it is observed that the petitioner has filed gross station heat rate of 2450 Kcal/KWh for the control period of FY 2019-20 to FY 2023-24 in accordance to MPERC (Terms & conditions for determination of Generation Tariff), Regulations, 2020.
128. Regarding the Gross Station Heat Rate of thermal generating units achieved CoD on or after 1.4.2012 till 31.03.2016, Regulation 49.3 (C)(i) of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2020, provides as under:
- “(a) *Existing Coal-based thermal generating stations having CoD on or after 1.4.2012 till 31.03.2016, (other than those covered under Regulation 49.2), the station heat rate norms shall be as already approved by the Commission.*
129. The Units of 2X250 MW Bina Thermal Power Plant (Phase I) achieved COD on 31st August' 2012, and 07th April' 2013, respectively which fall under the period mentioned in the aforesaid Regulation. The Commission determined the Gross Station Heat Rate of 2450 Kcal/Kwh in the final tariff order for Bina Thermal Power Plant (Phase I) issued on 26th November' 2014. The same norm approved by the Commission in the aforesaid final tariff order is considered in this order for the control period of FY 2019-20 to FY 2023-24.
130. Hence, the Station Heat Rate norms of 2450 Kcal/Kwh as filed by the petitioner and determined by the Commission is considered for the project in this order for the control period of FY 2019-20 to FY 2023-24.

Auxiliary Energy Consumption

131. While claiming the Energy Charges, the petitioner considered the normative Auxiliary consumption of 8.50% for the project for control period FY 2019-20 to FY 2023-24 in accordance with the Tariff Regulations, 2020.
132. Regulation 49.3 (E) of the Regulations, 2020 provides the norms of 8.50% for auxiliary energy consumption for thermal generating station/unit of 300 MW with natural draft cooling tower which have achieved COD on or after 01/04/2012 hence, the same is considered in this order.

Secondary Fuel Oil Consumption

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

Particulars	Unit	Norms
Gross Station Heat Rate	kCal/kWh	2450
Specific Oil Consumption	ml/kWh	0.50
Aux. Energy Consumption	%	8.50%
Transit losses	%	0.80%

Gross Calorific Value of Coal:

136. With regard to Gross Calorific Value (GCV) of Coal, Regulation 43.4 of the Regulations, 2020 provided as unde:

“The generating company shall provide to the beneficiaries of the generating

station the details of parameters of GCV and price of coal i.e. domestic coal, imported coal, e-auction coal, etc., as per the forms prescribed to these Regulations:

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

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

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

3944.19 Kcal/kg as received basis for preceding three months in annexure 17 filed with the aforesaid submission. The petitioner also filed weighted average GCV of coal so arrived after reducing (adjustment) of 85 kCal/kg in line with the Regulation 43.2, therefore, the net GCV of coal of 3859.19 Kcal/kg is considered for determination of energy charges. The Petitioner also submitted month-wise laboratory coal analysis report indicating GCV of coal on received basis.

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

Table 29: Weighted Average GCV of Coal

Month	Qty of Coal Consumed (MT)	GCV	Weighted average	Weighted Average GCV(Kcal/Kg)
January' 2019	154161.41	3984.30	614225306	
February' 2019	137725.87	3943.70	543149514	
March' 2019	138751.50	3900.11	541146113	
Total	430638.78		1698520932	3944.19
Less: 85 Kcal/kg for the purpose of Reg 43.2				3859.19

142. Hence, GCV of coal as 3859.19 Kcal/Kg is considered for the project for determination of energy charges in this order. The petitioner is directed to ensure the compliance of Regulation 43.4 of the Regulations, 2020.

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

Landed Cost of Coal:

144. The petitioner claimed weighted average landed cost of coal of Rs. 4838.46/MT for FY 2019-20 based on the landed cost of coal during preceding three months i.e. January'2019 to March' 2019.

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

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

Provided that procurement of coal at a price other than Government notified prices may be considered, if it is based on competitive bidding through transparent process, for the purpose of landed coal cost: Provided further that landed cost of coal shall be worked out based on the actual bill paid by the generating company including any adjustment on account of quantity and quality:

Provided also that the Gross Calorific Value of coal shall be measured by third party sampling and the expenses towards the third-party sampling facility shall be reimbursed by the beneficiaries.

146. In form TPS 15 of the petition, the petitioner worked out the weighted average landed price of coal considering the price of coal for preceding three months i.e. January, February and March' 2019. Vide Commission's letter dated 02nd September' 2020, the petitioner was asked to submit the following details:

- (i) Reasons of higher landed cost of coal claimed in the petition.*
- (ii) Detailed break-up of various cost components for arriving at landed price of coal for January, February and March 2020 in excel sheet. Supporting documents like copy of the bills/invoices be also filed.*
- (iii) Calculation sheet for arriving at the weighted average landed cost coal claimed while determining the energy charges in the petition along with supporting documents like copy of the bills/invoices be filed.*
- (iv) The copies of bills raised by JPVL to MPPMCL towards Energy Charges during January 2020 to March 2020 be submitted.*
- (v) Why the coal supplied under FSA is not adequate to fulfill the requirement of generation under long term PPA with MPPMCL.*

147. By affidavit dated 19th October' 2020, the petitioner submitted the following issue-wise reply:

- i. The petitioner would humbly like to submit that landed cost of coal consists of many components like Coal Invoice Value, Transportation Charges (rail mode and rail cum road mode), handling charges, washery charges (if applicable) and any other cost (if any) arises, out of necessity.*

Further, this is to submit that Jaypee Bina Thermal Power Plant (JBTPP) has

been granted long term coal linkage from SECL and CCL. In this connection, this is humbly to submit that landed cost of coal is directly linked with transportation cost which varies/depends on distance from mine to thermal power station.

Furthermore, the Petitioner would like to submit that distance of Jaypee Bina Thermal Power Plant (JBTPP) from CCL and SECL are about 800 to 1000 kms and 550 kms, respectively. Resultantly, its transportation cost becomes very high and ranges between Rs. 1200/- per metric tonne to 2200/- per metric tonne.

To summarize this reply, this is to submit that higher average landed price of coal is a consequence/result of longer/higher distance from mine siding to Bina Thermal Station.

Here, Petitioner would like to submit that in order to reduce the landed price of coal, Petitioner has obtained transfer of 3,95,000 MT of coal from CCL to NCL under the Rationalization Scheme and the FSA for the same is expected to be signed shortly after the incorporation of the same in the PPA to be approved by the Hon'ble Commission.

- ii. The petitioner would humbly like to submit that landed cost of coal consists of the following components:
 - a) *Invoice Value of coal,*
 - b) *Washery charges (if applicable),*
 - c) *Transportation Charges,*
 - d) *Handling Charges/Incidental Expenses and*
 - e) *Any other cost, arises out of necessity.*

Further, a summarized statement of landed price of coal along with the sample copy(ies) of the invoices are annexed here and marked as ANNEXURE-13.

- iii. *The petitioner would like to humbly submit that, during the control period from FY 2019-20 to FY 2023-24 weighted average landed price of coal has been taken as Rs. 4,838.46 per metric tonne (Rs. 4.84/Kg). This price was arrived at after considering the landed price of coal received during Jan-2019 to Mar-2019.*

Further, In TPS-15, while calculating the Energy Charges in the instant petition, landed price of coal has been considered as Rs. 4,877.48 per metric tonne after considering Normative Transit & Handling Loss @ 0.8%.The allowance of 0.80%

on account of Transit & Handling Loss is provided under the Regulation 45 of MPERC Tariff Regulation, 2020.

Calculation of coal cost had been supported by a statement placed at page no. 98 of the instant petition. However, a copy of the Page 98 of the Petition is annexed hereto and marked as Annexure 14. Further, sample copy(ies) of the Bills/Invoices of the coal is annexed hereto and marked as Annexure 15.

- iv. Copies of bills raised by JPVL to MPPMCL towards energy charges during January 2020 to March 2020 are annexed hereto and marked as Annexure 16.
- v. The petitioner would like to humbly submit that Jaypee Bina Thermal Power Plant (JBTPP) has long term coal linkage from SECL and CCL. Details of which are mentioned below:

S No.	Coal Company	Annual Contracted Quantity (ACQ)	Coal Grade
1	CCL	7.13 lac tonnes	G 7 to G 10
2	SECL	8.29 lac tonnes	G 10 to G 12

In this connection this is to submit that under FSA, coal quantity is being allotted to the IPPs equivalent to coal requirement corresponding to 90% of normative generation of tied up capacity. Methodology of calculation of ACQ is reproduced below for ease of understanding:

S. No.	Coal Requirement(s)	Remarks
1	1000 MT	@ 100% Contracted Capacity
2	850 MT	@ 85% of Normative Generation
3	765 MT	ACQ (90% of coal required at 85% normative generation)
4	235 MT	Net shortage of coal

Moreover, aforesaid requirement is calculated on the basis of equilibrated GCV. Here, petitioner would like to draw your kind attention towards the fact that 'Equilibrated GCV' always remains on higher side as compared to GCV 'As Received' and 'As Fired'.

In addition to the above, petitioner would like to humbly submit that to ensure uninterrupted power supply under the PPA, the petitioner is required to maintain

sufficient stock of coal at the station at any given time.

Further, in order to maintain the sufficient coal stock at thermal station, timely requisition is required to be made to the Coal Company(ies) and Railways for rake placement. It would be noteworthy to note that these activities take considerable amount of time.

In view of the above, the petitioner cannot rely on just a single source of coal since ACQ, as allotted under FSA are not sufficient enough to meet the entire requirement of long term PPA, further the lead time of materialization of coal is not fixed, hence the Petitioner is bound to use coal sourced from other sources as well.

148. On perusal of the aforesaid details filed by the petitioner, the Commission observed the following:

- i. With regard to higher landed cost of coal, the petitioner submitted that Jaypee Bina Thermal Power Plant has been granted long term coal linkage from SECL and CCL mines and distance of these mines are about 800 to 1000 kms and 550 kms, respectively from the plant.
- ii. The petitioner further submitted that the landed cost of coal is directly linked with transportation cost which varies/depends on distance from mine to thermal power station. Longer distances of coal mines from plant results its transportation cost becomes very high and ranges between Rs. 1200/- per metric tonne to 2200/- per metric tonne.
- iii. The petitioner also submitted that in order to reduce the landed price of coal, the petitioner has obtained transfer of 3,95,000 MT of coal from CCL to NCL under the Rationalization Scheme and the FSA for the same is expected to be signed shortly after the incorporation of the same in the PPA.
- iv. The petitioner in its additional submission filed the month-wise detailed break-up of coal cost components for the month of January' 2019, February' 2019 and March' 2019.
- v. While calculating the Energy Charges in the subject petition, the petitioner has considered the landed price of coal of Rs. 4,877.48 per metric tonne after **considering Normative Transit & Handling Loss @ 0.8%** in accordance with the Regulation 45 of MPERC Tariff Regulations, 2020.

149. The petitioner's power station is non-pit head therefore, while determining the landed cost of coal, the petitioner has considered normative transit and handling losses of 0.8%. The Commission has considered the normative transit and handling losses in determining the specific coal consumption for energy charge rate in this order. Therefore, the landed price of coal is considered prior to normative transit and handling losses filed by the petitioner. The weighted average landed cost of coal considered in this order is for preceding three months i.e., January' 2019, February' 2019 and March' 2019 in accordance with the Tariff Regulations. The details of the landed price of FSA and Non-FSA coal filed by the petitioner is as given below:

Particular	FSA	Other than FSA	Total (FSA + other than FSA)
Landed Cost per Tonne (Considering only last three months' purchase as per Regulation 38.2)	4739.78	5525.21	4838.45
Landed Cost per kg (Considering only last three months' purchase as per Regulation 38.2)	4.739	5.525	4.84
Net Landed Price of Coal per tonne after adjustment of 0.8% Transit Loss	4778.00	5569.77	4877.47
Net Landed Price of Coal per kg after adjustment of 0.8% Transit Loss	4.77	5.56	4.877

Based on the above submissions made by the petitioner regarding the quantity and cost of coal received by the petitioner during Jan' 19 to March' 19 and provided in form TPS15 of the petition, the Weighted Average landed price of coal is worked out in terms of Tariff Regulations, 2020 as given below:

Table 30: Weighted Average Price of Coal

Month	Total Quantity Coal Received (MT)	Cost of Coal (Rs in Cr)	Rate of Coal Received (Rs/MT)	Weighted average Landed price of Coal including normative transit loss (Rs /MT)
Jan' 2019	114221.74	59.91	5245.06	
Feb' 2019	137964.80	64.92	4705.55	
Mar' 2019	161081.05	75.12	4663.49	
Total	413267.59	199.95		
Weighted average landed cost of coal			4871.37	4838.26

150. Accordingly, the weighted average price of coal of **Rs. 4838.26/ MT**(with out considering transit and handling losses) is worked out by considering the weighted average rate of preceding three month's in this order.

151. Regulation 38.2 of the Regulations, 2020 provides that while determining the weighted average price of fuel, no fuel price escalation shall be provided during the tariff period. Therefore, the preceding three months weighted average rate of coal of Rs 4838.26 /MT is considered for entire control period in this order.

Landed Cost of secondary fuel oil:

152. The petitioner claimed weighted average landed cost of secondary fuel oil of Rs. 51,620.17/KL for FY 2019-20 based on the landed cost of fuel oil purchased in the month of April 2018 to March 2019.

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

While computing the weighted average rate of Secondary fuel oil, the petitioner has considered the LDO/HFO purchased in the month of April 2018 to March 2019. However, Regulation 19.1 of the Tariff Regulation, 2020 provides that the landed cost of secondary fuel oil for tariff determination shall be based on actual weighted average cost of secondary fuel of the three preceding months.

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

154. By affidavit dated 19th October' 2020, the petitioner submitted the following:

The petitioner would humbly like to submit that since secondary fuel oil had not been procured/sourced consecutively in the preceding three months; hence cost of secondary fuel oil was considered for the entire financial year 2018-19.

In this regard, a statement considering the cost of secondary fuel oil purchased from Nov. 2018 to Mar 2019 and supporting documents (invoices/bills) are being annexed hereto and marked as ANNEXURE 11 & 12 respectively.

Further, this is to humbly submit that secondary fuel oil was not procured/sourced in the month of Feb-2019 and Dec-2018, hence to meet out the requirement of

'consideration of cost of preceding three month', cost of Secondary Fuel Oil (HFO) for the month of Nov-2018, Jan-2019 and Mar-2019 has been considered in the above referred annexure.

155. In view of above, the weighted average rate of secondary fuel for preceding three months is considered by the Commission as Rs 48,577.48/KL based on the details filed by the petitioner as given below.

Table 31:Wt. Average landed rate of secondary fuel oil (Rs/KL)

Month	LDO					Weighted avg Landed Cost (Rs/KL)
	Qty (KL)	Invoice Value (Rs.)	Transportation (Rs.)	Landed Cost (Rs.)	Rs. Per Unit Rate	
Nov-18	0	-	-	-	-	54,743.82
Jan-19	160	73,34,762	2,57,600.00	75,92,362.38	47,452.26	45,682.17
Mar-19	122	63,58,710	1,95,420.00	65,55,130.00	53,730.57	51,962.08
Total	282	1,36,93,472	4,53,020.00	1,41,47,492.38	50.168.41	48,577.48

Month	HFO					Weighted avg Landed Cost (Rs./KL)
	Qty (KL)	Invoice Value (Rs.)	Transportation (Rs.)	Landed Cost (Rs.)	Rs. Per Unit Rate	
Nov-18	15.75	8,35,046.40	27,168.75	8,62,215.15	54,743.82	54,743.82
Jan-19	62.5	24,64,107.08	1,07,812.50	25,71,919.58	41,150.71	45,682.17
Mar-19	39.64	17,75,641.97	68,379.00	18,44,020.97	45,519.20	51,962.08
Total	117.89	50,74,795.45	2,03,360.25	52,78,155.70	44,771.87	48,577.48

156. Regulation 38.2 of the Regulations, 2020 provides that while determining the weighted average price of fuel, no fuel price escalation shall be provided during the tariff period. Therefore, the preceding three months weighted average rate of secondary fuel of Rs 48,577.48 /KL is considered for entire control period in this order.

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

Table 32: Energy Charges determined in this order

Sr. No.	Particular	Unit	FY 2019-20 to FY 2023-24
1	Installed Capacity	MW	500
2	Normative Aannual Plant Aavailability Factor	%	85
3	No. of days in year	No.	366
4	Gross Generation at generator terminals	MU's	3733
5	Aux. Energy Consumption (Normative)	%	8.50
6	Net Generation at ex-bus	MU's	3416
7	Gross Station Heat Rate (worked-out)	kCal/kWh	2,450
8	Sp. Fuel Oil Consumption (Normative)	ml/kWh	0.50
9	Weighted average GCV of Oil	kCal/ltr.	10,000
10	Price of Oil	Rs./ltr.	48577
11	Weighted average GCV of Coal (As received)	kCal/kg	3859
12	Weighted Average price of Coal	Rs./MT	4838
13	Transit and handling losses	%	0.80
14	Heat Contributed from Oil	kCal/kWh	5.00
15	Heat Contributed from Coal	kCal/kWh	2,445
16	Specific Coal Consumption	kg/kWh	0.6336
17	Sp. Coal consumption including transit loss	kg/kWh	0.6387
18	Rate of Energy Charge from Coal	Rs./kWh	3.090
19	Rate of energy charges from oil	Rs./kWh	0.024
20	Total energy charges (Coal + Oil)	Rs./kWh	3.114
21	Rate of Energy Charge at ex bus	Rs./kWh	3.404

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

Other Charges

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

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

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

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

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

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

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

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

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

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

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

Implementation of the order

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

The Commission directs that the generation tariff determined in this order shall be applicable from 1st April' 2019 and will continue to be operative till 31st March' 2024, under Multi Year Tariff Principles. The difference between the billing done in accordance with Regulation 7.11 of the Tariff Regulations, 2020 for the period starting from 01.04.2019 and the tariff determined in this order shall be done in accordance to second proviso of the Regulation 7.11 of the Regulations, 2020 in six equal monthly installments.

166. The petitioner must take steps to implement this order after giving seven (7) days' public notice in accordance to Regulation 1.30 of MPERC (Details to be furnished and fee payable by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004 and its amendments and must also provide information to the Commission in support of having complied with this order.

167. With the above directions, this Petition No. 44 of 2020 is disposed of.

(Shashi Bhushan Pathak)
Member

(Mukul Dhariwal)
Member

(S.P.S Parihar)
Chairman

Date: 30th April' 2021

Place: Bhopal

Annexure-1

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

MPPMCL Comment:

This Commission vide order dated 31.05.2019 passed in P. No. 49 of 2018 (True Up for FY 2017-18) has approved the Capital Cost of the project as on 31.03.2018 as Rs. 3510.63 Crores. The petition no. 47 of 2019 for the true up for FY 2018-19 is pending before the Commission. This Commission, vide order dated 10.01.2020 passed in P.No. 11 of 2017 has approved the revised Capital Cost of the project as on 31.03.2018 as Rs. 3519.87 Crores which is the last admitted cost of the Project. However, the petitioner in form TPS -5K (Statement of Capital Cost) has taken Opening Gross Block for FY 2018- 19 as 3535.47 Crores, which is incorrect as per provisions of Regulation 6.2 of Tariff Regulations 2020. Therefore, last admitted closing Capital cost as on 31.03.2018 may please be considered as Rs. 3519.87 Crores only. **The last admitted cost may be considered for determination of tariff.**

Petitioner's Reply:

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

The petitioner would humbly like to submit that difference between the capital cost as on 31/03/2018 admitted by the Commission (Rs. 3519.87 Crs) and Capital Cost submitted by Petitioner (Rs. 3535.47 Crs) is Rs. 15.60 Crores. It is submitted that the said difference is on account of the disallowance of Rs. 15.60 Crores in capital cost made by the Hon'ble commission during the proceedings of Petition No. 49/2018 on account of carpet coal.

Further, it is humbly submitted that since the said issue is sub-judice before the Hon'ble Appellate Tribunal (DFR No. 2378/2019) and as such has not attained finality, hence the Petitioner has included Rs 15.60 Crores (disallowed on account of Carpet Coal during the proceedings of True Petition for FY 2017-18 by Hon'ble Commission) in Opening Capital Cost as on 31-03-2018 for the purpose of the instant Petition.

It is also humbly submitted that since Capital Cost as on 31-03-2019 is yet to be determined by the Hon'ble Commission, hence the Base Capital Cost for the purpose of the instant Petition i.e. Capital Cost as on 31-03-2019, has been kept as the same

as mentioned in the Petition No.47 of 2020.

Observation:

Regulation 37.2 stated that the value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission. In accordance to the aforesaid Regulation, capital cost as on 31st March' 2019 admitted by the Commission in the last True-up Order for FY 2018-19 dated 16th December' 2020 is considered as the base opening figure of capital cost as on 01st April' 2019 in this MYT order.

MPPMCL Comment:

It is respectfully submitted that while calculating the tariff, the petitioner has considered Additional Capitalisation for FY 2018-19 (Rs. 23.98 Crores). The said Additional Capitalisation is pending adjudication in the Petition no. 47 of 2019 and has not been approved by this Commission.

Without prejudice to the above it is submitted that Chapter 6 of the Tariff Regulations deals with Additional Capitalisation. Without providing any details the petitioner has considered additional capitalisation (for FY 19-20) of Rs 8.81 Crore. In light of deletion of Rs 0.21 Crore, the petitioner has considered a net addition of Rs. 8.60 Crore.

It is submitted that the Petitioner has sought Additional Capex of Rs 8.60 Crore for FY 2019-20, in terms of Regulation 27 and 28 of the Tariff Regulations. It is pertinent to note that no break-up has been provided as to what items were part of the original scope and what items were beyond the original scope. The Petitioner has considered net Additional Capitalisation for the FY 2019-20 (Rs. 8.60 Crores) the accounts for which are yet to be finalised. It is prayed to the Commission that as per provisions of Regulation 6.2, "additional capital expenditure already admitted in last true-up order" may be considered for determination of Tariff. It is submitted that the entire capitalisation therefore needs to be disposed-off.

Since no clarity has been provided in the petition about any of the items, the answering respondent is not in position to comment on (a) whether the same was part of the original scope and (b) the prudence of such capital expenditure; and prays that the cost be disallowed.

That the Additional Capitalisation Rs. 23.98 Crs and Rs. 8.60 Crs. during the FY 2018-19 & 2019-20 respectively, be disallowed.

Petitioner's Reply:

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

As far as the Additional Capitalization of Rs. 8.60 Crs. made during the FY 2019-20 is concerned it is to bring in your kind attention that similar query has already been asked by Hon'ble Commission vide its letter dated: 02.09.2020. In response to the query of the Hon'ble Commission a detailed statement of additional capitalization of Rs. 8.60 Crs. along with its justifications/supportings/invoices has already been submitted in the office of Hon'ble Commission vide our Reply dated: 19.10.2020.

Further, with regard to the additional capitalization made during the FY 2018-19, it is humbly submitted that though the issue of additional capitalization made during FY 2018-19 pertains to Petition No 47/2019 and is not the subject matter of the instant Petition, still it is humbly submitted that the due diligence and prudence check regarding the same have been carried out by Hon'ble Commission & all the queries have been replied in depth along with all justifications/supporting/invoices during the proceedings of the above Petition.

However, it is to humbly submit that Petitioner never shied away from giving any information/additional information including "Details of Additional Capitalization" as and when sought by Hon'ble Commission.

Observation:

The Commission observed that the additional capitalization filed by the petitioner during the control period is required to be scrutinized on several counts specified in the Regulations 2020. Based on the information made available by the petitioner, this exercise will be carried out while undertaking true-up for the respective year based on Annual Audited Accounts and other requisite details in this regard. Therefore, the proposed additional capitalization during FY 2019-20 is not considered in this order.

MPPMCL Comment:

The Petitioner has projected non-tariff income as 'Zero' for the entire control period; whereas during the last control period non-tariff income was accruing to the Petitioner in all the previous years. No reason for the same has also been provided. It is submitted

that Regulation 58 of the tariff regulations mandate sharing of non-tariff income in the ratio of 50: 50. The petitioner may be directed to furnish reasons for none receipt of any non-tariff income in the entire control period.

That the petitioner has not submitted any details of Non-Tariff Income.

Petitioner's Reply:

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

Petitioner would humbly like to submit that as the books of account could not be finalized at the time of submission of MYT Petition, Petitioner did not submit any Non-Tariff Income, in absence of the authentic data or information.

Further, Petitioner would humbly like to submit that, Hon'ble Commission has already asked the petitioner to submit the details of Non-Tariff Income vide its letter dated: 02/09/2020. Furthermore, this is to humbly submit that details of provisional/approx details of Non-Tariff Income have already been submitted by the Petitioner to the Hon'ble Commission based on the past trends/assumptions vide its reply dated: 19.10.2020.

Observation:

In its additional submission dated 19th October' 2020, the petitioner has submitted the details of non-tariff Income based on projection basis. Therefore, the Commission has provisionally considered the non- tariff income as filed by the petitioner in accordance to the Regulations, which is subject to true-up based on Annual Audited Accounts of each year of the control period.

MPPMCL Comment:

It is submitted, that the petitioner has claimed O & M expenses for Transmission Lines & bay. In terms of the Tariff Regulations 2020, the O & M expenses for Transmission Lines & bay is not permissible. Similar claim of the petitioner has been rejected in previous petitions and since the provisions of Tariff Regulations 2020 is similar to the previous Regulations, the additional O&M cannot be allowed. It is submitted that the regulations framed are binding on all stakeholders, therefore, no separate expenses can be allowed on account of O&M of transmission line and bays.

The definition of O&M expenditure also includes 'overheads' and therefore lease rent cannot be claimed separately and needs to be recovered only as part of the O&M

Expenses.

That the O&M expenses for Transmission Lines & Bay be not allowed

&

That the Lease Rent cannot be claimed separately and needs to be recovered only as part of the O&M Expenses.

Petitioner's Reply:

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

It is humbly submitted that each tariff year gives rise to separate cause of action to the Petitioner and each claim is required to be determined in light of the extant regulatory and statutory framework. The issue of O&M expenses for Transmission Lines & Bay is sub-judice before the Hon'ble Appellate Tribunal in so far as the facts relating to Bina plant is concerned and as such has not attained finality and the Petitioner is bona fide in claiming O&M Charges as Capacity Charges.

Therefore, in light of the above, Petitioner has requested the Hon'ble Commission to consider O&M expenses of dedicated transmission lines and bay as the same is being sought under the control period FY 2019-24 and the same is independent of the matter sub-judice before the Hon'ble APTEL. Further, Petitioner would humbly like to submit that Commission also took the cognizance on the said issue alongwith the issue of inclusion of Lease Rent into Capacity Charges being contested by the Respondent No. 1 of the instant Petition and asked the Petitioner to submit a comprehensive reply vide its Letter 02.09.2020.

In this connection, Petitioner would humbly like to submit that both the issues i.e. inclusion of O&M Expenses of Transmission Line & Bay and Lease Rent into the Capacity Charges has been replied explicitly to the Hon'ble Commission by the Petitioner vide its Affidavit dated: 19.10.2020.

Observation:

The Commission observed that there are no separate norms provided in (Terms & Conditions for determination of Generation Tariff) Regulations, 2020 for operation & maintenance expenses on dedicated transmission lines and Bay as claimed in the subject petition. Further, the cost of dedicated transmission lines has appropriately

considered in the project capital cost of the petitioner's power plant while determining the final capital cost of the project. Further, in all earlier tariff/true-up orders since COD of the project, the Commission had taken the consistent approach on this issue and separate O&M expenses for dedicated transmission line and bay had not considered.

The issue of separate O&M expenses for dedicated transmission line and bay is currently pending adjudication before the Hon'ble APTEL under several Appeals filed by the petitioner against the tariff/true-up orders issued by the Commission therefore, the claim of the petitioner for separate Operation and Maintenance expenses of dedicated transmission line and bay is not considered in this order.

With regard to recovery of lease rent, the Commission observed that there is no separate provision in the tariff regulations, 2020 for recovery of lease rent therefore, the Commission is not considered the expenditure towards lease rent payable by the petitioner in this order. The petitioner is at liberty to approach the Commission in true-up petitions for respective year on actual payment basis as per Audited Accounts.

MPPMCL Comment

As per formula provided under Regulation 43.2 of Tariff Regulation 2020, the Energy Charge Rate depends on the CVPF & LPPF of primary fuel and CVSF & LPSFi of Secondary fuel. Regulation 44.2 of the Tariff Regulations 2020 has the provisions regarding Landed cost of coal for any month as under –

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

From the above, it may kindly be seen that the various components of landed cost of coal such as transportation cost, loading, unloading & handling charges have no norms /ceiling limits. The break up or sub -components of the transportation cost are also not specified under the Regulations. On account of this, Generators are free to charge any amount under Transportation cost. Different Generator are charging, different sub-components under Transportation cost. There is also considerable variations, in the Transportation cost of coal per MT/ per km charged by the different Generators. The

similar is the case with loading, unloading and handling charges. As such, there is no prudent check on the landed cost of coal. It is therefore, requested to the Commission to specify /define sub-heads /norms / ceiling limits on Transportation cost / Loading unloading & handling charges to have prudent check on the aforesaid cost.

The other factor which results in huge increase in Energy Charge Rate (ECR) is Weighted Average Gross calorific value of coal as received (CVPF). Regulation 3(30) defines the "GCV as received" as under-

“ ‘GCV as received’ means the GCV of coal as measured at the unloading point of the thermal generating station through collection, preparation and testing of samples from the loaded wagons, trucks, ropeways, Merry-Go-Round (MGR), belt conveyors and ships in accordance with the IS 436 (Part-1/Section1)-1964:

Provided that the measurement of coal shall be carried out through sampling by third party to be appointed by the generating companies in accordance with the guidelines, if any, issued by Central Government.”

In this regard, it is submitted that there is a considerable difference (sometimes upto 20 to 25 %) in the "GCV as billed" by the coal companies and 'GCV as received'. Resulting in considerable increase in the Energy charge Rate. Therefore, it is requested to the Hon'ble Commission to specify some ceiling norms for loss of GCV between the "GCV as Billed" & "GCV as received".

Further, in the instant petition, the petitioner while arriving at the Landed cost of coal considers the use of Non FSA coal also. The petitioner is also using FSA coal for merchant sale of unscheduled share of MPPMCL. It is respectfully prayed to the Commission to consider all the above submissions made by the answering respondent, while arriving / approving Energy Charge rate.

Petitioner's Reply:

That the contents of the instant paragraphs filed by the Respondent No. 1 are, untenable, vexatious and is categorically denied for the following reasons:

That the contents are vague and are solely intended to attempt and overreach this Commission or to otherwise influence the administration of justice, as the Tariff Determination is subject to the prudence check of the Commission in line with the

prevailing Regulation.

Further, this is to submit that Petitioner has filed the Petition in line with the MPERC Tariff Regulation, 2020. Further, this is to humbly submit that Respondent No. 1 of the instant Petition has requested the Hon'ble Commission to specify/define sub heads/norms/ceiling limits on Transportation cost>Loading and Unloading Charges/Handling Charges to have prudent check and also requested Hon'ble Commission to specify some ceiling norms for loss of GCV between the "GCV Billed" & "GCV Received".

In this connection, it is respectfully submitted that before the notification of MPERC Tariff Regulation, 2020 the Draft Regulation was available in the public domain, whereby comments/observations were sought by various stakeholders. In fact, Public Hearing was also conducted by Commission. After considering all the comments/observations, Commission has notified the MPERC Tariff Regulation, 2020 which might not be challenged/alterd at this stage. Hence contention of the Respondent No. 1 of the instant Petition is liable to be rejected.

Without prejudice to the above, it is respectfully submitted that the transportation cost depends on the distance between the generating station & source of the mine along with their topographical conditions. Further, Petitioner would humbly like to submit that as the distance of different thermal power plants of the different generators varies from their respective source of coal (mine) from where the coal is allocated under the FSA, hence it is obvious that there will be difference in Transportation Cost of all the generators. Further, with regard to the GCV 'as Billed' Vs 'as Received', Petitioner would humbly like to submit that deviation in GCV's occurs because of its natural property/essence and the same is beyond the control of any generator.

Further, here it would be pertinent to mention that GCV of Coal is being measured at the Bina Thermal Station in accordance with the MPERC Tariff Regulations, 2020 by a third party and reports of the same is being provided to the Respondent No. 1 of the instant Petition along with the Energy Bills for their utmost satisfaction. Moreover, this is to humbly submit that Petitioner has already made available all the supporting documents pertaining to Coal Cost to the Hon'ble Commission for their prudence check.

Observation:

On examination of the subject petition, the Commission sought several details and documents relevant to Landed Cost of Coal like detailed break-up of various cost components alongwith supporting documents like copy of the bills/invoices and copies of bills raised by JPVL to MPPMCL towards Energy Charges. The Commission also sought detailed reasons for higher landed cost of coal. The landed cost of coal is only allowed after prudence check with respect to the bills/invoices submitted by the petitioner and in accordance with the Regulations, 2020.

The petitioner submitted that the landed cost of coal is directly linked with transportation cost which varies/depends on distance from mine to thermal power station. Longer distances of coal mines from plant result its transportation cost becomes very high.

The GCV of coal is considered in accordance to the Regulation, 2020 based on the laboratory test report submitted by the petitioner.

MPPMCL Comment:

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

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

That, at this stage this Respondent has made above observations on the basis of documents/ information made available by the Petitioner. The Respondent craves liberty to amend, alter and add to the points or make further submissions as may be required at any later stage. The Respondent also seeks liberty to cite Case Laws or respond to the Case Laws referred/ quoted by the Petitioner at appropriate stage.

Petitioner's Reply:

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

That the contents is vague as the Respondent No. 1 of the instant Petition has requested the Commission to limit allowable ED & ED Cess on actual/normative whichever is less, which is not in conformity of the prevailing MPERC Tariff Regulations, 2020.

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

It is submitted that the contents of the Prayer Clauses of the Reply filed by the Respondent No. 1 are, untenable, vexatious and are categorically denied. Each and every averment contained in the Prayer Clauses are hereby denied. It is submitted that the contents of the Prayer Clauses are solely intended to attempt and overreach this Commission or to otherwise influence the administration of justice.

Observation:

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

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

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

Annexure-II

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

Stakeholder Comment:

There has been a delay in filing the instant MYT Petition. Petitioner be directed to provide the audited accounts of the financial year 2019-20 based on actual income and expenditure, consequent to which the tariff of financial year of 2019-20 be considered as final order.

Petitioner's Reply:

It is most respectfully submitted that the said contention raised by the objectors is wholly without merit. The instant Petition has been filed as per Tariff Regulations, 2020 and all the information sought by the Commission either through its Regulations or RoP have been duly provided by the Petitioner.

In so far as the delay in filing the instant MYT Petition is concerned, it is stated that in terms of Regulation 6.2 of the Tariff Regulations, 2020, a Generating Company has to make an application for determination of multiyear Tariff within 60 days from the date of the notification of the Regulations. In the instant case, the Regulation was notified on 20.02.2020 and the present MYT Petition was filed by the Petitioner on 11.06.2020 and amended Petition was filed on 25.07.2020, which was duly listed by the Commission for the Motion Hearing held on 07.08.2020. In this regard the following is noteworthy:

- (a) Due to COVID-19 pandemic which has erupted throughout the globe, Governments of various countries across the Globe, including the Government of India and the local/municipal bodies had imposed strict preventive measures to contain the spread of COVID 19.*
- (b) Thereafter, the Ministry of Home Affairs, Government of India issued an order dated 24.03.2020 wherein the ministry imposed a lockdown of 21 days across the country which kept extending.*
- (c) In this regard, noting the difficulties being faced by the generating companies in filing their MYT Petitions on account of the lockdown imposed across the country, even this Hon'ble Commission vide its Order dated 06.05.2020 while taking cognizance of the difficulties being faced by the Generating Companies, extended*

the timeline for filing the MYT Petition to 30.06.2020. A True copy of Order dated 06.05.2020 passed by this Hon'ble Commission is annexed hereto and marked as ANNEXURE R/1.

Moreover, the Hon'ble Supreme Court of India, after considering the above unprecedented situation, has also passed an Order dated 23.03.2020 in Suo Motu Writ Petition (Civil) No. 3/2020 and had ordered that:-

*“To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, **it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.**”*

Hence, the contention raised by the objectors is without any merit as there was no delay in filing the Petition.

Observation:

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

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

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

Stakeholder Comment:

The petitioner has filed the subject MYT petition considering the capital cost and additional capitalization filed in true-up petition for the financial year 2018-19. In absence of any details/proof of actual payment etc. the additional capitalization during FY 2018-19 should not be allowed. Therefore, the capital expenditure considered by the petitioner in the ongoing true-up Petition No. 47 of 2019 may be disapproved in the present Petition.

Petitioner's Reply:

That the objectors vide their objections have contended that only the approved Capital Expenditure, i.e. Rs. 3519.87 Crores be considered instead of Rs. 3535.47 Crores as sought by the Petitioner.

In this regard, it is most respectfully submitted that the said difference of Rs. 15.60 Crores is on account of disallowance of Rs. 15.60 Crores during the proceedings of Petition No. 49 of 2018 against which an Appeal being DFR No. 2378 of 2019 has been filed before the Hon'ble Tribunal for Electricity.

That detailed submissions qua the inclusion of Rs. 15.60 Crores has already been made by the Petitioner vide its Additional Reply dated 19.10.2020 to the queries raised by this Hon'ble Commission vide letter dated 02.09.2020 and the same are not being repeated for the sake of brevity.

Further, the Petitioner has included the said amount only to safeguard its claim in case the same is subsequently allowed by the Hon'ble Tribunal as the said issue is sub judice before the Hon'ble Tribunal and has not attained finality.

Observation:

The Commission issued the true-up order for FY 2018-19 on 16th December' 2020. Regulation 37.2 of the Regulations, 2020 provides that the value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission. In accordance to the aforesaid Regulation, Gross Fixed Assets as on 31st March' 2019 admitted by the Commission in the True-up Order for FY 2018-19 dated 16th December' 2020 is considered as the base opening figure of capital cost as on 01st April' 2019.

Stakeholder Comment:

The petitioner claimed projected additional capitalization of Rs. 8.61 Crore during FY 2019-20 of the control period. Claim for additional capitalization after the cut-off date be dismissed and this Hon'ble Commission and should direct the Petitioner to comply with the Order dated 27.04.2019 passed by the Commission in Petition no. 18 of 2019 and should also comply with the provisions of the Tariff Regulations, 2020.

Petitioner's Reply:

That the objectors vide their objections while placing reliance upon this Hon'ble Commissions order in Petition No. 18 of 2019 have contended that the Additional Capital Expenditure proposed to be incurred to the tune of Rs. 8.61 Crores for FY 2019-20 ought to be disallowed as being beyond the cut-off date.

In this regard, it is most respectfully submitted that the detailed submissions have already been made by the Petitioner vide its Reply dated 19.10.2020 to the queries raised by this Hon'ble Commission. Further it is stated that the there cannot be blanket application of the order passed by this Hon'ble Commission in Petition No. 18 of 2019 as each order has to be understood in its context.

Petition No. 18 of 2019 was filed by M.B. Power (Madhya Pradesh) seeking extension of cut-off date wherein the Generating Company had failed to provide details qua additional capitalisation beyond the cut-off date. However, in the instant case, the Petitioner vide its Reply dated 19.10.2020 has already made detailed submissions regarding the same and provided details of additional capitalisation at Annexure 6 & 7 of the Reply.

Furthermore, in the instant case the Petitioner out of Rs. 8.61 Crores is seeking Rs. 8.03 crores under Regulation 27 (i) of the Tariff Regulations, 2020 for payment towards stamp duty. The same is being claimed in view of the order dated 13.02.2020 passed by the Collector of Stamp, District Sagar to levy stamp duty of Rs. 8.03 Crores on the instant project due to amalgamation of Bina Thermal Station into JPVL. It is trite law that stamp duty is a statutory levy over which a party has no control. The same has been fortified by the Hon'ble Tribunal in Judgment dated 20.10.2011 in Appeal No. 74 of 2010.

In this backdrop, it is most respectfully submitted that the Judgment cited/relied upon by the Objectors is case specific and cannot be accepted as binding precedent in instant matter. It is trite law that a Judgment cannot be read as statute. Thus, same shall not be applicable in a separate set of facts with different nature of proceedings. The above said Hon'ble Apex Court has upheld the same in following judgments:

(a) **Zee Telefilms Ltd. vs. Union of India (2005) 4 SCC 638:**

“254. A decision, it is trite, should not be read as a statute. A decision is an authority for the questions of law determined by it. Such a question is determined having regard to the fact situation obtaining therein. While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. A judgment, as is well known, must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it.”

(b) **Islamic Academy of Education vs. State of Karnataka (2003) 6 SCC 697:**

“139. A judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal. (See Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj [(2001) 2 SCC 721]) Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj [(2001) 2 SCC 721]”

(c) **P.S. Sathappan v. Andhra Bank Ltd. (2004) 11 SCC 672:**

“144. While analyzing different decisions rendered by this Court, an attempt has been made to read the judgments as should be read under the rule of precedents. A decision, it is trite, should not be read as a statute. Thus, the aforesaid contention of the objectors is misplaced and therefore liable to be rejected.

Observation:

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

Stakeholder Comment:

For establishment of Emission Control System (ECS)/Fuel Gas desulphurization (“FGD”) direction be issued for verbatim compliance of 0.45 Crore/per megawatt and in absence of the same no amount be approved for additional capitalization.

Petitioner's Reply:

That the objectors have contended the additional capitalisation cost of Rs. 1 Crore per MW as sought by the Petitioner ought to be rejected and the cost of Rs. 0.45 Crores per MW as determined by CEA be allowed.

At the outset, it is most respectfully submitted that the said contention raised by the Objectors is beyond the scope of the present proceedings as the Petitioner has not claimed any amount towards the installation of FGD system in the instant MYT Petition. The Petitioner in its MYT Petition [Para (i)/@Pg. 25] has categorically stated that it shall file the True up in the corresponding/respective year along with the details and supporting of actual Additional Capital Expenditure on account of installation of FGD in line with the prevailing MPERC Regulation.

However, for the sake of completeness, it is reiterated that a Feasibility Report dated February 2019 was prepared by the Tata Consulting Engineers and the Price of Rs. 1 Crores/MW is only an estimation based on the preliminary studies.

Moreover, it is stated that the CEA cost is only indicative in nature and not sacrosanct. The Hon'ble Central electricity Regulatory Commission ("Hon'ble CERC") vide its orders has categorically held the same and subsequently rejected the indicative cost as determined by CEA, once the actual cost has been arrived at via competitive bidding. In this regard, reliance is placed on Hon'ble CERC's order dated 29.04.2020 in Petition No. 446/MP/2019, the relevant extract is reproduced hereunder:

25. Issue regarding CEA recommended cost has been dealt with by the Commission in the matter of Maithon Power Ltd. in Petition No. 152/MP/2019. Though the tariff in case of Maithon Power Ltd. is determined as per provisions of Section 62 of the Act, while in the instant case, tariff has been determined as per Section 63 of the Act, the principles as regards costs recommended by CEA and the prices discovered in competitive bidding process remain the same. Relevant extract of the Order dated 11.11.2019 is as under:

"21. As regards the estimated expenditure, it is observed that there is difference of Rs.0.32Cr/MW (Rs.0.740-Rs.0.420) between the estimate of CEA and the petitioner. CEA has indicated that its estimates are indicative only and the petitioner shall go for open competitive bidding. This difference is due to the fact that CEA has not considered cost towards "Fire protection and detection" package, IDC, IEDC and GST @18%

considered by the petitioner and also attributable to difference in cost towards “FGD main package” and “Opportunity cost.”

22. It is observed that for the two packages i.e. “FGD main package” and “Electrical power supply package”, cost discovered through competitive bidding by the petitioner is Rs.0.438 Crore/MW, which is higher by Rs.0.101 Crore/MW in comparison to CEA cost of Rs.0.337 Crore/MW, including spares. This difference of Rs0.101 Crore/MW gets reduced to Rs.0.058 Crore/MW compared to the revised base cost considered by CEA in its report dated 21.02.2019. CEA, in its report dated 21.02.2019, has increased the base cost of FGD system from Rs. 0.362 crore/MW to Rs.0.405 Crore/MW based on the prices discovered by various thermal plants.

23. Considering the above facts and recognizing that the cost considered by CEA is indicative only and the cost claimed by the petitioner has been discovered based on open competitive bidding, Commission allows the cost claimed by the petitioner for the two packages i.e. “FGD main package” and “Electrical power supply package

Therefore, the Commission needs to treat the cost recommended by CEA as indicative cost and ensure that a transparent international competitive bidding process has been followed, so that prices discovered are reasonable.

26. We now proceed to compare the costs in the instant case as claimed by the Petitioner when compared with CEA recommended costs. It is clear from the table at paragraph 19 that the cost of Rs.1600.18 crore towards “FGD main package”, works out to Rs. 0.404 crore/MW (including expenditure towards site specific duct work) as against the CEA’s indicative figure of Rs.0.37 crore/MW (without site specific duct work). For site specific “Electrical power supply package”, cost claimed by the petitioner on estimated basis is Rs. 0.02 crore/MW which is yet to be awarded as against Rs. 0.047 crore/MW as per CEA recommendations. The overall cost comes to Rs.0.424 crore/MW for “FGD main package” and site-specific requirements. The Petitioner, for the purpose of provisional approval, has claimed this cost @Rs. 0.42 crore/MW (total cost at Rs. 1663 crores) as against CEA recommended base cost of Rs. 0.417 crore/MW. In our view, there is hardly any difference in the costs claimed by the Petitioner vis-à-vis that indicated by CEA as regards the “FGD main package”

Furthermore, the issue qua installation of FGD being a change in law event is no longer re integra in light of the Judgment dated 13.11.2020 in Appeal No. 101 of 2020 titled as Lalitpur Power Generation Company Limited vs. UPERC & Anr. and Judgment dated

28.08.2020 in Appeal No. 21 and 73 of 2019 titled as Talwandi Saboo vs. PSERC and Nabha Power Limited vs. PSERC.

Observation:

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

Stakeholder Comment:

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

In respect to the increment of Operation and Maintenance expenses, the said expenses be considered similar to the State of Chhattisgarh and the Operation and Maintenance expenses be kept at the same level of FY 2018-19. The actual expenses for Operation and Maintenance as incurred by the petitioner in the previous year be approved for the petitioner.

Petitioner's Reply:

In this regard it is most respectfully submitted that the aforesaid contentions raised by the Objectors are beyond the scope and extraneous to the present proceedings. Therefore, the same merit no response.

Further, it has also been alleged by the Objectors that the Petitioner had not provided any details qua O&M expenses in their objection in Petition No. 47 of 2019. In this regard, it is submitted that the Petitioner had categorically provided the said details in Para 6 & 6.1 vide its Reply in the said Petition. Although the said issue was replied vide our rejoinder dated 06.08.2020 to the Objections dated 14.07.2020 in the said matter.

Moreover, the Objectors are seeking amendment of Regulations under Regulation 68.2 of the Tariff Regulations, 2020 which pertain to the inherent power of this Hon'ble Commission. It is most respectfully submitted that the inherent powers of the court/tribunal are in addition to the powers specifically conferred to the court/tribunal

by a statute. The said powers cannot be exercised in any way which is in conflict with what has been expressly provided in the statute.

Moreover, the Hon'ble Supreme Court in the case Gujarat Urja Vikas Nigam Limited v. Solar Semi Conducted Power Company (India) Private Limited, Civil Appeal No. 6399 of 2016 [Para 34, 35, 38, 40, 58 & 59] has held that the inherent power is not a provision of law to grant any substantive relief. It was further held that the inherent powers are only a procedural provision to make orders to secure the ends of justice and to prevent abuse of process of the Court.

Observation:

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

Stakeholder Comment:

The maximum limit of base rate for Return on Equity ("RoE") in the present Petition be set on 10%.

Petitioner's Reply:

That the Objectors vide their Objections have contended that the maximum limit of Return on Equity ("RoE") in the present Petition be set on 10% instead of the 15.5% as sought by the Petitioner in its MYT Petition. While contending the same, the Objectors have relied upon the Order dated 30.05.2020 passed by the Chhattisgarh Electricity Regulatory Commission as well as the Aatmanirbhar Bharat special economic ad comprehensive package dated 13.05.2020

At the outset, it is most respectfully submitted that the Petitioner has filed the present MYT Petition in conformity with the Tariff Regulations, 2020 as notified by this Hon'ble Commission. Further, it is relevant to mention herein that the Aatmanirbhar package being relied upon by the Objectors, have been issued by the Government of India in the context of NTPC Ltd. and other Central Public Sector Generation Companies.

However, in the instant case, the Petitioner is an Independent Power Producer ("IPP"). In fact, even the MoP vide letters dated 15.05.2020 and 16.05.2020 has reiterated and clarified that the offer qua 20-25% rebate on power supply billed and interstate

transmission charges is only applicable to Central Public Sector Generation Companies. A True copy of letters dated 15.05.2020 and 16.05.2020 issued by MoP is annexed hereto and marked as ANNEXURE R/2.

Furthermore, the order dated 30.05.2020 passed by the Hon'ble Chhattisgarh Electricity Regulatory Commission is also in relation to state generating companies and therefore has no bearing on the Petitioner. In this backdrop, it is reiterated that Judgment cited/relied upon by the Objectors is case specific and cannot be accepted as binding precedent in instant matter as it is a settled law that a Judgment cannot be read as a statute.

Therefore, the said contention raised by the Objectors is wholly misplaced and liable to be rejected.

Observation:

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

Stakeholder Comment:

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

Petitioner's Reply:

That the objectors in their Objections have contended that the due date as envisaged under the PPA, i.e. 21 and the same may be taken into account for the calculation of interest on Working capital as per the Tariff regulations, 2020, i.e. 45 days of Receivables be proportionately reduced in public interest.

In this regard, it is most respectfully submitted that the due date is a commercial arrangement between the two parties and keeping in mind the benefits arising out of the Petitioner's plant and commercial understanding between the Petitioner and MPPMCL, this Hon'ble Commission while approving the PPA consciously permitted the Petitioner to levy LPS after the expiry of a period of 21 days.

In fact, even the Tariff Regulations, 2020 envisage that the due date has to be in terms of the PPA. For ease of reference, the relevant extract is reproduced hereunder:

55. Late Payment Surcharge

55.1 increase the payment of any bill for charges payable under these Regulations is delayed beyond 45 days from the date of presentation of bills or the due date as mentioned in the power purchase agreement whichever is earlier, a late payment surcharge at the rate of 1.25% per month shall be levied by the generating company.

Further, it is trite law that commercial terms and conditions forming a part of PPA per se does not become statutory in nature unless the same has an effect on determination of tariff. It is imperative to highlight that LPS has no impact upon determination of tariff and hence is merely a commercial arrangement between MPPMCL and the Petitioner. The said legal position has been fortified by the Hon'ble Supreme Court in India Thermal Power Ltd. v. State of M.P., (2000) 3 SCC 379 [Para 11]

Therefore, the said contention raised by the objectors is misconceived and wholly without merit.

Observation:

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

Stakeholder Comment:

Petitioner be directed to present the actual bills for all the coal purchase/transport in the months of January 2019, February 2019 and March 2019 for verification.

Petitioner's Reply:

That the objectors vide their comments have contended that the Petitioner be directed to present the actual bills for all the coal purchase/transport in the months of January 2019, February 2019 and March 2019 for verification.

It is most respectfully submitted that the said details have already been provided by the Petitioner vide its Response dated 19.10.2020 to queries raised by this Hon'ble Commission [Annexure P/15 of the Reply dated 19.10.2020 filed by the Petitioner]. Therefore, the same is not being repeated for the sake of brevity.

Observation:

The petitioner has provided relevant details of coal purchase like bills/invoices raised by the coal companies and detailed calculations for arriving the weighted average landed cost of coal. Based on the details and documents filed by the petitioner, the Commission has worked out the weighted average landed cost of coal for preceding three months and same has been considered for determination of energy charges,

Stakeholder Comment:

Provide proper justification with respect to the coal purchased at higher price under Non-FSA and the electricity been sold in open market at the rate lower than the rate declared for the State of Madhya Pradesh.

Petitioner's Reply:

That the objectors vide their comments dated 14.12.2020 have sought justification qua the coal purchased at higher price under NFSA and the electricity been sold in open market at a rate lower than the rate declared for the State of Madhya Pradesh.

In this regard it is most respectfully submitted that the Petitioner has been facing a problem of erratic scheduling from MPPMCL over the years. Due to erratic scheduling being given by the Procurer, Generator is forced to operate the plant at partial loading. Further, in absence of proper schedule, it has been a difficult scenario to maintain the technical minimum of the plant and operate the plant efficiently.

That, on account of the aforesaid, the Petitioner has been constrained to sell the remaining quantum of Electricity on Exchange, in order to maintain the Technical Minimum of the Plant. Therefore, the sale of power on Power Exchange is not out of the free will of the Petitioner but rather dictated by the erratic scheduling. In addition, it is also noteworthy that the Petitioner, at the most of the occasions incurs substantial losses on power being sold on exchange, as the price offered at exchange is substantially lower than the actual cost of generation.

Observation:

The energy charges have been worked out in this order for working capital purpose. The base rate of the energy charges shall however be subject to month-to-month adjustment based on actual fuel price and actual GCV of coal on received basis and the respondent shall have to deal with issue in light of provisions under PPA.

Stakeholder Comment:

The petitioner is transmitting the non-scheduled electricity through interstate transmission of Madhya Pradesh, the Petitioner be directed to produce documents qua whether the fee/loss payable towards the use of interstate transmission line is being recovered or not.

Petitioner's Reply:

That the objectors have contended that since the Petitioner is transmitting the non-scheduled electricity through interstate transmission of Madhya Pradesh, the Petitioner be directed to produce documents qua whether the fee/loss payable towards the use of interstate transmission line is being recovered or not

At the outset, it is most respectfully submitted that aforesaid contention raised by the Objectors are beyond the scope and extraneous to the present proceedings. Therefore, the same merit no response.

However, without prejudice to the above, it is humbly submitted that the Petitioner has been depositing Transmission charges to the concerned authority as and when it has been applicable.

Observation:

The issue is not related to subject petition. However, the petitioner submitted that it has been depositing Transmission charges to the concerned authority as and when it has been applicable.

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