

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION**

5<sup>th</sup>Floor, "Metro Plaza", Bittan Market, Bhopal (M.P.) - 462 016



**Petition No. 57 of 2017**

**PRESENT:**

**Dr. Dev Raj Birdi, Chairman**

**Mukul Dhariwal, Member**

**Anil Kumar Jha, Member**

**IN THE MATTER OF:**

**True-up of Generation Tariff of 2 x 250 MW (Phase-I) coal based Thermal Power Station at Bina, District Sagar (M.P.) for FY 2016-17 determined by MP Electricity Regulatory Commission vide Multi Year Tariff Order dated 08<sup>th</sup> August' 2016.**

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

**PETITIONER**

**Vs.**

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

**RESPONDENTS**

## ORDER

(Passed on this day of 24<sup>th</sup> May' 2018)

1. M/s Jaiprakash Power Ventures Limited (hereinafter called "the petitioner" or JPVL) has filed the subject petition on 14<sup>th</sup> November' 2017 for True-up of Generation Tariff for FY 2016-17 in respect of its 2x250MW (Phase I) coal based Bina Thermal Power Station determined by the Madhya Pradesh Electricity Regulatory Commission (hereinafter called "the Commission or MPERC") vide Multi Year Tariff Order dated 08<sup>th</sup> August' 2016.
2. The subject true-up petition has been filed under Section 62 and 86 (1)(a) of Electricity Act, 2003 and in terms of proviso 8.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 (herein after referred to as "the Regulations' 2015").
3. The Bina Thermal Power Station (Phase I) under the subject petition comprises of two generating Units of 250 MW each. Date of Commercial Operation (CoD) of both units of the petitioner's power plant are as given below:

**Table 1: CoD of Unit No.1 and 2**

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

### **Background**

4. Vide tariff order dated 26<sup>th</sup> November' 2014 in petition no. 40 of 2012, the Commission determined the final generation tariff for 2 x 250 MW (Phase-I) of Bina Thermal Power Station for FY 2012-13 and FY 2013-14 based on the Annual Audited Accounts. The generation tariff for FY 2014-15 and FY 2015-16 was determined on provisional basis subject to true-up on availability of Annual Audited Accounts.
5. On 23<sup>rd</sup> January' 2015, the petitioner filed a review Petition No. 05 of 2015, seeking review of the aforesaid Commission's order dated 26<sup>th</sup> November' 2014 on the following issues:
  - a. Pre commissioning Fuel Expenses
  - b. Double deduction of infirm power
  - c. Interest and Finance Charges on Loan
  - d. Inadequate Recovery of Capacity Charges

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6. Vide order dated 8<sup>th</sup> May' 2015 in the review petition no. 05 of 2015, the Commission revised the Annual Capacity (fixed) charges on the basis of revision in only one issue i.e. interest and finance charges on loan. Aggrieved with aforesaid order, the petitioner filed an appeal No. 25 of 2016 with the Hon'ble Appellate Tribunal for Electricity, New Delhi on the following issues:-
- (i) Pre-Commissioning Fuel Expenses
  - (ii) Double Deduction of Infirm Power
  - (iii) Inadequate recovery of Annual Capacity Charges.
  - (iv) Post Facto adjustment on account of Non-Tariff Income.
7. Hon'ble Appellate Tribunal for Electricity, by its Judgement dated 13<sup>th</sup> February' 2017 in Appeal No. 25 of 2016 partly allowed the Appeal. Two issues regarding inadequate recovery of capacity charges and post facto deduction of non-tariff income have been decided against the petitioner and the Commission's Order was upheld to the extent of these two issues. However, the Commission's order was remanded back to the Commission on first two issues regarding pre-commissioning fuel expenses and double deduction of revenue earned from sale of infirm power.
8. In terms of the direction of the Hon'ble Tribunal, in their judgement dated 13<sup>th</sup> February' 2017 the petitioner M/s JPVL filed a petition No. 11/ 2017 with the Commission for consideration of following two issues:-
- (i) Consider actual Pre-Commissioned Fuel Expenses.
  - (ii) Re-consider double deduction of revenue earn from sale of infirm power.
9. Vide order dated 04<sup>th</sup> 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 earn from sale of infirm power, the Commission had observed that the petitioner is still not been able to clarify its stand on this issue. Therefore, the issue of double deduction of revenue from infirm power was not considered by the Commission.
10. Vide order dated 3<sup>rd</sup> June' 2016, the Commission had issued the true-up order for FY 14-15 in Petition No. 70 of 2015 based on the Annual Audited Accounts for FY 14-15.
11. On 01<sup>st</sup> August' 2016, the petitioner filed a review Petition No. 47 of 2016, seeking review of the aforesaid order dated 03<sup>rd</sup> June' 2016 to the extent of disallowed Grossing up of the base rate of Return on Equity with MAT. The petitioner also filed an Interlocutory Application in the review Petition No. 47 of 2016 and raised an additional issue for review on disallowance of O&M expenses for the dedicated transmission lines of the Project.

12. Further, vide order dated 21<sup>st</sup> June' 2017, the Commission had issued the true-up order for FY 2015-16 based on the Annual Audited Accounts for FY 2015-16.
13. Vide order dated 25<sup>th</sup> September' 2017, in review Petition No. 47 of 2016, the Commission considered the issue regarding grossing up the rate of return on equity with MAT and revised the Annual Capacity Charges for FY 2014-15.
14. The Commission Vide order dated 08<sup>th</sup> August' 2016 had issued the MYT order for FY 2016-17 to 2018-19. The base opening figures of Capital Cost and funding in the aforesaid MYT order were considered from the true-up order for FY 2014-15 issued on 3<sup>rd</sup> June' 2016. The details of Annual Capacity (fixed) Charges for both the units of Bina Thermal Power Plant for FY 2016-17 determined vide Commission's order dated 08<sup>th</sup> August' 2016 are as given below:

**Table 2: Annual Capacity (Fixed) Charges (Rs. in Crore)**

Particulars	FY 2016-17
Return on Equity	162.01
Interest Charges on Loan	221.32
Depreciation	171.42
Operation & Maintenance Expense	135.00
Interest on Working Capital	56.22
Lease Rent Payable	0.00
<b>Annual Capacity (Fixed) Charges</b>	<b>745.97</b>
Less: Non-Tariff Income	<b>(0.50)</b>
Net Annual Capacity Charges	<b>745.47</b>
<b>Annual Capacity (Fixed) charges corresponding to 65% of the installed capacity of the units</b>	<b>484.55</b>

15. In the subject petition, the petitioner sought true-up of Annual Capacity (fixed) Charges for FY 2016-17 in respect of the additional capital expenditure incurred during FY 2016-17 in accordance with Regulation 8.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 which provides as under:

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

16. The petitioner filed the additional capitalization of Rs. 1.69 Crore during FY 2016-17. Based on the aforesaid additional capitalization during FY 2016-17, the petitioner claimed the following Annual Capacity (fixed) Charges and energy charges for Unit No. 1&2 of Bina Thermal Power Station:

**Table 3: Capacity and Energy Charges claimed for FY 2016-17 (Rs. in Crore)**

S. No.	Particulars	FY 2016-17
<b>1</b>	<b>Capacity Charge or Fixed Charge</b>	
1.1	Return on Equity	208.07
1.2	Interest on Loan	223.25
1.3	Depreciation	179.54
1.4	Interest on Working Capital	62.18
1.5	O & M Expenses	135.00
1.5A	O & M expenses (400kV Transmission Lines & Bay)	0.32
1.6	Lease Rent Payable	0.35
	<b>Total Annual Capacity (Fixed) Charges</b>	<b>808.72</b>
1.7	Less:-Non Tariff Charges	3.19
	<b>Net Annual Capacity (Fixed) Charges</b>	<b>805.53</b>
<b>2</b>	<b>65% of Capacity charge</b>	<b>523.59</b>
<b>3</b>	<b>Variable Cost (Coal + Secondary fuel)</b>	<b>943.83</b>

17. The petitioner filed a copy of the Annual Audited Accounts of Jaypee Bina Thermal Power Plant (JBTPP), along with the Consolidated Balance Sheet of Jaypee Power Ventures Limited (JPVL) as on 31<sup>st</sup> March, 2017 with the subject petition.
18. With the above submission, the petitioner prayed the following:
- (a) *True Up Capacity Charges in respect of FY 2016-17 determined by the Commission vide MYT Order dated 08.08.2016 in terms of the Additional Capital Expenditure incurred by the Petitioner and*
- (b) *Pass appropriate Orders directing recovery of Capacity Charges worked out by petitioner after addition of Rs 1,68,83,495/- (Rupees One Crore Sixty Eight Lacs Eighty Three Thousand Four Hundred Ninety Five Only);*
19. The Commission has scrutinized the subject petition in accordance with the principles, methodology and the norms specified in the MPERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2015 and Annual Audited Accounts of Jaypee Bina Thermal Power Project for FY 2016-17. The Commission has also examined the subject true up petition in light of the comments/suggestions offered by the Respondent No. 1 (MPPMCL)/ other stakeholders and the response of petitioner on the same.
20. In the subject true-up petition, the Commission has considered the opening figures of Gross Fixed Assets, Equity, Loan, Accumulated Depreciation as per the order dated 04<sup>th</sup> December' 2017 in petition No. 11 of 2017.

### Procedural History

21. Motion hearing in the subject true up petition was held on 19<sup>th</sup> December' 2017. Vide order dated 19<sup>th</sup> December' 2017, the petition was admitted and the petitioner was directed to serve copies of its petition to all Respondents in the matter. The Respondents were also asked to file their response on the petition by 17<sup>th</sup> January' 2018.
22. Vide Commission's letter dated 08<sup>th</sup> January' 2018, the information gaps on preliminary scrutiny of the petition were communicated to the petitioner seeking its comprehensive reply by 22<sup>th</sup> January' 2018.
23. The next hearing in the subject matter was held on 23<sup>th</sup> January' 2018, wherein the Respondent submitted that it has not received the copy of petition, therefore it requires 4 week's time to furnish its reply/ comments on the subject petition. The petitioner also sought 3 week's time to furnish its reply on information gaps communicated vide letter dated 08<sup>th</sup> January' 2018. Accordingly, the Commission direct the Responded and the petitioner to furnish their respective reply before 20<sup>th</sup> February' 2018.
24. By affidavit dated 9<sup>th</sup> February' 2018, Respondent No. 1 (M.P. Power Management Co. Ltd.) filed its reply/comments on the subject petition.
25. By affidavit dated 27<sup>th</sup> February' 2018, the petitioner filed its reply to the issues raised by the Commission. By affidavit dated 29<sup>th</sup> March' 2018, the petitioner also filed its additional submission in continuation to information furnished vide affidavit dated 27<sup>th</sup> February' 2018. Issue-wise response of petitioner to all information gaps/ requirement of additional information/ documents sought by the Commission are mentioned in **Annexure-I** of this Order.
26. By affidavit dated 08<sup>th</sup> March' 2018, the petitioner filled rejoinder to the reply/ comments filled by the Respondent No.1. The petitioner's responses on each comment offered by the Respondent No.1 are mentioned in **Annexure-II** of this Order.
27. The Commission has also received the comments from one stakeholder. By affidavit dated 8<sup>th</sup> March' 2018, the petitioner filled its response on each issue raised by the Stakeholder. The issues raised in the aforesaid comments are neither found relevant to the subject true-up petition nor in accordance with the Regulations, 2015.
28. The public notice for inviting comments/ suggestions from stakeholders was published on 13<sup>th</sup> February' 2018 in the following newspapers:

- (i) Dainik Jagran (Hindi), Bhopal,
- (ii) Dainik Jagran (Hindi), Rewa and
- (iii) The Times of India (English)

29. The public hearing in this matter was held on 13<sup>th</sup> March' 2018 wherein the representatives of the petitioner, Respondent No. 1 and other stakeholder appeared.

**Capital Cost as on 1<sup>st</sup> April' 2016****Petitioner's Submission:**

30. The petitioner filled opening Gross Fixed Asset of Rs. 3518.83 Crore as on 1<sup>st</sup> April' 2016. The petitioner claimed additional capitalization of Rs.1.69 Crore during FY 2016-17. The details of opening Gross Fixed Assets along with asset additions during FY 2016-17 and closing Gross Fixed Assets as filed by the petitioner are as given below:

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

Particulars	Capital Cost as on 1 <sup>st</sup> April, 2016	Addition during FY 2016-17	Capital Cost as on 31 <sup>st</sup> March, 2017
Land	6.86	-	6.86
BTG	1741.36	0.41	1741.77
BOP	1157.10	0.84	1157.94
Civil Cost	613.51	0.43	613.94
<b>Gross Fixed Assets</b>	<b>3518.83</b>	<b>1.69</b>	<b>3520.52</b>

**Provision in Regulations:**

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

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

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

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

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



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

**Commission’s Analysis:**

32. In the subject petition the petitioner claimed Opening Gross Fixed Assets of Rs. 3518.83 Cr. The petitioner filed the copy of the Annual Audited Accounts of Jaypee Bina Thermal Power Plant (JBTPP), along with the Consolidated Balance Sheet of Jaypee Power Ventures Limited (JPVL) as on 31<sup>st</sup> March’ 2017.
33. With regard to capital cost of the project, it was observed that the opening balance and closing balance of Gross Fixed Assets (GFA) filed in the subject petition (TPS 5B) and those recorded in Note 2 of the Annual Audited Accounts for FY 2016-17 are at variance as given below:

**Table 5: Variation in Gross Fixed Assets**

**(Rs. in Crore)**

<b>Sr. No.</b>	<b>Particular</b>	<b>Filed in the subject petition</b>	<b>Recorded in Note 2 of Annual Audited Account</b>
1.	Opening GFA as on 01 <sup>st</sup> April’ 2016	3518.83	3494.42
2.	Addition during FY 2016-17	1.69	1.69
3.	Closing GFA as on 31 <sup>st</sup> March’ 2017	3520.52	3496.11

34. It is further observed that in the last true up petition for FY 2015-16, the petitioner filed the Closing Gross Fixed Assets of Rs. 3495.35 Crore as on 31<sup>st</sup> March’ 2016 as per Audited Accounts for FY 2015-16, whereas the opening Gross Fixed Assets of Rs. 3494.42 Crore as on 01<sup>st</sup> April’ 2016 is indicated in Note-2 of the Annual Audited Accounts for FY 2016-17.
35. Vide Commission’s letter dated 08<sup>th</sup> January’ 2018, the petitioner was asked to explain the reasons for aforementioned discrepancies.
36. By affidavit dated 27<sup>th</sup> February’ 2018, the petitioner submitted the following:

**(Rs. in Crore)**

<b>Sl. No.</b>	<b>Particular</b>	<b>Rs. in Cr.</b>	<b>Remarks</b>
1.	Gross Fixed Assets as on 31-03-2016 as per Audited Accounts for FY 2015-16	3,495.35	Filed with True Up Petition for FY 2015-16, namely, Petition No. 62/2016
2.	<b>Less:-</b> Gross Block of Lease Hold Land not recognized as Fixed Asset as per New Indian Accounting Standards mandatorily applicable w.e.f. 01-04-2016	0.92	

3.	Gross Fixed Assets as on 01-04-2016 as per Note-2 of Annual Audited Accounts for FY 2016-17	3,494.43	Filed with True Up Petition for FY 2016-17, namely, Petition No. 57/2017 (R/off diff of Rs 0.01 Crore)
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On account of aforesaid reasons, Reconciliation of variances observed in Para (i) by the Hon'ble Commission between the figures of fixed assets filed in the Petition and the Audited Financial Accounts are as under:-

Sl. No.	Particular	Amount in Rs. Crore	Remarks
1.	Opening Gross Fixed Assets as on 01-04-2016/31-03-2016	3,518.83	As filed in the subject Petition
2.	<b>Less:</b> - Interest for 218 days (intervening period between COD of Unit I & COD of Unit II) on Debt Component of unallocated costs allowed by Hon'ble Commission vide its Order dated Nov 26th, 2014. <b>(Please refer Para 4.30 &amp; 4.31 of the said Order)</b>	23.46	
3.	Gross Fixed Assets as on 31-03-2016 as per Audited Accounts for FY 2015-16	3,495.37	Same as Sl. No. 1 of Table-1 (R/off diff of Rs 0.02 Crore)
4.	<b>Less:-</b> Gross Block of Lease Hold Land not recognized as Fixed Asset as per Indian Accounting Standards mandatorily applicable w.e.f. 01-04-2016	0.92	Same as Sl. No. 2 of Table-1.
5.	Opening Gross Fixed Assets as on 01-04-2016 as per Annual Audited Accounts for FY 2016-17	3,494.45	Same as Sl. No. 3 of Table-2 above and as recorded in the Audited Accounts for FY 2016-17 filed with instant Petition (R/off diff of Rs.0.02 Crore)
6.	Addition during FY 2016-17	1.69	
7.	Closing Gross Fixed Assets as on 31-03-2017 as per Annual audited Accounts for FY 2016-17	3,496.14	As recorded in the Note-2 of Annual Audited Accounts for FY 2016-17 filed with instant Petition) (R/off diff of Rs.0.03 Crore)
8.	<b>Add:-</b> Gross Block of Lease Hold Land not recognized as Fixed Asset as per Indian Accounting Standards mandatorily applicable w.e.f. 01-04-2016	0.92	
9.	<b>Add:-</b> Interest for 218 days (intervening period between COD of Unit I & COD of Unit II) on Debt Component of unallocated costs allowed by Hon'ble Commission vide its Order dated Nov 26th, 2014. <b>(Please refer Para 4.30 &amp; 4.31 of the said Order)</b>	23.46	
10.	Closing Gross Fixed Assets as on 31-03-2017	3,520.52	Filed in the titon.

37. It was further observed by the Commission that the opening GFA of Rs. 3518.83 Cr. as on 1<sup>st</sup> April' 2016 as filed in the petition is not in line with closing GFA of Rs. 3505.58 Crore approved in the last true-up Order for FY 2015-16. Vide Commission letter dated 08<sup>th</sup> January' 2018 the petitioner was asked to submit the reasons for difference in aforesaid figures.

38. By affidavit dated 27<sup>th</sup> February' 2018, the petitioner submitted the following:

*“The difference between capital cost of Rs 3505.58 Crore admitted by Hon’ble Commission and the Capital Cost of Rs 3518.83 Crore submitted by Petitioner is equal to the disallowances of Rs 13.25 Crore in Capital Cost made by the Hon’ble Commission during the proceedings of Petition No.40/2012 & Review Petition No.05/2015 on account of two issues namely:*

- *Rs 4.01 Crore on account of Pre-Commissioning Fuel Expenses.*
- *Rs 9.23 Crore on account of Double Deduction of Infirm Power.*

*However, the reconciliation of the difference between Capital Cost as on 31-03-2016 admitted by the Hon’ble Commission and the Capital Cost submitted by the Petitioner is as under:-*

<b>Sl. No.</b>	<b>Particular</b>	<b>Rs. Crore</b>
1.	Capital Cost up to 31.03.2016 admitted by Commission in True Up Order for FY 2015-16	3,505.58
2.	<b>Add:-</b> Pre-Commissioning Coal Cost disallowed by Commission vide its Order dated Nov 26 <sup>th</sup> , 2014/08-05-2015 having been successfully contested by the Petitioner ( Approved by Commission vide Remand Petition Order dated 04-12-2017)	4.01
3.	<b>Add:-</b> Disallowance made on account of revenue earned from sale of infirm power Commission vide its Order dated Nov 26 <sup>th</sup> , 2014 being contested by the Petitioner pursuant to disallowance of the same by Commission vide Remand Petition Order dated 04-12-2017 (Appeal filed with APTEL vide Diary No. 345 of 2018)	9.23
<b>4.</b>	<b>Capital Costs as on 01.04.2016 filed in the Petition</b>	<b>3,518.83</b>

*However, the Petitioner would humbly like to submit that the Commission vide its order dated 4<sup>th</sup> December, 2017 in the Remand Petition No. 11 of 2017 has allowed Pre-Commissioning Fuel Expenses of Rs.4.02 Crore to be added back to Capital Cost.”*

39. In view of the above submission, the Commission observed that the petitioner considered the impact of disallowance made by the Commission in respect of Rs. 4.01 Crore towards pre-commissioning fuel expenses and Rs. 9.23 Crore towards double deduction of infirm power.

40. As mentioned in para 6 and 7 of this order, the appeal filed by the petitioner on above issues was disposed of vide Hon’ble Tribunal’s Judgement dated 13<sup>th</sup> February’ 2017. The Hon’ble APTEL partly allowed the appeal and directed the petitioner to approach the Commission. The petitioner filed a petition no. 11/2017 with the Commission, which was disposed of vide Commission’s order dated 04<sup>th</sup> December’ 2017.

41. The Commission vide its aforesaid order dated 04<sup>th</sup> December’ 2017 has revised the Capital Cost and an amount of Rs. 4.01 Crore on account of pre-commissioning fuel

expenses had been added in the capital cost. Accordingly, the Commission has considered the opening Gross Fixed Assets of Rs.3509.59 Crore as on 01<sup>st</sup> April' 2016 as admitted by the Commission (as on 31<sup>st</sup> March' 2016) in its order dated 04<sup>th</sup> December' 2017 in petition No. 11 of 2017.

### **Additional Capitalization**

42. The petitioner filed the additional capitalization of Rs. 1.69 Crore during FY 2016-17. Out of this, Rs. 0.41 Crore pertains to BTG, Rs. 0.84 Crore towards BOP and the balance of Rs. 0.43 Crore towards civil cost.

43. With regard to the aforesaid additional capitalization claimed in the petition, the petitioner submitted the following:

**(i) BTG:**

*Details of additions in BTG during FY 2016-17 are as follows:-*

- *Rs 0.41 Crore were incurred towards the Service tax claimed by M/s BHEL Haridwar in respect of BTG which was capitalized during the year.*
- *Rs 0.01 Crore were incurred towards the procurement of Control Transformer for Unit-1 ESP Control system.*

**(ii) BOP:**

*Details of additions in BOP during FY 2016-17 are as follows:-*

- *Rs 0.58 Crore were incurred towards Coal Handling Plant wherein the major expenditure was incurred on procurement of system software up gradation of Program Logic Control of CHP operation software and procurement of improved version of PLC software for Coal Blending System, Sheet cutting machine for use during modification and improvement of Air Circulation system in CHP Tunnel, AC to DC convertor for use in CHP operation control upgradation.*
- *Rs 0.05 Crore were spent for procurement and installation of equipment for measurement of dissolved oxygen in SWAS system for system modification and improvement. The SWAS system performance for monitoring of the boiler water has improved with this installation and modification.*
- *Rs 0.02 Crore were incurred towards procurement of Scanner for detecting the level of Ash in the intermediate Silos installed in Ash Handling System.*
- *Rs 0.03 Crore were incurred towards the procurement and installation of miscellaneous items such as procurement of UPS system in 33 KVA and CH Main control room/ Electrical Room-1 (ER-1) and also for providing latest and improved version of computers for preservation of plant data in switchyard system.*
- *Rs 0.16 Crore were incurred towards procurement of floor to floor ceiling system on cable tray entry points in Main plant Building.*

**(iii) Civil Cost:**

*Details of additions under Civil during FY 2016-17 are as follows:-*

- *Rs 0.32 Crore were incurred towards the construction of road from Plant Gate to STP area;*
- *Rs 0.09 Crore spent towards the cost of construction of Boundary wall at Barrage Area.*
- *Rs 0.02 Crore procurement of Portable gas analyser.*

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

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

- (a) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law;*
- (b) Change in law or compliance of any existing law;*
- (c) Any expenses to be incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies of statutory authorities responsible for national security/internal security;*
- (d) Deferred works relating to ash pond or ash handling system in the original scope of work;*
- (e) Any liability for works executed prior to the cut-off date, after prudence check of the details of such un-discharged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc.*
- (f) Any liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments;*
- (g) Any additional capital expenditure which has become necessary for efficient operation of generating station other than coal based stations, the claim shall be substantiated with the technical justification duly supported by the documentary evidence like test results carried out by an independent agency in case of deterioration of assets, report of an independent agency in case of damage caused by natural calamities, obsolescence of technology, up-*

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*gradation of capacity for the technical reason such as increase in fault level;*

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

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

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

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

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

45. Regarding the Cut off date of the project, Regulation 4.1 (I) of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:

*‘Cut-off Date’ means 31<sup>st</sup> March’ of the year closing after two years of the year of commercial operation of whole or part of the project, and in case the whole or part of the project is declared under commercial operation in the last quarter of a year, the cut- off date shall be 31<sup>st</sup> March of the year closing after three years of the year of commercial operation:*

46. The Bina thermal Power Project (Phase-I) achieved its CoD on 7<sup>th</sup> April’ 2013, therefore, the cut of date of the project shall be 31<sup>st</sup> March’ 2016 in accordance with Tariff Regulations, 2015. The Commission has observed that the additional capitalization filed by the petitioner is beyond the cut-off date of the project.

47. Vide Commission's letter dated 08<sup>th</sup> January' 2018, the petitioner was asked to file a comprehensive reply on the various issues related to additional capitalization communicated to it by the Commission. By affidavit dated 27<sup>th</sup> February' 2018, the petitioner filled its response on each issue raised by the Commission. The issue-wise response filled by the petitioner are as given below:

**Issue**

- i) Whether the addition of assets is on account of the reasons mentioned in Regulation 20.2 and 20.3 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015. The petitioner was required to furnish the information in the format prescribed in the letter.
- ii) Whether the assets capitalized during the year are under original scope of work. Supporting documents in this regard were also sought.

**Petitioner Response:**

(i) & (ii) *The Petitioner humbly submits that the additional net capitalization of Rs 1.69 Crore falls within the norms specified under Regulation 20.2 and 20.3 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015.*

*The Petitioner would humbly like to draw the kind attention of the Commission in the light of the above Regulation that the said additional capitalization is within the original scope of the work of Rs 3,575/- Crore authorized by the Resolution of Board of Directors dated May 17<sup>th</sup>, 2014.*

*Resolution of Board of Directors dated May 17<sup>th</sup>, 2014 is attached as Annexure-1.*

*The detailed reasons of asset additions under suitable provisions of Regulations including the supporting documents is furnished in the format as provided by the Commission as given below.*

S. N	Particulars As per MPERC	Asset Addition	Detailed Reasons of Asset Addition	Provision of Regulations Under which Add. Cap. Has been filed.	Supporting Documents attached (Copy of Bills, Invoices annexed)
<b>1. BTG</b>					
A	Service Tax	0.41	<i>This amount is on account of Service tax claimed by M/s BHEL, Haridwar during the year 2016-17 for the BTG Contract awarded to BHEL being a statutory liability on us it becomes imperative to us to reimburse the same.</i>	20.3 (e )	<i>Attached as Appendix 1A to Annexure 2</i>

B	Control Transformer	0.01	This expenditure was on account of procurement of various instruments including Control Transformer for Unit-1 ESP Control System and Portable Hardness Tester so as to improve the overall BTG efficiency thereby reducing the breakdown and downtime.		Attached as Appendix 1B to Annexure 2
<b>TOTAL BTG (A)</b>		<b>0.42</b>			
<b>2. BOP</b>					
A	Coal Handling Plant	0.58	The major expenditure was incurred on procurement of system software up gradation of Program Logic of CHP operation software as the originally provided software had become obsolete (out dated ) and the OEM, M/s ABB Ltd stopped giving technical support for the out dated system. This in turn forced us to upgrade it with the new version to have efficient and reliable operation of CHP system.		Attached as Appendix 2A to Annexure 2
B	Measurement Equipment	0.05	This amount was spent for Procurement and installation of equipment for measurement of dissolved oxygen in Steam and Water Analysis System so as to improve the boiler feed water monitoring and prevent damage of steam turbine, steam boiler and other apparatus due to scaling and corrosion.		Attached as Appendix 2B to Annexure 2
C	Detecting Scanner	0.02	The expenditure to the tune of Rs. 0.02 Crore is on behalf of major modification and improvement works carried out in Fuel Oil supply system (LDO), wherein provisions were made to provide LDO Supply to both the units, if the situation arises for lighting up of both the units simultaneously . The original system did not allow for this arrangement.		Attached as Appendix 2C to Annexure 2
D	Miscellaneous Items	0.03	This expenditure is on account of procurement and installation of CCTV system in Central store so as to ensure the safety and security of costly spare materials store at the storage yard. This has helped improving the safety of the total storage area.	20.3 (c )	Attached as Appendix 2D to Annexure 2
E	Floor Ceiling System	0.16	Rs. 0.16 Crore were incurred towards procurement of floor to floor ceiling system on cable tray entry points in Mail Plant Building to eliminate spreading of fire in the event of hazard, control in movement of Rodents and other insects through cable entry points into panels and eliminate seepage of water through cable trays etc. This was inevitable and important for electrical safety and to avoid serious hazards that can be cause by rodents.		Attached as Appendix 2E to Annexure 2
<b>TOTAL BOP (B)</b>		<b>0.84</b>			
<b>3. Civil Cost</b>					
A	Construction of Road	0.32	Rs. 0.32 Crores were incurred towards the construction of road from Plant Gate to STP Area		Attached as Appendix 3A to Annexure 2
B	Construction of Boundary Wall	0.09	Rs. 0.09 Crors were incurred towards the Boundary Wall at Barrage area to improve the security and safety of the barrage.	20.3 (c )	Attached as Appendix 3B to Annexure 2



C	Portable Gas Analyser	0.02	Rs. 0.02 Crores were spent for procuring Portable Gas Analyser which has become essential for maintaining the stringent new environmental norms. The use of the equipment has become essential and inevitable to collect the sample and analyze for correction of atmospheric pollution as per MP State Pollution Control Norms.	Attached as Appendix 3C to Annexure 2
	<b>TOTAL Civil Cost (C)</b>	<b>0.43</b>		
	<b>Total Addition during the Year (A+B+C)</b>	<b>1.69</b>		

**Issue:**

- iii) Why the above works claimed under additional capitalization have not been carried out/completed up to CoD and Cut-off date.

**Petitioner Response:**

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

**Issue:**

- iv) The asset addition of Rs. 1.69 Crore claimed in the petition be reconciled with the figures recorded in the Assets cum Depreciation Register.

**Petitioner Response:**

The Reconciliation between asset additions of Rs 1.69 Crore claimed in the petition and Asset-cum-Depreciation Register is as under:

Description	Amount in Rs.
Total addition as per Asset-cum-Depreciation Register filed with the Petition as Appendix-1 to TPS Forms	16,883,495.00
Say,	Rs. 1.69 Crore
Addition claimed in the Petition	Rs. 1.69 Crore
Difference	NIL

The Petitioner also humbly submits that above addition during FY 2016-17 filed in the Petition & Asset-cum-Depreciation Register is in agreement with the Addition during FY 2016-17 as per Note-2 of Annual Audited Accounts for FY 2016-17 as well.

**Issue**

- (v) In form TPS-5B, the petitioner has filed the break-up of capital cost components however, in the same format the original project cost column is not filled up. The petitioner is required to file the break-up of original project cost in the same Form TPS 5B in this regard.

**Petitioner Response:**

The break-up of original project cost in TPS-5B format is attached herewith as Annexure-3. The Commission may be pleased to note that though there are some minor variations within the sub-groups of the Project Cost, the overall capital expenditure as on 31.03.2017, is well within the estimated cost of completion of Rs.3,575 Crore. The details are as under:-

<b>Particulars</b>	<b>Rs. in Crs</b>
Estimated Cost of Completion	3,575.00
Add: Interest for intervening period between COD of Unit I & COD of Unit II on Debt Component of unallocated costs allowed by Hon'ble Commission vide its Order dated Nov 26 <sup>th</sup> , 2014.	23.46
<b>Adjusted Cost of Completion</b>	<b>3598.46</b>
<b>Current Project Cost upto 31.03.2017 filed in the Petition</b>	<b>3,520.52</b>

**Issue**

- (vi) The petitioner is required to file the status of Liquidated Damages if any, recovered/to be recovered from the different vendors as on 31<sup>st</sup> March' 2017.

**Petitioner Response:**

The Petitioner would humbly like to submit that no Liquidated Damages has been claimed by Petitioner from vendors as on 31<sup>st</sup> March 2017.

**Commission's Analysis:**

48. On perusal of the details and documents submitted by the petitioner, it is observed that the additional capitalization of Rs 1.69 Crore as claimed by the petitioner is indicated in Annual Audited Accounts of Jaypee Bina Thermal Power Plant (JBTPP) for FY 2016-17. Further, the aforesaid additional capitalization is after the cut-off date in terms of aforesaid Tariff Regulations, 2015.
49. On scrutiny of the petitioner's response on each component claimed under additional capitalization vis-a-vis the issues raised by the Commission and provisions under Regulation 20.3 of the Tariff Regulations, 2015, the Commission has observed the following::

**BTG:**

- (a) The petitioner has claimed Rs. 0.41 Crore under BTG towards Service Tax liability claimed by M/s. BHEL and same has been capitalized during FY 2016-17. The petitioner has claimed aforesaid additional capitalization under Regulation 20.3(e) of the tariff Regulations, 2015, which provides as under:

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

- (b) In view of the submission made by the petitioner, the Commission has observed that the amount on account of service tax claimed by the petitioner is the liability for the works executed prior to the cut-off date within the original scope of work. The aforesaid liability was also part of the contract for BTG awarded to BHEL. The petitioner has also filed the document in support of its claim. Therefore, the Commission has considered the additional capitalization of Rs. 0.41 Crore towards Service Tax Liability in terms of the Regulation 20.3(e) of the tariff Regulations, 2015.
- (c) The petitioner has also claimed Rs. 0.01 Crore towards procurement of control transformers for Unit No. 1 ESP control system. However, the petitioner has not mentioned any Regulation under which these expenses were claimed in the subject petition. Further, Proviso of Regulation 20.3(i) of the Regulation, 2015 provide that any expenditure on acquiring the minor items after cut-off date shall not be considered for additional capitalization for determination of tariff w.e.f. 01.04.2016. Therefore, the Commission has not considered the claim of Rs. 0.01 Crore under additional capitalization in this order.

**BOP:**

- (a) The petitioner claimed additional capitalization of Rs. 0.58 Crore towards coal handling plant. The petitioner has mentioned that the major expenditure was on procurement of system software up-gradation of program login of CHP Operation software as originally provided software had become obsolete.
- (b) Vide Commission's letter dated 8<sup>th</sup> January' 2018, the petitioner was asked to mention the provision of Regulation under which aforesaid additional capitalization is claimed in the subject petition. However, the petitioner in its reply dated 27<sup>th</sup> February' 2018 has not mentioned the specific Regulation under which these expenses towards coal handling plant were filed in the subject petition. The Commission has observed that these expenses after cut-off date are not covered under Regulation 20.3 (a to i) of the Tariff Regulations, 2015 hence not considered in this order.
- (c) The petitioner also claimed additional capitalization of Rs. 0.05 Crore towards procurement of any installation of equipment for measurement of dissolved oxygen in Steam and Water Analysis System (SWAS). The petitioner has not mentioned any specific provision of the Regulations, 2015 under which these expenses claimed. Moreover, proviso of Regulation 20.3(i) provides that any expenditure on acquiring of minor items after cut-off date shall not be considered under additional capitalization for determination of tariff. Therefore, these expenses are not considered by the Commission in this order.

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- (d) The petitioner claimed Rs. 0.02 Crore towards procurement of scanner for detecting the level of ash in the intermediate silos. The petitioner has not mentioned the Regulation under which these expenses were claimed in the subject petition. The Commission observes that these expenses are not covered under Regulation 20.3 of the tariff Regulations, 2015, hence not considered in this order.
- (e) The petitioner claimed Rs. 0.03 Crore towards procurement and installation of CCTV system in central store in order to ensure safety and security of material at store yard. Vide affidavit dated 27<sup>th</sup> February' 2018, the petitioner mentioned that the aforesaid expenses cover under Regulation 20.3(c) of tariff Regulations, 2015, which provides as under:
- “Any expenses to be incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies of statutory authorities responsible for national security/internal security;”*
- (f) In view of the above, the aforesaid expense of Rs. 0.03 Crore towards procurement and installation of CCTV system in central store in order to ensure safety and security of material at store yard are considered under Regulation 20.3(c) of Tariff Regulations, 2015 in this order.
- (g) The petitioner also claimed Rs. 0.16 Crore towards procurement of floor to floor ceiling system on cable tray entry point in main plant building. The petitioner has not mentioned any Regulation under which these expenses claimed in the subject petition.
- (h) On perusal of the Detailed Project Report (DPR) of Bina Thermal Power Project, it is observed that there is provision for fire proof sealing system in the plant. At Page 49 of the DPR it is mentioned that the fire proof sealing will be provided for all cable penetrations through walls and floors to prevent spreading of fire from one area/ floor to another.
- (i) Regulation 20.3(c) provides that expenses under additional capitalization incurred on account of higher security and safety of the plant may be considered by the Commission after prudence check. Therefore, in order to ensure safety against fire, the Commission has considered these expenses under Regulation 20.3(c) of the Regulations, 2015.

**Civil works**

- (a) The petitioner claimed additional capitalization of Rs. 0.32 Crore towards construction of road from Plant gate to STP area. However, the petitioner has not mentioned any specific provision/Regulation under which these expenses claimed in the subject petition.

- (b) On detailed scrutiny of the aforesaid expenses filed under additional capitalization, the Commission observed the following:
- i. Detailed Project Report (DPR) of the project mentioned that there is a provision for sewage disposal in the power plant.
  - ii. For the smooth running of power plant STP plant is the mandatory requirement with fulfilment of the environmental norms prescribed by MoEF.
  - iii. Vide letter dated 5<sup>th</sup> August' 2009, the Environmental Clearance issued by the Ministry of Environmental and Forest stated one of the condition that "A sewage treatment plant shall be provided and the treated sewage shall be used for raising greenbelt / plantation.
  - iv. The petitioner filed copy of work order issued to contactor and copy of bills raised by the contactor.

In view of the above, the expenses towards approach road upto STP area is considered under Regulations, 2015 in this order.

- (c) The petitioner also claimed Rs. 0.09 Crore under civil works towards the cost of construction of boundary wall at Barrage area. By affidavit dated 27<sup>th</sup> February, 2018, the petitioner submitted that these expenses has been claimed under Regulation 20.3(c) which provides as under:

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

- (d) The Commission observed that the aforesaid additional capitalization incurred to ensure the safety and security of the plant. Therefore, the Commission considered these expenses under Regulation 20.3(c) of the tariff Regulations, 2015.
- (e) The petitioner claimed additional capitalization of Rs. 0.02 Crore towards procurement of portable gas analyzer. The petitioner has not mentioned any Regulation under which these expenses claimed in the subject petition.
- (f) First proviso of Regulation 20.3(i) provides as under:

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

In view of the above, the Commission has observed that these expenses are not covered under the tariff Regulations, 2015, hence not considered in this order.

50. Accordingly, the Commission has considered the following additional capitalization of Rs. 1.01 Crore out of Rs. 1.69 Crore claimed by the petitioner during FY 2016-17. The of detailed breakup of additional capitalization considered in this order is as follows

Sr. No.	Particular	Amount in Rs. Crore
1	Expenses towards payment of Service tax liability	0.41
2	CCTV Cameras to improve safety and security	0.03
3	Floor to floor ceiling system on cable try entry pointto eliminate fire	0.16
4	Construction of Road from plant gate to STP area	0.32
5	Construction of Boundary wall at Barrage Area for safety of barrage	0.09
<b>Total additional capitalization considered</b>		<b>1.01</b>

51. In view of the above, the opening Gross Fixed Assets, addition during the year and closing Gross Fixed Assets as considered by the Commission in this order are as given below:

**Table 6: Capital Cost (Rs. in Crore)**

Opening Capital cost as on 01.04.2016	Additions during FY 2016-17	Closing Capital Cost as on 31.03.2017
3509.60	1.01	3510.61

## DEBT –EQUITY RATIO

### Petitioner's Submission:

52. Regarding the sources of funding for additional capitalization of Rs. 1.69 claimed in the subject matter, the petitioner in TPS 10 has mentioned the sources of funding entirely from the equity/ reserve/ internal accruals. Thus, for the purpose of computation of ROE and Interest on loan, the petitioner considered the funding of additional capitalization of Rs. 1.69 Crore in the ratio of 70:30. i.e. Rs. 1.18 Crore by normative loan component and Rs. 0.51 Crore by equity component.

### Provision in Regulation:

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

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

**Provided that:**

- 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.

- 25.2 The generating company shall submit the resolution of the Board of the company regarding infusion of fund from internal resources in support of the utilization made or proposed to be made to meet the capital expenditure of the generating station.
- 25.3 In case of the generating station declared under commercial operation prior to 1.4.2016, debt- equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2016 shall be considered.
- 25.4 In case of the generating station declared under commercial operation prior to 1.4.2016, but where debt: equity ratio has not been determined by the Commission for determination of tariff for the period ending 31.3.2016, the Commission shall approve the debt- equity ratio based on actual information provided by the generating company.
- 25.5 Any expenditure incurred or projected to be incurred on or after 1.4.2016 as may be admitted by the Commission as additional capital expenditure for determination of tariff, and renovation and modernisation expenditure for life extension shall be serviced in the manner specified in clause 25.1 of this Regulation.

**Commission's Analysis**

54. Regarding opening debt & equity funding of capital cost, the Commission vide order dated 04<sup>th</sup> December' 2017 has approved the following Debt & Equity as on 31<sup>st</sup> March' 2016.

**Table 7: Opening Debt and Equity (Rs. in Crore)**

Sr. No.	Particular	FY 2016-17
1	Opening Capital Cost	3509.60
2	Opening Equity	1052.88
3	Opening Loan	1905.94

55. With regard to funding of additional capitalization of Rs.1.01 Crore MPERC Tariff Regulations stated that “Where equity actually employed is in excess of 30%, the amount of equity for the purpose of Tariff shall be limited to 30% and the balance amount shall be considered as loan”, The Commission has considered the excess equity i.e. above 30% of additional capitalization, as normative loan.”
56. The detail of additional capitalization during the year and its corresponding debt and equity as admitted by the Commission for FY 2016-17 is as follows:

**Table 8: Source of Funding (Rs. in Crore)**

Particulars	Addition and Source of Funding Admitted for FY 16-17		
	Addition	Loan Addition	Equity Addition
Addition Capitalisation and funding	1.01	0.707	0.303

**Annual Capacity (fixed) Charges:**

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

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

58. The petitioner claimed the Return on Equity in the petition as given below:

**Table 9: Opening, Closing and Average Normative Equity**

Sr. No.	Particular	Unit	FY 2016-17
1	Opening Equity	Rs. Crore	1055.65
2	Equity Additions (Normative)	Rs. Crore	0.51
3	Closing Equity	Rs. Crore	1056.15
4	Average Equity	Rs. Crore	1055.90
5	Base Rate of Return On Equity	%	15.50%



6	Tax rate considered MAT	%	21.34%
7	Rate of Return on Equity	%	19.71%
	<b>Return on Equity</b>	<b>Rs. Crore</b>	<b>208.07</b>

59. While claiming the Return on Equity, the petitioner considered the base rate of return on equity as 15.50%, which is grossed up with MAT rate of 21.34%.

**Provision in Regulations:**

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

**30 Return on Equity:**

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

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

*Provided that:*

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

**31. Tax on Return on Equity:**

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

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

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

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

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

**Commission’s Analysis:**

- 61. For the purpose of determining of Return on Equity, the normative closing equity as on 31<sup>st</sup> March’ 2016 as admitted in the order dated 04<sup>th</sup> December’ 2017, has been considered as the opening equity as on 1<sup>st</sup> April’ 2016 in this order.
- 62. The petitioner filed the additional capitalization of Rs. 1.69 Crore. The petitioner mentioned that the aforesaid additional capitalization has been funded through equity or internal sources. Accordingly, the petitioner claimed corresponding normative equity

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infusion of Rs 0.51 Crore (i.e. 30% of additional capitalization as per the provision of the Regulations, 2015) during the year. The Commission has considered the normative equity of 30% of the admitted additional capitalization i.e. 30% of Rs 1.01 is Rs 0.30 Crore.

63. Further, with regard to grossing up the rate of Return on Equity with MAT, vide Commission's letter dated 08<sup>th</sup> January' 2018, the petitioner was asked to explain the following issues:

(i) The petitioner has claimed RoE by grossing up the rate of return on equity with MAT. The petitioner was asked to justify its claim in light of the proviso under Regulation 31 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, which provides as under:

*"31.3 The actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2016-17 to 2018-19 on actual gross income of any financial year shall be trued-up every year."*

(ii) As per the Annual Audited Accounts of Jaypee Bina Thermal Power Plant and JPVL corporate Annual Audited Accounts for FY 2016-17, the tax amount is indicated as Nil, while the petitioner has claimed the Return on Equity by grossing up with MAT. In view of above, the petitioner was asked to file the basis of tax amount claimed whereas; it has not paid any Income tax for Jaypee Bina TPP and JPVL for FY 16-17.

(iii) The petitioner was asked to explained with supporting documents whether the petitioner is eligible for MAT during FY 2016-17 in light of figures recorded in its Annual Audited Accounts for FY 2016-17 and the provisions under MPERC (Terms and Condition for Determination of Generation Tariff) Regulations, 2015.

(iv) The petitioner was also asked to file the detailed break-up and allocation of income, expenditure and profit/loss of M/s JPVL among all its power stations for FY 2016-17 duly certified by statutory auditor. The copy of Challan for the income tax paid during FY 2016-17 along with the copy of the income tax return were also sought from the petitioner.

64. By affidavit dated 27<sup>th</sup> February' 2018, the petitioner submitted the following:

*"The Petitioner would humbly like to submit that since the Generating Station has recorded a profit of Rs 99.23 Crore during the Year 2016-17, the Petitioner has accordingly claimed ROE grossing up with MAT. The break up and allocation of income, expenditure and profit/ loss of M/s. JPVL among all its power stations duly certified by Statutory Auditor to arrive at **overall loss of Rs 760.18 Crore in M/s. JPVL** is attached as Annexure-4.*

***The Petitioner would humbly like to submit that we have not paid tax for FY 2016-17 by way of cash/bank basis but have paid the tax by means of TDS/TCS as recorded in the Income Tax Return for FY 2016-17 (Assessment Year 2017-18). Copy of Income Tax Return for FY 2016-17 (Assessment Year 2017-18) is attached as Annexure-5.”***

65. On perusal of the aforesaid response filed by the petitioner on MAT, the Commission observed the following:
- (i) The petitioner filed the Annual Audited Accounts including balance sheet, profit and loss accounts of Jaypee Bina Thermal Power Plant (JBTPP) along with Consolidated Financial Statement of Jaypee Power Ventures Limited (JPVL) as on 31<sup>st</sup> March, 2017.
  - (ii) The Consolidated Financial statement of Jaypee Power Ventures Limited (JPVL) comprises of the financials of following power plants also including 500 MW Bina TPS in the subject petition:
    - a) 300 MW Jaypee Baspa-II Hydro Electric Project (HEP),
    - b) 400 MW Jaypee Vishnuprayag HEP,
    - c) 1091 MW Jaypee Karcham Wangtoo HEP,
    - d) 500 MW Bina TPS
    - e) 1320 MW Jaypee Nigrie Super Thermal Power Station.
  - (iii) In the Annual Audited Accounts of Bina Thermal Power Plant, the payment towards Income Tax or MAT during FY 2016-17 is shown as NIL.
  - (iv) In the instant case, the JPVL has not paid any tax, therefore, despite of the fact that Bina thermal power station is earning profit, the grossing up of ROE with MAT cannot be considered as the neither the JPVL nor Jaypee Bina is paying income tax.
  - (v) Further, it is observed that at page 23 of the Income tax return filed by the petitioner, the so called TDS & TCS deduction of Rs. 1846178 is also claimed as refund by the petitioner. Hence, the JPVL has not paid any tax during FY 2016-17.
66. In view of the above observations, the Commission has not considered grossing up the base rate of RoE with MAT and adopting a consistent approach in this matter. Accordingly, the Return on equity for FY 2016-17 is worked out as given below:

**Table 10: Return on Equity for FY 2016-17 Allowed**

Sr. No.	Particular	Unit	FY 2016-17
1	Opening Equity Normative	Rs. Crore	1052.88
2	Normative Equity Addition During the Year	Rs. Crore	0.30
3	Closing Normative Equity	Rs. Crore	1053.18

4	Average normative equity	Rs. Crore	1053.03
5	Base rate of Return on Equity	%	15.50%
	<b>Return On Equity</b>	<b>Rs. Crore</b>	<b>163.22</b>

**b. Interest on loan capital:**

**Petitioner's Submission:**

67. The petitioner submitted the detailed break-up of opening loan balances, repayment during the year, closing balance of loan, weighted average rate of interest and interest on loan in form TPS 13 A of the petition as given below:

**Table 11: Interest on Loan Claimed for FY 2016-17**

Sr. No	Particulars	Unit	FY 2016-17
			Unit I & II
1	Gross Normative Loan - Opening	Rs. Crore	2463.18
2	Cumulative Repayment of Normative Loan upto Previous Year	Rs. Crore	551.56
3	<b>Net Normative Loan-Opening</b>	Rs. Crore	<b>1911.62</b>
4	Loan Additions during the year	Rs. Crore	1.18
5	Repayment During the year	Rs. Crore	179.54
6	<b>Closing Loan</b>	Rs. Crore	<b>1733.26</b>
7	<b>Average Loan-Normative</b>	Rs. Crore	<b>1822.44</b>
	Weighted average Rate of Interest on actual Loans	%	12.25%
	<b>Interest on Normative loan</b>	Rs. Crore	<b>223.25</b>

**Provision in Regulations:**

68. Regulation 32 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations 2015, provides as under:
- 32.1 *The loans arrived at in the manner indicated in Regulation 25 shall be considered as gross normative loan for calculation of interest on loan.*
- 32.2 *The normative loan outstanding as on 1.4.2016 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2016 from the gross normative loan.*
- 32.3 *The repayment for each of the year of the tariff period 2016-19 shall be deemed to be equal to the depreciation allowed for the corresponding year/period. In case of de-capitalization of assets, the repayment shall be adjusted by taking into account cumulative repayment on a pro rata basis and the adjustment should not exceed cumulative depreciation recovered upto the date of de-capitalisation of such asset.*
- 32.4 *Notwithstanding any moratorium period availed by the generating company, the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the depreciation allowed for the year or part of the year.*

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

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

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

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

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

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

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

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

**Commission's Analysis:**

69. For the purpose of determination of interest on term loan, normative closing loan balance as on 31<sup>st</sup> March' 2016 as admitted in the order dated 04<sup>th</sup> December' 2017 for FY 2015-16, has been considered as the opening loan balance as on 1<sup>st</sup> April' 2016.

70. The petitioner filed the additional capitalization of Rs. 1.69 Crore during FY 2016-17. The petitioner mentioned that the asset under additional capitalization has been funded through equity component. Accordingly, the petitioner claimed corresponding normative loan of Rs. 1.18 Crore i.e. 70% of net additional capitalization. Accordingly The Commission has considered the 70% of admitted additional capitalization i.e 70% of Rs 1.01 Crore is Rs 0.71 Crore.

71. With regard to weighted average rate of interest filed in the petition, vide letter dated 08<sup>th</sup> January' 2018 the petitioner was asked to file the detailed computation of the weighted average rate of interest on the basis of the actual loan portfolio.
72. By affidavit dated 27<sup>th</sup> February' 2018, the petitioner submitted the following:  
*The Petitioner would humbly like to submit that the actual interest rates corresponding to actual loan portfolio for each bank has been taken into account to calculate the Weighted Average Rate of Interest for bank wise normative loan balance which is reflected in TPS 13 and the clubbed weighted average rate of interest all these interest rates are reflected in TPS 13A. However, to substantiate the Rate of Interest, a summary of Actual amount of monthly interest paid, rate of interest along with the true copy of bank statement showing payment thereof has been attached herewith as Annexure-6.*
73. In view of the above, the interest on loan has been worked out by the Commission based on the following:
- Gross normative opening loan of Rs. 1905.94 Crore has been considered as per Order dated 04<sup>th</sup> December' 2017
  - Net Addition of normative loan amount of Rs. 0.71 Cr. (70% of additional capital expenditure approved above) has been considered.
  - Annual repayment of loan equal to annual depreciation has been considered.
  - Weighted average rate of interest @ 12.25% filed by the petitioner based on the actual loan portfolio has been considered.
74. Based on the above, the interest on loan is worked out as given below:

**Table 12: Interest on Loan Allowed**

Sr. No.	Particulars		FY 2016-17
1	Opening Loan	Rs. Crore	1905.94
2	Loan Addition /(Reduction) during the year	Rs. Crore	0.71
3	Repayment during the Year considered	Rs. Crore	179.02
4	Closing Loan	Rs. Crore	1727.63
5	Average Loan	Rs. Crore	1816.79
6	Weighted average Rate of Interest on actual Loans	%	12.25%
	<b>Interest on Normative loan</b>	Rs. Crore	<b>222.56</b>

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

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

Table 13: Depreciation on Assets

(Rs. in Crore)

Particulars	Total Opening Gross Block as on 1 <sup>st</sup> April' 2016	Addition during the Year	Total Closing Gross Block as on 31 <sup>st</sup> March' 2017	Average Gross Block	Depreciation as per Regulation	Depreciation
Land	6.86	0	6.86	6.86	0.00%	0
BTG	1741.36	0.41	1741.77	1741.57	5.10%	88.82
BOP	1157.1	0.84	1157.94	1155.4	5.10%	59.03
Civil Cost	613.51	0.43	613.94	604.76	5.10%	31.3
<b>Gross Fixed Assets</b>	<b>3518.83</b>	<b>1.69</b>	<b>3520.52</b>	<b>3519.67</b>		<b>179.54</b>

**Provision in Regulations:**

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

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

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

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

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

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

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



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

- 33.4 *Land other than the land held under lease and the land for reservoir in case of hydro generating station shall not be a depreciable asset and its cost shall be excluded from the capital cost while computing depreciable value of the asset.*
- 33.5 *Depreciation shall be calculated annually based on Straight Line Method and at rates specified in Appendix-II to these Regulations for the assets of the generating station: Provided that the remaining depreciable value as on 31st March of the year closing after a period of 12 years from the effective date of commercial operation of the station shall be spread over the balance useful life of the assets.*
- 33.6 *In case of the existing projects, the balance depreciable value as on 1.4.2016 shall be worked out by deducting the cumulative depreciation as admitted by the Commission upto 31.3.2016 from the gross depreciable value of the assets.*
- 33.7 *The rate of Depreciation shall be continued to be charged at the rate specified in Appendix-II till cumulative depreciation reaches 70%. Thereafter the remaining depreciable value shall be spread over the remaining life of the asset such that the maximum depreciation does not exceed 90%.*
- 33.8 *Depreciation shall be chargeable from the first Year of commercial operation. In case of commercial operation of the asset for part of the Year, depreciation shall be charged on pro rata basis.*
- 33.9 *The generating company shall submit the details of proposed capital expenditure during the fag end of the project (five years before the useful life) along with justification and proposed life extension. The Commission based on prudence check of such submissions shall approve the depreciation on capital expenditure during the fag end of the project.*
- 33.10 *In case of de-capitalization of assets in respect of generating station or unit thereof, the cumulative depreciation shall be adjusted by taking into account the depreciation recovered in tariff by the de-capitalized asset during its useful services.*

**Commission's Analysis:**

77. For the purpose of computation of Depreciation, the closing Gross Fixed Assets as on 31<sup>st</sup> March' 2016, as admitted in the order dated 04<sup>th</sup> December' 2017 for FY 2015-16, has been considered as the opening Gross Fixed Assets as on 1<sup>st</sup> April' 2016.
78. The petitioner filed the additional capitalization of Rs.1.69 Crore during the year. out of which the Commission has considered addition to fixed assets of Rs. 1.01 Crore in

this order.

79. The closing Gross Fixed Assets as on 31<sup>st</sup> March' 2017, is worked out after considering the addition due to additional capitalization during the year.
80. It is observed that the petitioner has filed the assets cum depreciation register, wherein the weighted average depreciation rate of 5.10% is worked out based on the depreciation rates approved in the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.
81. The Commission worked out the depreciation on average Gross Fixed Assets duly taking into account the opening Gross Fixed Assets, additions during the year, closing Fixed Assets as considered in this order and weighted average rate of depreciation as filed by the petitioner as per Regulations, 2015, is given below:

**Table 14: Depreciation**

Sr. No.	Particular	Units.	FY 2016-17
1	Opening GFA	Rs. Crore	3509.60
2	Addition during the year	Rs. Crore	1.01
3	Closing GFA Average GFA	Rs. Crore	3510.61
4	Average GFA	Rs. Crore	3510.11
5	Applicable Rate of Depreciation	%	5.10%
<b>6</b>	<b>Annual Depreciation</b>	<b>Rs. Crore</b>	<b>179.02</b>
	Closing Cumulative Depreciation	Rs. Crore	729.79

**d. Interest on Working Capital**

**Petitioner Submission:**

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

**Table 15: Interest on Working Capital Claimed**

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

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**Provision in Regulations:**

83. Regulation 34 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 regarding working capital for coal based generating stations provides that:
- 34.1 *The working capital shall cover:*
- (1) *Coal-based thermal generating stations*
    - (a) *Cost of coal towards stock, if applicable, for 15 days for pit-head generating stations and 30 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal stock storage capacity whichever is lower;*
    - (b) *Cost of coal for 30 days for generation corresponding to the normative annual plant availability factor;*
    - (c) *Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil;*
    - (d) *Maintenance spares @ 20% of operation and maintenance expenses specified in Regulation 35;*
    - (e) *Receivables equivalent to two months of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor; and*
    - (f) *Operation and maintenance expenses for one month.*
- 34.2 *The cost of fuel shall be based on the landed cost incurred (taking into account normative transit and handling losses) by the generating company and gross calorific value of the fuel as per actual for the three months preceding the first month for which tariff is to be determined and no fuel price escalation shall be provided during the tariff period.*
- 34.3 *Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.4.2016 or as on 1<sup>st</sup> April of the year during the tariff period 2016-17 to 2018-19 in which the generating station or a unit thereof , is declared under commercial operation, whichever is later.*
- 34.4 *Interest on working capital shall be payable on normative basis notwithstanding that the generating company has not taken loan for working capital from any outside agency.*

**Commission's Analysis:**

84. In the above mentioned provision under Regulations, 2015, no fuel price escalation

shall be provided during the tariff period for calculating the working capital. The details of working capital are worked out as per the provisions under the Regulations, 2015 as given below:

- (i) Cost of coal for 2 months as considered vide MYT Order dated 08<sup>th</sup> August' 2016.
- (ii) Cost of secondary fuel of main oil for two months equivalent to normative plant availability factor as considered in MYT Order dated 08<sup>th</sup> August' 2016 as stated below is considered:

Particulars	FY 2016-17 (Rs in Cr.)
Cost of Coal for Two Months	136.37
Cost of Secondary Fuel Oil for Two Months	0.89

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

Particulars	FY 2016-17 (Rs in Cr.)
Maintenance Spares (20% of O&M Expenses)	27.00

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

Particulars	FY 2016-17 (Rs in Cr.)
Variable Charges- 2 Months (As considered on Order dated 8th August, 2016.)	139.37
Annual Fixed Charges- 2 Months (Worked Out in this Order)	126.09
<b>Total</b>	<b>265.46</b>

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

Particulars	FY 2016-17 (Rs in Cr.)
O & M Expenses for One Month	11.25

85. The State Bank of India Base rate applicable/ prevailing as on 05.10.2015 (up to 1st April 2016) is 9.30% + 3.50% = 12.80%. Accordingly, no variation in the Interest rate is observed.

86. Considering the above, the interest on working capital worked out by the Commission for FY 2016-17 in this true-up order is as given below:

**Table 16: Interest on Working Capital Allowed**

Sr. No	Particulars	Norms	Unit	FY 2016-17
1	Cost of Coal/Lignite	2 months of coal purchase	Rs. Crore	136.37
2	Cost of Main Secondary Fuel Oil	2 months of sec oil purchase	Rs. Crore	0.89
3	O & M expenses	1 month of O&M	Rs. Crore	11.25

4	Maintenance Spares	20% of O&M	Rs. Crore	27.00
5	Receivables	2 months of total revenue	Rs. Crore	265.46
6	<b>Total Working Capital</b>		Rs. Crore	<b>440.96</b>
7	Rate of Interest (SBI PLR)*		%	12.80%
8	<b>Interest on Working Capital</b>		Rs. Crore	<b>56.44</b>

e. **Operation and Maintenance expenses:**

**Petitioner's Submission:**

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

**Table 17: O&M Expenses claimed for generating unit (Rs. in Crore)**

Phase – 1	Particulars	FY 2016-17
Unit I & II	O & M Expense	135.00

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

**Table 18: O&M Expenses of Transmission Line & Bay (Rs. in Crore)**

Sr. No.	Particulars		FY 2016-17
1	O&M Expenses of 400kV Transmission Line	39.294 ckt km	0.13
2	O&M Expenses of 400kV Bay	2 Nos of 400kV Bay	0.19
	<b>Total O &amp; M Expenses</b>		<b>0.32</b>

**Provision in Regulations:**

89. Regarding the Operation and Maintenance expenses of thermal power stations, Regulation 35.7 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, provides as under:

*“The Operation and Maintenance expenses admissible to existing thermal power stations commissioned prior to 01.04.2012 comprise of employee cost, Repair & Maintenance (R&M) cost and Administrative and General (A&G) cost. These norms exclude Pension and Terminal Benefits, EL encashment, Incentive, arrears to be paid to employees, taxes payable to the Government, and fees payable to MPERC. The generating company shall claim the rate, rent & taxes payable to the Government, cost of chemicals and consumables, fees to be paid to MPERC, EL encashment and any arrears paid to employees separately as actuals. The claim of pension and Terminal Benefits shall be dealt as per Regulation 35.4 of these Regulations..”*

**Table 19: O&M Norms for Thermal Generating (Rs in Lakh/MW)**

Units (MW)	FY 2016-17
45	32.07
200/210/250	27.00
300/330/350	22.54

500	18.08
600 and above	16.27

**Commission's Analysis:**

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

**Table 20: Operation & Maintenance Expenses admitted (Rs in Crore)**

Sr. No.	Phase - 1	Capacity	Normative O & M Expenses	Annual O&M Expenses as per norms
		MW	Rs In Lack/MW	Rs In Crore
1	Unit I & II	2 X 250	27.00	135.00

91. With regard to operation & maintenance expenses on Transmission lines & Bay, vide Commission's letter dated 08<sup>th</sup> January' 2018. The petitioner was asked to justify its claim in this regard in light of the MPERC (Terms and Condition for Determination of Generation Tariff) Regulations, 2015.
92. By affidavit dated 27<sup>th</sup> January' 2018, the petitioner submitted the following:-  
*The O&M expenses of Transmission lines & bay has been claimed on the basis of the norms prescribed under MPERC (Terms and Conditions for determination of Transmission Tariff) Regulations and the detailed calculation of the same has been same provided on the Page No.T-3 of the subject petition. The same is being reproduced as under:-*

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

Sl. No.	Particulars		FY 2016-17
1	O&M Expenses of 400kV Transmission Line	39.294 ckt km	0.13
2	O&M Expenses of 400kV Bay	2 Nos of 400kV Bay	0.19
	<b>Total O&amp;M Expenses</b>		<b>0.32</b>

	Length of Transmission Line	Circuit Kms	
<b>A</b>	13.444 kms 400kV Double Circuit Line	26.888	ckt km
<b>B</b>	Single Circuit MPPTCL Line	6.177	ckt km
<b>C</b>	Single Circuit PGCIL Line	6.229	ckt km
	<b>Total Circuit Kms</b>	<u>39.294</u>	<u>ckt km</u>

Note:-

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

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

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

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

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

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

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

Moreover, while adjudicating in the Petition No. 70 of 2015 for FY 2014-15 vide its Order dated 03-06-2016 the Commission has disallowed the O&M Expenditure claimed by the Review Petitioner on ‘Dedicated Transmission Line’ built for supplying

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power to the Respondents on the incorrect premise that the O&M Expense allowed for the Power Plant will also cover the O&M Expense required for the Transmission Line.

Further, the Hon'ble Commission in disallowing the claim of the Petitioner in Petition No. 70 of 2015 has held that MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 does not provide for any O&M expenses of dedicated transmission line separately and therefore the Claim of the Petitioner cannot be granted. The said contention is incorrect as even the Central Commission and its Regulations do not provide specifically for O&M Expense of Dedicated Transmission Line to be given. However, CERC in Petition No. 308 of 2009 in its Order dated 11.03.2010 has held as follows:-

"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 :"

From the perusal of the above quoted extracts of the Order of the Hon'ble CERC it is evident that as a matter of practice the Central Commission allows O&M on dedicated Transmission Lines as if the same is not allowed then it will lead to under-recovery for the generator. Further, it is most respectfully submitted that neither the CERC 2009 Regulations nor the recently 2014 Regulations provide for such dispensation. Hence, the Hon'ble Commission's reasoning that because the MPERC Regulations, 2012 did not provide for the same, the Commission will not grant O&M is contrary to the principles of Tariff determination to be undertaken under Section 62 of the Act.

Further, in terms of the PPA dated 05.01.2011 signed between the Petitioner and the Respondents the entire onus of evacuating power beyond the inter-connection point vests with the Respondents. Hence, the O&M Expense for such line also has to be borne by the Respondents. The relevant extracts of the PPA are being reproduced as follows:-



*“3.2 -Satisfaction of Conditions Subsequent by the Procurer*

- (ii) The Procurer shall have established the necessary evacuation infrastructure beyond the Interconnection Point, necessary for evacuation of the Contracted Capacity at least 201 days prior to COD.*

*It is pertinent to mention that the Normative O&M expenses of a power plant is a complete package determined after considering all the elements/components of Operation and Maintenance and other overhead costs of a generating stations. The O&M expenses of a generating station do not include any cost incurred by the generator with regards to maintenance of the Dedicated Transmission Line. Therefore, such costs have to be allowed separately to the generator.*

*The Petitioner is entitled to the O&M expenses with regards to the Dedicated Transmission Line as these lines are installed, owned and maintained by the Petitioner. The Petitioner incurs substantial amount of cost in maintaining these dedicated Transmission lines and disallowance of the same would lead to under recovery of the cost to the Petitioner, which is against the mandate of Act and the National Tariff policy.*

*Section 10 of the Electricity Act 2003 mandates the Generating Company to establish, operate and maintain the Dedicated Transmission Lines. These dedicated transmission lines are required for evacuation of power from the generating station of the Petitioner. 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. The Hon’ble Tribunal in its Judgment dated 23.05.2012 in Appeal No. 145 of 2011 has held as below: -*

*“14.....On the contrary, Section 10 of the 2003 Act mandates that generating company shall establish, operate and maintain the dedicated transmission lines connected therewith in accordance with the provisions of this Act. Thus, the Section 10 of the 2003 Act becomes mandatory by which the generating company is mandated to construct its own dedicated transmission lines which connect the substation of the Appellant”.*

*It is also humbly submitted 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 maintain the Dedicated Transmission Line will result in significant drop in the Return on Equity allowed in the tariff of the Petitioner and the project of the Petitioner will not be commercially viable. The Hon’ble Appellate Tribunal for Electricity 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*

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&Ors' has held as under: -

"6-

.....

xx. *In our opinion it is now not open to the Appellant to raise issues on consideration of the additional capital cost on account of conversion from 32 KV Dedicated Transmission Line to 132 KV Dedicated Transmission Line at the stage of determination of the tariff. This being a very small power plant and has been set up to promote renewable energy and would not be able to sustain after such an additional cost for conversion is not allowed. We have also noticed if a cost on Dedicated Transmission Line is not fully serviced through the tariff there will be significant drop in the Return on Equity allowed in the tariff of the Respondent no.2 and the project of the Respondent no.2 will not be commercially viable".*

*In view of the above it is submitted that the Petitioner is mandated under the Act to install and maintain the Dedicated Transmission Line. Further as per the Hon'ble Tribunal Judgment, the Petitioner must be allowed to recover the entire cost with regards to the installation and maintenance of the Dedicated Transmission Line. It is pertinent to mention that the CERC being cognizant of the above fact allows such cost, even without there being any specific provision in its Regulation. It is settled position that in a cost plus Tariff the State Commission must allow all the reasonable expenditure to the Generator after prudence check.*

*The Petitioner humbly requests the Hon'ble Commission to allow this in view of the aforesaid circumstances.*

93. With regard to O&M expenses of transmission line, the Commission has already dealt with the same vide commission's true up order dated 21<sup>st</sup> June' 2017. Where the commission has disallowed the O&M expenses of transmission line with the following observation:

*"94. It is evident from the above submission of the petitioner that the Transmission line in the subject petition is a dedicated line and its cost has been appropriately included in the capital cost of the 2x250 MW (Phase-I) of petitioner's power plant while determining its final tariff vide Commission's order dated 26.11.2014.*

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

95. *The status of the aforesaid dedicated transmission line has already been dealt with in para 27 to 30 of the Commission's first order dated 12<sup>th</sup> December' 2012 in Petition No. 40 of 2012. Further, the remaining issue has been dealt with in relevant paras of Commission's order dated 26.11.2014.*

96. *The extract of the above-mentioned paragraphs of Commission's order is that the dedicated transmission lines is neither a transmission line in terms of sub-section (72) of Section 2 of the Electricity Act' 2003 nor it is a distribution system connecting the point of a connection to the installation of consumer in terms of sub-section (19) of Section 2 of the Act. The O&M expenses of a transmission line are part of the Annual Fixed Cost of the line of a transmission licensee whereas; the petitioner is not a transmission licensee. The cost of dedicated line has been considered in the capital cost of the petitioner's power plant and the tariff of the said power plant has been determined in terms of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations' 2012 which does not provide for any O&M expenses of dedicated transmission line separately."*

94. Further, the petitioner filed a review petition no. 47/2016 for review of the Commission's order dated 6<sup>th</sup> June' 2016 (in petition No. 70/2016 for true-up of FY 2014-15) to the extent allowing grossing up of ROE by MAT. The petitioner also filed an Interlocutory Application (IA-1/2017 in P-47/2016) for amendment of review petition by incorporation of one more issue for review "O&M expenses for dedicated transmission line". Vide order dated 25<sup>th</sup> September' 2017 the Commission had not considered the O & M Expenses for dedicated transmission line.

Moreover, the petitioner has filed an Appeal No. 283 of 2017 before Hon'ble Appellate Tribunal for electricity on this issue of O&M expenses of dedicated transmission line.

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

**f. Lease Rent:-**

96. In the subject true up petition, the petitioner filed Rs. 0.35 Crore as yearly lease rent for FY 2016-17.

**Commission's Analysis:**

97. The petitioner has claimed Rs. 0.35 Cr. against lease rent payable for land during the year. Vide Commission's letter dated 08<sup>th</sup> January' 2018, the petitioner was asked to provide supporting document in this regard.

98. By affidavit dated 27<sup>th</sup> February' 2018, the petitioner submitted that **“it has wrongly claimed Rs 0.32 Crore against the Lease Rent Payment instead of Rs 29.67 Lakh. It was an inadvertent error. We have claimed Lease Rent of Rs 5,81,059/-(Rs 5,20,512+Rs 60,547) & Railway Land Lease Rent of Rs 23,85,814/-, totalling Rs 29,66,873/-. Both these figures are grouped under “Other Expenses” (Note-29 of P&L A/c) and are recorded against “Miscellaneous Expenses”. However, the amount recorded against Miscellaneous Expense also includes certain credit balances such as Sundry Balances Written Off A/c, due to which the Miscellaneous Expenses amounts to Rs 23,27,750 /-.**

*However, relevant documents in support of “Lease Rent” payment are attached as Annexure-12.”*

99. In view of the above, the Commission has considered the lease rent payment of Rs. 0.30 Crore as claimed by the petitioner for FY 2016-17 in this order.

**g. Non-Tariff Income:**

**Provision in Regulations:**

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

53.1 *Any income being incidental to the business of the generating company derived from sources, including but not limited to the disposal of assets, income from investments, rents, income from sale of scrap other than the decapitalized/written off assets, income from advertisements, interest on advances to suppliers/contractors, income from sale of fly ash/rejected coal, and any other miscellaneous receipts other than income from sale of energy shall constitute the non-tariff/other income.*

53.2 *The amount of Non-Tariff /Other Income relating to the Generation Business as approved by the Commission shall be deducted from the Annual Fixed Cost in determining the Annual Fixed Charge of the Generation Company:*

*Provided that the Generation Company shall submit full details of its forecast of Non-Tariff Income to the Commission in such form as may be stipulated by the Commission from time to time. Non-tariff income shall also be Trued-up based on audited accounts.*

**Commission’s Analysis:**

101. Aforesaid provision under the Regulations, 2015 provides that the non-tariff income shall also be trued up based on the Audited Accounts. On scrutiny of the subject petition, it was observed that the petitioner claimed the non-tariff income of Rs. 3.19 Crore, as recorded in Note-23 & 24 of the Annual Audited Accounts For FY 2016-17,

Therefore, the total non-tariff income of Rs 3.19 Crore as claimed by the petitioner is considered by the Commission in this order. The break-up of non tariff income is as given below;

<b>Sr. No.</b>	<b>Particulars</b>	<b>FY 2016-17</b>
1	Sale of Fly Ash	0.26
2	Interest from bank Deposits	0.00
3	Excess Provision written back	0.12
4	Other Income	1.38
5	Miscellaneous Income	1.43
	<b>Total Non Tariff Income</b>	<b>3.19</b>

**Summary of Annual Capacity (fixed) charges:**

102. The details of the Annual Capacity (fixed) Charges for FY 2016-17 allowed in this true-up order vis-a-vis those determined in the MYT Order dated 08 August, 2016 at normative Plant Availability Factor are summarized in the following table:

**Table 22: Head wise Annual Capacity Charges at normative availability (Rs in Crore)**

<b>S. No.</b>	<b>Particulars</b>	<b>MPERC Order dated 08 Aug.2016 for FY 2016-17</b>	<b>2016-17 allowed in this true up order FY 16-17</b>	<b>True-up amount at Normative Availability</b>
		<b>A</b>	<b>B</b>	<b>C=B-A</b>
1.1	Depreciation	171.42	179.02	7.60
1.2	Interest on Loan	221.32	222.56	1.24
1.3	Return on Equity	162.01	163.22	1.21
1.4	Interest on Working Capital	56.22	56.44	0.23
1.5	O & M Expenses	135.00	135.00	0.00
1.6	Lease Rent Payable	-	0.30	0.30
	<b>Total Annual Capacity (Fixed) Charges</b>	<b>745.97</b>	<b>756.53</b>	<b>10.57</b>
	<b>Less:-Non Tariff Charges</b>	<b>0.50</b>	<b>3.19</b>	<b>2.69</b>
	<b>Net Annual Capacity (Fixed) Charges</b>	<b>745.47</b>	<b>753.34</b>	<b>7.88</b>
	Annual Capacity (fixed) charges corresponding to 65% of the installed capacity of the units	<b>484.55</b>	<b>489.67</b>	<b>5.12</b>

103. The Annual Capacity (fixed) Charges as determined above for FY 2016-17 are at Normative Availability and these charges are based on Annual Audited Accounts of Jaypee Bina Thermal Power Plant for FY 2016-17.

**Implementation of the order**

104. The petitioner must take steps to implement the order after giving seven (7) days' public notice in accordance with Clause 1.30 of MPERC (Details to be furnished and fee payable by licensee or generating company for determination of tariff and manner

of making application) Regulations, 2004 and its amendments and recalculate its bills for the energy supplied to Distribution Companies of the State/ M.P. Power Management Company Ltd. since 1<sup>st</sup> April' 2016 to 31<sup>st</sup> March' 2017.

105. The petitioner is also directed to provide information to the Commission in support of having complied with this Order. The amount under-recovered or over- recovered as a result of this order shall be passed on to MP Power Management Company Ltd/ three Distribution Companies of the state in terms of Regulation 8.15 of MPERC (Terms and Condition for Determination of Tariff) Regulations, 2015 in six equal monthly instalments during FY 2018-19 from the date of this order.

With the above directions, this Petition No. 57 of 2017 is disposed of.

**(Mukul Dhariwal)**  
**Member**

**(Anil Kumar Jha)**  
**Member**

**(Dr. Dev Raj Birdi)**  
**Chairman**

**Date: 24<sup>th</sup> May' 2018**

**Place: Bhopal**

**Annexure 1****Issue Wise reply of the petitioner to the queries raised by the commission:-****Capital Cost and Additional Capitalization:****Issue:**

- (i) With regard to capital cost of the project, the opening balance and closing balance of Gross Fixed Assets (GFA) filed in the subject petition (TPS 5B) and those recorded in Note 2 of the Annual Audited Accounts for FY 2016-17 are at variance as given below:

Sr. No.	Particular	Filed in the subject petition (Rs Crore)	Recorded in Note 2 of Annual Audited Account (Rs Crore)
1.	Opening GFA as on 01 <sup>st</sup> April' 2016	3518.83	3494.42
2.	Addition during FY 2016-17	1.69	1.69
3.	Closing GFA as on 31 <sup>st</sup> March' 2017	3520.52	3496.11

The petitioner is required to clarify the aforesaid difference in figures recorded in Annual Audited Accounts and those filed in the petition.

**Opening and Closing GFA as per Annual Audited Accounts:****Issue:**

- (ii) It is observed that in the last true up petition for FY 2015-16, the petitioner filed the Closing Gross Fixed Assets of Rs 3495.35 Crore as on 31<sup>st</sup> March' 2016 as per Audited Accounts for FY 2015-16, whereas the opening Gross Fixed Assets of Rs 3494.42 Crore as on 01<sup>st</sup> April' 2016 is indicated in Note-2 of the Annual Audited Accounts for FY 2016-17. The petitioner is required to clarify the difference in figure of closing and opening GFA as per Annual Audited Accounts for FY 2015-16 and FY 2016-17 respectively.

**Petitioner's Response: Reply to Para (i) & (ii)**

*At the onset the Petitioner would humbly like to take the liberty to reply to Para (i) and (ii) simultaneously since the two are closely linked.*

*With regard to Para (ii), the Petitioner would humbly like to submit that the difference in figure observed by the Hon'ble Commission in the Closing Gross Fixed Asset as on 31-03-2016 as per Annual Audited Accounts for FY 2015-16 filed with True Up Petition for FY 2015-16 and Opening Gross Fixed Asset as on 01-04-2016 as per Annual Audited Accounts for FY 2016-17 filed with instant Petition is on account of adjustments made in the Opening Gross Fixed Assets as on 01-04-2016 due to New Indian Accounting Standards (hereinafter referred to as "IND AS") having been made*

applicable w.e.f. 01-04-2016.

However, to summarize:-

**Table-1**

Sl. No.	Particular	Rs Cr.	Remarks
1.	Gross Fixed Assets as on 31-03-2016 as per Audited Accounts for FY 2015-16	3,495.35	Filed with True Up Petition for FY 2015-16, namely, Petition No. 62/2016
2.	<b>Less:-</b> Gross Block of Lease Hold Land not recognized as Fixed Asset as per New Indian Accounting Standards mandatorily applicable w.e.f. 01-04-2016	0.92	
3.	Gross Fixed Assets as on 01-04-2016 as per Note-2 of Annual Audited Accounts for FY 2016-17	3,494.43	Filed with True Up Petition for FY 2016-17, namely, Petition No. 57/2017 (R/off diff of Rs 0.01 Crore)

On account of aforesaid reasons, Reconciliation of variances observed in Para (i) by the Hon'ble Commission between the figures of fixed assets filed in the Petition and the Audited Financial Accounts are as under:-

**Table-2**

Sl. No.	Particular	Rs Cr.	Remarks
1.	Opening Gross Fixed Assets as on 01-04-2016/31-03-2016	3,518.83	As filed in the subject Petition
2.	<b>Less: -</b> Interest for 218 days (intervening period between COD of Unit I & COD of Unit II) on Debt Component of unallocated costs allowed by Hon'ble Commission vide its Order dated Nov 26th, 2014. <b>(Please refer Para 4.30 &amp; 4.31 of the said Order)</b>	23.46	
3.	Gross Fixed Assets as on 31-03-2016 as per Audited Accounts for FY 2015-16	3,495.37	Same as Sl. No. 1 of Table-1 (R/off diff of Rs 0.02 Crore)
4.	<b>Less:-</b> Gross Block of Lease Hold Land not recognized as Fixed Asset as per Indian Accounting Standards mandatorily applicable w.e.f. 01-04-2016	0.92	Same as Sl. No. 2 of Table-1.
5.	Opening Gross Fixed Assets as on 01-04-2016 as per Annual Audited Accounts for FY 2016-17	3,494.45	Same as Sl. No. 3 of Table-2 above and as recorded in the Audited Accounts for FY 2016-17 filed with instant Petition (R/off diff of 0.02 Crore)



6.	Addition during FY 2016-17	1.69	
7.	Closing Gross Fixed Assets as on 31-03-2017 as per Annual audited Accounts for FY 2016-17	3,496.14	As recorded in the Note-2 of Annual Audited Accounts for FY 2016-17 filed with instant Petition) (R/off diff of 0.03 Crore)
8.	<b>Add:-</b> Gross Block of Lease Hold Land not recognized as Fixed Asset as per Indian Accounting Standards mandatorily applicable w.e.f. 01-04-2016	0.92	
9.	<b>Add:-</b> Interest for 218 days (intervening period between COD of Unit I & COD of Unit II) on Debt Component of unallocated costs allowed by Hon'ble Commission vide its Order dated Nov 26th, 2014. <b>(Please refer Para 4.30 &amp; 4.31 of the said Order)</b>	23.46	
10.	Closing Gross Fixed Assets as on 31-03-2017	3,520.52	Filed in the instant Petition.

#### Opening and Closing GFA as filed in the petition:

##### Issue:

- (iii) It is also observed that the opening GFA of Rs 3518.83 Cr. as on 1<sup>st</sup> April' 2016 as filed in the petition is not in line with closing GFA of Rs 3505.58 Crore approved in the last true-up Order FY 2015-16. The petitioner is required to submit the reasons for difference in aforesaid figures.

##### Petitioner's Response: Reply to Para (iii)

*The difference between capital cost of Rs 3505.58 Crore admitted by Hon'ble Commission and the Capital Cost of Rs 3518.83 Crore submitted by Petitioner is equal to the disallowances of Rs 13.25 Crore in Capital Cost made by the Hon'ble Commission during the proceedings of Petition No.40/2012 & Review Petition No.05/2015 on account of two issues namely:*

- *Rs 4.01 Crore on account of Pre-Commissioning Fuel Expenses.*
- *Rs 9.23 Crore on account of Double Deduction of Infirm Power.*

*However, the reconciliation of the difference between Capital Cost as on 31-03-2016 admitted by the Hon'ble Commission and the Capital Cost submitted by the Petitioner is as under:-*

Sl. No.	Particular	Rs Cr.
1.	Capital Cost up to 31.03.2016 admitted by Hon'ble Commission in True Up Order for FY 2015-16	3,505.58

2.	<b>Add:-</b> Pre-Commissioning Coal Cost disallowed by Hon'ble Commission vide its Order dated Nov 26 <sup>th</sup> , 2014/08-05-2015 having been successfully contested by the Petitioner ( Approved by Hon'ble Commission vide Remand Petition Order dated 04-12-2017)	4.01
3.	<b>Add:-</b> Disallowance made on account of revenue earned from sale of infirm power Hon'ble Commission vide its Order dated Nov 26 <sup>th</sup> , 2014 being contested by the Petitioner pursuant to disallowance of the same by Hon'ble Commission vide Remand Petition Order dated 04-12-2017 (Appeal filed with APTEL vide Diary No. 345 of 2018)	9.23
4.	<b>Capital Costs as on 01.04.2016 filed in the Petition</b>	<b>3,518.83</b>

However, the Petitioner would humbly like to submit that the Hon'ble Commission vide its order dated 4<sup>th</sup> December, 2017 in the Remand Petition No. 11 of 2017 has allowed Pre-Commissioning Fuel Expenses of Rs 4.02 Crore to be added back to Capital Cost.

**Issue:**

- (iv) With regard to the Additional Capitalization during FY 2016-17 claimed in the subject petition, the petitioner is required to file a comprehensive reply to the following issues with all relevant supporting documents:
- a. Whether the addition of assets is on account of the reasons mentioned in Regulation 20.2 and 20.3 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015. The petitioner is required to furnish the information in following format.

**Details of Additional Capitalization**

S.N	Particulars	Asset Additions ( Rs Cr. )	Detailed reasons of Asset Additions	Provision of Regulations under which Add. Cap. filed	Reference of all supporting doc. enclosed with this reply
<b>1</b>	<b>BTG</b>	<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
A	Service Tax	0.41			
B	Control Transformer	0.01			
	<b>Total BTG ( A )</b>	<b>0.42</b>			
<b>2</b>	<b>BOP</b>				
A	Coal Handling Plant	0.58			
B	Measurement Equipment	0.05			
C	Detecting Scanner	0.02			
D	Miscellaneous Items	0.03			
E	Floor Ceiling System	0.16			
	<b>Total BOP ( B )</b>	<b>0.84</b>			
<b>3</b>	<b>Civil Cost</b>				
A	Construction of Road	0.32			
B	Construction of Boundary wall	0.09			
<b>C</b>	<b>Portable Gas Analyzer</b>	<b>0.02</b>			

<b>Total Civil Cost ( C )</b>	<b>0.43</b>			
<b>Total Addition (A+B+C)</b>	<b>1.69</b>			

- b. **Whether the assets capitalized during the year are under original scope of work. Supporting documents need to be filed by the petitioner in this regard.**

**Petitioner's Response: Reply to Para (iv) (a) & (b)**

*The Petitioner humbly submits that the additional net capitalization of Rs 1.69 Crore falls within the norms specified under Regulation 20.2 and 20.3 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015. The said Regulation reads as under:-*

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

- (i) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law;*
- (ii) Change in law or compliance of any existing law;*
- (iii) Deferred works relating to ash pond or ash handling system in the original scope of work; and*
- (iv) Any liability for works executed prior to the cut-off date, after prudence check of the details of such un-discharged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc."*

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

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

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

The Petitioner would humbly like to draw the kind attention of the Hon'ble Commission in the light of the above Regulation that the said additional capitalization is within the original scope of the work of Rs 3,575/- Crore authorized by the Resolution of Board of Directors dated May 17<sup>th</sup>, 2014.

Resolution of Board of Directors dated May 17<sup>th</sup>, 2014 is attached as **Annexure-1**.

The detailed reasons of asset additions under suitable provisions of Regulations including the supporting documents is furnished in the format as provided by the Hon'ble Commission and is hereby annexed as **Annexure-2**.

**Issue:**

- (iv) (c) **Why the above works claimed under additional capitalization have not been carried out/completed up to CoD and Cut-off date.**

**Petitioner's Response: Reply to Para (iv) (c)**

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

**Issue:**

- (iv) (d) The asset addition of Rs 1.69 Crore claimed in the petition be reconciled with the figures recorded in the Assets cum Depreciation Register.

**Petitioner's Response: Reply to Para (iv) (d)**

The Reconciliation between asset additions of 1.69 Crore Claimed in the petition and Asset-cum-Depreciation Register is as under:

Description	Amount in Rs
Total addition as per Asset-cum-Depreciation Register filed with the Petition as Appendix-1 to TPS Forms (PI refer Page TA-1 to TA-64)	16,883,495.00
Say,	Rs 1.69 Crore
Addition claimed in the Petition	Rs 1.69 Crore
Difference	NIL

The Petitioner also humbly submits that above addition during FY 2016-17 filed in the Petition & Asset-cum-Depreciation Register is in agreement with the Addition during FY 2016-17 as per Note-2 of Annual Audited Accounts for FY 2016-17 as well.

**Issue:**

- (v) In form TPS-5B, the petitioner has filed the break-up of capital cost components however, in the same format the original project cost column is not filled up. The petitioner is required to file the break-up of original project cost in the same Form TPS 5B in this regard.

**Petitioner's Response: Reply to Para (v)**

The break-up of original project cost in TPS-5B format is attached herewith as **Annexure-3**. The Hon'ble Commission may be pleased to note that though there are some minor variations within the sub-groups of the Project Cost, the overall capital expenditure as on 31.03.2017, is well within the estimated cost of completion of Rs 3,575 Crore. The details are as under:-

Particulars	Rs in Crs
Estimated Cost of Completion	3,575.00
Add: Interest for intervening period between COD of Unit I & COD of Unit II on Debt Component of unallocated costs allowed by Hon'ble Commission vide its Order dated Nov 26 <sup>th</sup> , 2014.	23.46
<b>Adjusted Cost of Completion</b>	<b>3598.46</b>
<b>Current Project Cost upto 31.03.2017 filed in the Petition</b>	<b>3,520.52</b>

**Issue:**

- (vi) The petitioner is required to file the status of Liquidated Damages if any, recovered/to be recovered from the different vendors as on 31<sup>st</sup> March' 2017.

**Petitioner's Response: Reply to Para (vi)**

*The Petitioner would humbly like to submit that no Liquidated Damages has been claimed by Petitioner from vendors as on 31<sup>st</sup> March 2017.*

**Return of Equity:-**

**Issue:**

- (vii) The petitioner has claimed RoE by grossing up the rate of return on equity with MAT. The petitioner is required to justify its claim in light of the proviso under Regulation 31 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, which provides as under:

*“31.3 The actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2016-17 to 2018-19 on actual gross income of any financial year shall be trued-up every year.”*

- (viii) As per the Annual Audited Accounts of Jaypee Bina Thermal Power Plant and JPVL corporate Annual Audited Accounts for FY 2016-17, the tax amount is indicated as Nil, while the petitioner has claimed the Return on Equity by grossing up with MAT. In view of above, the petitioner is required to file the basis of tax amount claimed whereas, it has not paid any Income tax for Jaypee Bina TPP and JPVL for FY 2016-17.
- (ix) It needs to be explained with supporting documents whether the petitioner is eligible for MAT during FY 2016-17 in light of figures recorded in its Annual Audited Accounts for FY 2016-17 and the provisions under MPERC (Terms and Condition for Determination of Generation Tariff) Regulations, 2015.

**Petitioner's Response: Reply to Para (vii), (viii) & (ix)**

*The Petitioner would humbly like to submit that since the Generating Station has recorded a profit of Rs 99.23 Crore during the Year 2016-17, the Petitioner has accordingly claimed ROE by grossing up with MAT.*

**Issue:**

- (x) The petitioner is required to file the detailed break-up and allocation of income, expenditure and profit/loss of M/s JPVL among all its power stations for FY 2016-17 duly certified by statutory auditor.

**Petitioner's Response: Reply to Para (x)**

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*The break up and allocation of income, expenditure and profit/ loss of M/s. JPVL among all its power stations for FY 2016-17 duly certified by Statutory Auditor to arrive at overall loss of Rs 760.18 Crore in M/s. JPVL is attached as **Annexure-4**.*

**Issue:**

- (xi) **The petitioner is also required to file the copy of Challan for the income tax paid during FY 2016-17 along with the copy of the income tax return.**

**Petitioner's Response: Reply to Para (xi)**

*The Petitioner would humbly like to submit that we have not paid tax for FY 2016-17 by way of cash/bank basis but have paid the tax by means of TDS/TCS as recorded in the Income Tax Return for FY 2016-17 (Assessment Year 2017-18). Copy of Income Tax Return for FY 2016-17 (Assessment Year 2017-18) is attached as **Annexure-5**.*

**Interest on Term Loan:-**

**Issue:**

- (xii) **The petitioner has worked out the weighted average rate of interest on Normative Loan of different lenders whereas the Regulation 32.5 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015, provides that:**

***“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.”***

**In view of above Regulation, the petitioner is required to file the detailed computation of the weighted average rate of interest on the basis of the actual loan portfolio. Supporting documents for rate of interest as on 1<sup>st</sup> April' 2016 be also filed in this regard.**

**Petitioner's Response: Reply to Para (xii)**

*The Petitioner would humbly like to submit that the actual interest rates corresponding to actual loan portfolio for each bank has been taken into account to calculate the Weighted Average Rate of Interest for bank wise normative loan balance which is reflected in TPS 13 and the clubbed weighted average rate of interest all these interest rates are reflected in TPS 13A. However, to substantiate the Rate of Interest, a summary of Actual amount of monthly interest paid, rate of interest along with the true copy of bank statement showing payment thereof has been attached herewith as **Annexure-6**.*

**O&M Expenses:-****Issue:**

- (xiii) In the subject true-up petition, the petitioner has claimed O&M expenses of transmission line and bay for FY 2016-17 is Rs 0.32 Crore on the basis of the norms prescribed under MPERC (Terms and Conditions for determination of Transmission Tariff) Regulations.

The petitioner is required to justify its claim in this regard in light of the MPERC (Terms and Condition for determination of Generation Tariff) Regulations, 2015.

**Reply to Para (xiii)**

The O&M expenses of Transmission lines & bay has been claimed on the basis of the norms prescribed under MPERC (Terms and Conditions for determination of Transmission Tariff) Regulations and the detailed calculation of the same has been same provided on the Page No.T-3 of the subject petition. The same is being reproduced as under:-

**Statement of O&M Expenses of Transmission Line & Bay***Rs in Crore*

<b>Sl. No.</b>	<b>Particulars</b>	<b>FY 2016-17</b>	
1	O&M Expenses of 400kV Transmission Line	39.294 ckt km	0.13
2	O&M Expenses of 400kV Bay	2 Nos of 400kV Bay	0.19
	<b>Total O&amp;M Expenses</b>		<b>0.32</b>
	<b>Length of Transmission Line</b>	<b>Circuit Kms</b>	
<b>a</b>	13.444 kms 400kV Double Circuit Line	26.888	ckt km
<b>b</b>	Single Circuit MPPTCL Line	6.177	ckt km
<b>c</b>	Single Circuit PGCIL Line	6.229	ckt km
	<b>Total Circuit Kms</b>	<b>39.294</b>	<b>ckt km</b>

**Note:-**

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

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

The Generation Project of the Petitioner having two units of 250 MW each achieved COD of Unit – 1 on 31-08-2012 and Unit – 2 on 07-04-2013. The PPA entered into



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with MPPMCL (Procurer) dated 05-01-2011 in Article 4.8 has the following provision:-

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

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

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

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

Moreover, while adjudicating in the Petition No. 70 of 2015 for FY 2014-15 vide its Order dated 03-06-2016 the Commission has disallowed the O&M Expenditure claimed by the Review Petitioner on ‘Dedicated Transmission Line’ built for supplying power to the Respondents on the incorrect premise that the O&M Expense allowed for the Power Plant will also cover the O&M Expense required for the Transmission Line.

Further, the Hon'ble Commission in disallowing the claim of the Petitioner in Petition No. 70 of 2015 has held that MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 does not provide for any O&M expenses of dedicated transmission line separately and therefore the Claim of the Petitioner cannot be granted. The said contention is incorrect as even the Central Commission and its Regulations do not provide specifically for O&M Expense of Dedicated Transmission Line to be given. However, CERC in Petition No. 308 of 2009 in its Order dated 11.03.2010 has held as follows:-

“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**  
:”

From the perusal of the above quoted extracts of the Order of the Hon'ble CERC it is evident that as a matter of practice the Central Commission allows O&M on dedicated Transmission Lines as if the same is not allowed then it will lead to under-recovery for the generator. Further, it is most respectfully submitted that neither the CERC 2009 Regulations nor the recently 2014 Regulations provide for such dispensation. Hence, the Hon'ble Commission's reasoning that because the MPERC Regulations, 2012 did not provide for the same, the Commission will not grant O&M is contrary to the principles of Tariff determination to be undertaken under Section 62 of the Act.

Further, in terms of the PPA dated 05.01.2011 signed between the Petitioner and the

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*Respondents the entire onus of evacuating power beyond the inter-connection point vests with the Respondents. Hence, the O&M Expense for such line also has to be borne by the Respondents. The relevant extracts of the PPA are being reproduced as follows:-*

*“3.2 -Satisfaction of Conditions Subsequent by the Procurer*

*(ii) The Procurer shall have established the necessary evacuation infrastructure beyond the Interconnection Point, necessary for evacuation of the Contracted Capacity at least 201 days prior to COD.*

*It is pertinent to mention that the Normative O&M expenses of a power plant is a complete package determined after considering all the elements/components of Operation and Maintenance and other overhead costs of a generating stations. The O&M expenses of a generating station do not include any cost incurred by the generator with regards to maintenance of the Dedicated Transmission Line. Therefore, such costs have to be allowed separately to the generator.*

*The Petitioner is entitled to the O&M expenses with regards to the Dedicated Transmission Line as these lines are installed, owned and maintained by the Petitioner. The Petitioner incurs substantial amount of cost in maintaining these dedicated Transmission lines and disallowance of the same would lead to under recovery of the cost to the Petitioner, which is against the mandate of Act and the National Tariff policy.*

*Section 10 of the Electricity Act 2003 mandates the Generating Company to establish, operate and maintain the Dedicated Transmission Lines. These dedicated transmission lines are required for evacuation of power from the generating station of the Petitioner. 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. The Hon’ble Tribunal in its Judgment dated 23.05.2012 in Appeal No. 145 of 2011 has held as below: -*

*“14.....On the contrary, Section 10 of the 2003 Act mandates that generating company shall establish, operate and maintain the dedicated transmission lines connected therewith in accordance with the provisions of this Act. Thus, the Section 10 of the 2003 Act becomes mandatory by which the generating company is mandated to construct its own dedicated transmission lines which connect the substation of the Appellant”.*

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*It is also humbly submitted 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 maintain the Dedicated Transmission Line will result in significant drop in the Return on Equity allowed in the tariff of the Petitioner and the project of the Petitioner will not be commercially viable. The Hon'ble Appellate Tribunal for Electricity 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**' has held as under: -*

"6

.....

*xx. In our opinion it is now not open to the Appellant to raise issues on consideration of the additional capital cost on account of conversion from 32 KV Dedicated Transmission Line to 132 KV Dedicated Transmission Line at the stage of determination of the tariff. This being a very small power plant and has been set up to promote renewable energy and would not be able to sustain after such an additional cost for conversion is not allowed. **We have also noticed if a cost on Dedicated Transmission Line is not fully serviced through the tariff there will be significant drop in the Return on Equity allowed in the tariff of the Respondent no.2 and the project of the Respondent no.2 will not be commercially viable**".*

*In view of the above it is submitted that the Petitioner is mandated under the Act to install and maintain the Dedicated Transmission Line. Further as per the Hon'ble Tribunal Judgment, the Petitioner must be allowed to recover the entire cost with regards to the installation and maintenance of the Dedicated Transmission Line. It is pertinent to mention that the CERC being cognizant of the above fact allows such cost, even without there being any specific provision in its Regulation. It is settled position that in a cost plus Tariff the State Commission must allow all the reasonable expenditure to the Generator after prudence check.*

*The Petitioner humbly requests the Hon'ble Commission to allow this in view of the aforesaid circumstances.*

**Lease Rent:-**

**Issue:**

- (xiv) **In Form TPS-1, the petitioner has claimed an amount of Rs 0.35 Crore during FY 2016-17 as lease rent payment for land. Supporting document(s) in this regard is required to be filed by the petitioner. This amount is also required to be reconciled with the Annual Audited Accounts.**

**Petitioner's Response: Reply to Para (xiv)**

*With regard to Lease Rent Payment, the Petitioner would humbly like to clarify that the Petitioner has wrongly claimed Rs 0.32 Crore against the Lease Rent Payment instead of Rs 29.67 Crore. It was an inadvertent error. We have claimed Lease Rent of Rs 5,81,059/- (Rs 5,20,512+Rs 60,547) & Railway Land Lease Rent of Rs 23,85,814/-, totalling Rs 29,66,873/-. Both these figures are grouped under "Other Expenses" (Note-29 of P&L A/c) and are recorded against "Miscellaneous Expenses". However, the amount recorded against Miscellaneous Expense also includes certain credit balances such as Sundry Balances Written Off A/c, due to which the Miscellaneous Expenses amounts to Rs 23,27,750 /-.*

*However, relevant documents in support of "Lease Rent" payment are attached as Annexure-7.*

**Plant Availability Factor:-**

**Issue:**

- (xv) The petitioner is required to file actual Plant Availability Factor achieved during FY 2016-17 duly certified by concerned Load Dispatch Centre.

**Petitioner's Response: Reply to Para (xv)**

*Actual Plant Availability achieved during FY 2016-17 was 87.02% as reflected in the State Energy Account for the month of March '17 issued by State Load Despatch Centre vide their Letter No. 07-05/PM-68A/SEA-3.0/65 dated 07-04-2017. The Page A-1 of the said letter specifying above PAFY is attached herewith as Annexure-8.*

**Issue:**

- (xvi) Regulation 8.7 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 stated that the generating company shall carry out the truing up of tariff of generating station based on the performance of following controllable parameters:
- a. Station Heat Rate;
  - b. Secondary fuel oil consumption;
  - c. Auxiliary Energy consumption

In view of the above, the petitioner is required to file the monthly details of aforesaid performance parameters actually achieved vis-a-vis normative parameters under the Regulations, 2015. The petitioner is also required to file the details of financial gain if any, on account of controllable parameters and

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shared with the beneficiaries in light of the Regulation 8.9 of the Regulations, 2015.

**Petitioner's Response: Reply to Para (xvi)**

*In line with the Regulation 8.7 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015, the Petitioner would humbly like to submit that the Petitioner has incurred a loss of Rs 0.93 Crore on account of Controllable Performance Parameters including:*

- Station Heat Rate;
- Secondary Fuel Oil Consumption; and
- Auxiliary Energy Consumption.

*The month wise detailed comparison of aforesaid performance parameters actually achieved vis-a-vis normative parameters is attached as **Annexure-9**.*

**Issue:**

- (xvii) **The petitioner is also required to file a copy of the bills raised during FY 2016-17 to the procurer for supply of electricity.**

**Reply to Para (xvii)**

*The summary of bills raised during FY 2016-17 to the Procurer for the supply of power is attached as **Annexure-10**. In addition the copy of all the capacity charges bills and energy charges bill are attached as soft copy in the CD as providing the hard copy for the same is a voluminous task.*

*That the Public Notice on the gist of the Petition in English and Hindi version inviting comments/ suggestions from stakeholders was published on 13<sup>th</sup> February, 2018 in Times of India (Bhopal Edition) and in DainikJagran (Bhopal & Rewa Edition). The relevant e-pages of both the newspapers are attached as **Annexure-11**.*

*That the Hon'ble Commission may True Up the Capacity Charges in respect of FY 2016-17 determined vide Order dated in terms of the Additional Capital Expenditure incurred by the Petitioner as enumerated in subject Petition and determine Capacity Charges.*

*The Petitioner request the Hon'ble Commission to condone any inadvertent omissions/ errors/ rounding off differences/ shortcomings/ delay and permit the Petitioner to add/ alter this filing and make further submissions as may be required by the Hon'ble Commission.*

**Annexure II:**

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

1. **Comment:** It is submitted that definition of 'cut-off date' in the 2015 Generation Regulation has been modified from the definition under the 2012 Generation Regulations. The definition under the 2012 Regulation was as under

*"cut of date" means 31<sup>st</sup> March of the year closing after two years of the year of commercial operation of the Project, and in case the Project is declared under commercial operation in the last quarter of a year, the Cut off date shall be 31<sup>st</sup> March of the year closing after three years of the year of commercial operation;*

2. **Comment:** Unit-I of the Project was declared under commercial operation on 31.08.2012 and Unit-II was commissioned on 07.04.2013. Therefore the cut-off date in terms of the 2015 Generation Regulations would be 31.03.2015. Any expenditure incurred after the said date cannot be capitalised for the purpose of tariff determination. It is submitted that as per Form 1 Statement Showing Claimed Capital Cost Rs. 1.69 Crore is alleged to have been incurred in FY 2016-17. The same is clearly beyond the cut-off date and recoverable only under special circumstances as prescribed under the applicable Regulations.

3. **Comment:** The present petition has been filed praying that certain works have been undertaken by the Petitioner under all three heads, i.e., BTG, BOP and the Civil Works. The additional expenditure in relation to BTG relates to alleged claim of Rs. 0.41 Crore as service tax by BHEL and Rs. 0.01 Crore incurred towards the procurement of control Transformers to improve rapping system of ESP& procurement of hardness tester.

***Petitioner's Reply***

*Expenditure incurred after the cut-off date of the Project and Expenditure for work not within the original scope of the Project cannot be capitalised for the purpose of Tariff determination*

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

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6.1 The present Petition has been filed under Regulation 8.4 and Regulation 20.3 of the MPERC Tariff Regulation 2015.

6.2 Regulation 8.4 of the MPERC Tariff Regulation 2015 is reproduced as below: -

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

6.3 In terms of Regulation 8.4 this Hon'ble Commission can True-up the Tariff of Bina TPP on account of '**Capital Expenditure**' and '**Additional Capital Expenditure**' actually incurred in the Year for which the true up is sought. Therefore, if the Generating Company has actually incurred any form of expenditure as envisaged under Regulation 20, than its Tariff for that particular year can be Trued-up. It is submitted that the Petitioner has incurred Additional Capital Expenditure relating to Boiler, Turbine and Generator (**BTG**) of the Plant, Balance of Plant (**BOP**) and Civil Work in the FY 2016-2017 and hence sought for True-up of the Tariff for the said year.

6.4 Regulation 20 of the MPERC Tariff Regulation 2015 is reproduced as below: -

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

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

(ii) Works deferred for execution;

(iii) Procurement of initial capital spares within the original scope of work, in

accordance with the provisions of Regulation 19;

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

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

Provided that the details of works asset wise/work wise included in **the original scope of work** along with estimates of expenditure, liabilities recognized to be payable at a



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future date and the works deferred for execution shall be submitted along with the application for determination of tariff.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*6.5 Capital Expenditure or Additional Capital Expenditure incurred by the Generating Station after the cut-off date of the Project, are admissible under Regulation 20.3. Unit - I of Bina TPP achieved its Commercial Operation Date ('COD') on 31.08.2012 and Unit – II achieved its COD on 07.04.2013 respectively. Therefore, in terms of the MPERC Tariff Regulation the cut-off date for Unit-I and Unit-II is 31.03.2014 and 31.03.2015 respectively.*

*6.6 The Petitioner has claimed Additional Capital Expenditure incurred in FY 2016-2017, which is evidently after the cut-off date of the Project. Hence, the claims made under the present Petition would be covered under the different heads of Regulation 20.3. Regulation 20.3 specifically covers capital Expenditure incurred by the Generating Station beyond its cut-off date.*

*6.7 Regulation 20.1 as well as Regulation 20.2 is restricted to works covered under the Original Scope of the Work of the Project, which is evident from the recital of the said Regulations. However, Regulation 20.3 is not subjected to the phrase 'within the original scope of work' and hence it seeks to allow expenditure/cost related to work, which are not even covered under Original Scope of the Work of the Project. This important aspect of Regulation 20.3 makes it much broader and comprehensive in its scope.*

*6.8 In view of the above it is submitted that: -*

*(a) The contention of MPPMCL (@ **Para 6 of its reply**) that expenditure incurred after the cut-off date cannot be capitalized for the purpose of Tariff determination is completely flawed and incorrect in terms of the mandate of Regulation 20.3 and the explanation offered above.*

*(b) Further, the claim of the Petitioner is admissible under Regulation 20.3 since the Petitioner has filed the present Petition seeking True-up of Tariff in relation to cost incurred after the cut-off date of the Project.*

*(c) Regulation 20.3 is comprehensive in nature as it seeks to allow cost for work which are not even covered under the original scope of work of the Project.*

*7. It is well settled position of law that the State Commission is bound by its own regulations as held by a Constitution Bench in the matter **PTC India Limited Vs Central Electricity Regulatory Commission(2010) 4 SCC 603** and also held by the Hon'ble Appellate Tribunal vide its order dated 01.03.2012 in Appeal No.131 of 2011 in the case of **Haryana Power Generation Corporation Ltd. vs. Haryana Electricity Regulatory Commission.***

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8. In addition to the above it is submitted that the estimated cost of completion of the Project as approved under the Resolution passed by the Board of Directors is Rs 3,575 Crores. It is submitted that as on 31.03.2017 the Petitioner has incurred and claimed only Rs.3,520.52 Crores towards the capital cost of the Project. The aforesaid fact has been intimated to the Hon'ble Commission from time to time and the Hon'ble Commission being cognizant of the aforesaid fact has always Trued up the Additional Capital Expenditure claimed by the Petitioner. Therefore the Petitioner till date has not exceeded the estimated cost that was prudently approved by the Board of Directors. Present Petition pertains to additional cost qua BTG, BOP and Civil Work, which were all part of the original scope of work already approved by this Hon'ble Commission. Therefore, alleged contentions of MMPMCL that the claims of the Petitioner made in the Petition are not admissible are baseless and unsustainable under law.

9. It is most respectfully submitted that 'True Up' proceedings are necessary as the projections at the beginning of the year and actual expenditure and revenue received differ due to one reason or the other. The same has been upheld by the Hon'ble Appellate Tribunal in its Judgment dated 04.12.2007 in Appeal No.100 of 2007 in the matter of '**Karnataka Power Transmission Company Limited V/s Karnataka Electricity Regulatory Commission**'. The relevant extract of the Judgment is reproduced as below: -

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

**[Emphasis Added]**

10. Therefore, the expenditure for works claimed under the present Petition may have not been projected earlier, however the same have been made necessary on account of efficient operation of the Plant and hence the Petitioner was constrained to incur such expenditure.

11 It is respectfully submitted that once the asset is put to use for generation, its capitalization is to be allowed. The servicing of the capital expenditure through tariff is not to be deferred after the asset is put to use, as held by the Appellate Tribunal

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*in its judgment dated 06.09.2013 in Appeal No. 2 of 2013 in the case of **Haryana Vidyut Prasaran Nigam Ltd. Vs. Haryana Electricity Regulatory Commission & Ors.** It is respectfully submitted that aforesaid asset put to use is giving benefit to the beneficiaries only and therefore, ultimately reducing burden on the consumers in the State of MP.*

4. **Comment:** Typically, BTG component would refer to supply of the Boiler, Turbine and Generator for the Plant. There is no separable element of service in the BTG component and thus there cannot be any question of levy of service tax. Further, neither the provision of the contract nor the demand letter from BHEL have been placed on record. There is no means to verify whether the expense was incurred in a prudent manner. Therefore, the alleged liability of service tax incurred by the Petitioner cannot be allowed to be passed on in tariff and the claim is liable to be rejected.
  
5. **Comment:** It is submitted that Rs. 0.01 Crore allegedly incurred towards the procurement of control Transformers to improve rapping system of ESP& procurement of hardness tester were neither part of the original project conceived by the developer nor has become a mandatory installation upon advice/ direction from Statutory Authorities. Therefore, even if expenses have been incurred towards installation of new machinery, the same cannot be considered towards gross block of capital cost of the Project of the petitioner.

#### ***Petitioner's Reply***

*It is the contention of MPPMCL that BTG component refers to supply of Boiler, Turbine and Generator. There is no separate element of service in the BTG component and thus there cannot be any liability of service tax incurred by the Petitioner.*

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

13.1 *With regards to BTG component of a Generating Station, two different contracts were entered into viz; Contract for Supply of BTG and Contract for Erection and Commissioning of BTG. The Contract for Supply might not involve any liability qua Service Tax but the Contract for Erection and Commissioning unequivocally involves an element of service and the service provider is liable to pay service tax to the Central Government. In the present case the Contract for Erection and Commissioning of BTG was given to M/s BHEL. Under the terms of the said contract, the Service Tax paid by*

M/s BHEL to the Central Government was liable to be reimbursed by the Petitioner by way of separate invoices raised by M/s BHEL in terms of the service tax paid by it.

13.2 Regulation 20.3 (e) of the MPERC Tariff Regulation 2015 provides that any liability for work executed prior to the cut-off date may be admitted by the Hon'ble Commission after prudence check. The cut-off date of the Project is 31.08.2014 for Unit I and 31.03.2015 for Unit II. The Petitioner in the present Petition has claimed 0.41 Crores towards the Service Tax as claimed by BHEL, Haridwar in respect of BTG work, which was executed prior to the cut-off date of the Project. Moreover, it is an admitted fact that the BTG work was executed and completed before the cut-off date of the Project, as the Plant would not be operational without the BTG.

13.3 The contract for erection and commissioning of BTG was also given to BHEL. Pursuant, thereto BHEL vide its various invoices has claimed the Service Tax amounting to Rs.0.41 Crores, which was paid by the Petitioner in FY 2016-2017. In view thereof, it is submitted that Rs.0.41 Crores is a liability accrued upon the Petitioner qua work, which was executed and completed prior to the cut-off date. Hence, the same is clearly covered by Regulation 20.3 (e) of the MPERC Tariff Regulation 2015. Various invoices raised by M/s BHEL qua service tax are annexed with the reply dated 27.02.2018 to query letter letter issued by this Hon'ble Commission.

**Re: Control Transformer**

13.4 Further, the Petitioner had claimed 0.01 Crores towards cost incurred on account of procurement of Control Transformer for Electric Static Precipitators in Unit -1 and procurement of hardness tester as the same had become necessary for improving the rapping system of the ESP and for predictive maintenance of boiler pressure parts. The aforesaid expenditure was necessary for efficient operation of the Plant, hence the same shall be allowed. Further, allowance of the same would be within the approved estimated cost of the Project.

6. **Comment:** Petitioner has averred that it has incurred the following expenses for the items specified herein for balance of plant works:

S.No	Item	Amount Claimed (In Rs Crore)
1.	System Software upgradation for Coal Handling for improved version of program logic centre for Coal Blending system, Sheet cutting machine for use	0.58

	during modification and improvement of Air Circulation system in CHP Tunnel, AC to DC converter for use in CHP operation control upgradation	
2.	Procurement and installation of equipment for measurement of dissolved system in SWAS system for system modification and improvement	0.05
3.	Scanner for detecting level of Ash Handling system	0.02
4.	Miscellaneous items such as UPS system in 33KVA and CH Main control room/ Electrical Room-1, latest computers for improved preservation of plant data.	0.03
5.	Floor to Floor ceiling system on cable tray entry points in Main plant Building	0.16

7. **Comment:** It is submitted that as stated earlier, the above mentioned items were neither part of the original project conceived by the developer nor has become a mandatory installation upon advice/ direction from Statutory Authorities. Further, the petitioner has even failed to point out why these were required. Bald statements have been made that upon installation of the these various items are performing better. Therefore, the present claim of the Petitioner is a backdoor attempt to increase the tariff of the project and unnecessarily burden the consumer with additional tariff.

#### ***Petitioner's Reply***

*It is the contention of MPPMCL that the several claims of the Petitioner relating to BOP of Project were neither part of the original scope of work of the project nor has become mandatory installation as per the advice or directions of the statutory authority, hence the same shall not be allowed.*

15. *That the above contention of MPPMCL is baseless and vehemently denied for the following reasons:-*

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15.1 As stated above the claim of the Petitioner falls within Regulation 20.3, which allows capital expenditure incurred after the cut-off date of the Project. Further, Regulation 20.3 is comprehensive in its scope and seeks to allow cost for work which are not even covered under the original scope of the work of the Project. Therefore, the aforesaid contention of MPPMCL is flawed and incorrect.

15.2 Under the BOP head the Petitioner has claimed Rs.0.03 Crores for procurement of CCTV Cameras and Rs.0.16 Crores towards procurement of floor to floor ceiling system on cable tray and entry points in order to keep a watch in the cable galleries and to eliminate spreading of fire. Both these expenditure have been incurred qua work which have become necessary for improving the safety and security of the Plant.

15.3 It is most respectfully submitted that the works related to Fire Detection and Protection System was carried out in line with the mandate of Regulation 12 (5) of CEA Regulations, 2010 which requires thermal generating stations to be equipped with comprehensive/ automatic fire detection, alarm and fire protection system. The relevant part of Regulation 12 (5) (f) (iii) of CEA Regulations, 2010 is reproduced below:

“Automatic medium velocity water spray system, complying with TAC guidelines, shall be provided for the areas relating to:

...(B) Coal Conveyors, Transfer Points, crusher houses etc”

Therefore, it can be seen that the works carried out by the Petitioner qua installation of CCTV and augmentation of fire fighting system are in line with the mandate of CEA Regulations mentioned as above.

15.4 The previous position was altered vide the notification of CEA Regulation 2010. Regulation 12 (5) (f) (iii) of CEA Regulations, 2010 as quoted above mandated every thermal power plant to be equipped with comprehensive/automatic fire detection, alarm and fire protection system. It is pertinent to mention that CEA Regulation 2010 is in the nature of a delegated legislation hence it has to be compulsorily complied with. Since the installation of fire detection and protection system was mandated by CEA Regulations, 2010 with regards to higher security and safety of the plant, the Petitioner has claimed the expense under Regulation 20.3 (b) as well as 20.3 (c). Regulation 20.3 (b) seeks to allow all cost incurred on account of work related to Change in Law or Compliance of Existing Law.

15.5 Regulation 20.3 (c) of the MPERC Tariff Regulation provides that any expenses incurred on account of need for higher security and safety of the Plant as advised or directed by the appropriate Government Agency may be allowed by the Hon'ble Commission. What is important to note is that Regulation 20.3 (c) seeks to allow all such expenditure which are incurred pursuant to a mere advice or upon direction from the appropriate Government Agency relating to work qua improving the safety of the Plant. A direction from the appropriate Government Agency is not a mandatory



requirement, even if the cost is incurred pursuant to a mere advice and such cost relates to work qua improving the safety and security of the Plant, than such cost may be allowed by the Hon'ble Commission.

15.6 In the present case there is no specific direction from the Government Agency for installing the CCTV Cameras and the floor to floor ceiling system. However, CEA Regulation has changed the earlier position mandating Thermal Power Plants to be equipped with fire fighting, alarm and detection system. Further, the CISF and other National Security Agency have been directing other Generating Companies such as NTPC to necessary install CCTV and Fire Protection System in the cable gallery of the Plant in order to early detect and eliminate fire. Further, the Central Electricity Authority, which is a statutory body from time to time issues directions and advices for improving the safety of the Thermal Power Plant. Therefore, being cognizance of the aforesaid fact the Petitioner in a proactive manner and with the intent of improving the safety and security of the Plant and the people working therein has incurred the cost qua the aforesaid work, which shall be allowed in terms of the mandate of Regulation 20.3 (b) &(c).

15.7 Further the Petitioner has incurred cost qua Coal Handling Plant, for procurement and installation of equipment for measurement of dissolved oxygen in SWAS system and for procurement of scanner for improving the ash handling system. All the aforesaid work have become necessary for the efficient working of the Plant and hence the Petitioner was constrained to execute such work. Therefore, the Hon'ble Commission shall allow the same.

8. **Comment:** Petitioner has averred that it has incurred the following expenses for the items specified herein for other civil works:

S.No	Item	Amount Claimed (In Rs Crore)
1.	Construction of road from plant gate to STP area	0.32
2.	Boundary Wall at Barrage Area	0.09
3.	Procurement of Portable Gas analyzer	0.02

9. **Comment:** It is submitted that as stated above for BTG and BOP costs, neither the above mentioned works are part of the original project works deferred for a later date nor have these become mandatory in terms of the direction/ advice of the statutory

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authorities. Accordingly, there is no provision under the extant 2015 Tariff Regulations which can be relied on to claim capitalisation of the above mentioned items.

10. **Comment:** It is submitted that all entities operating in a state are bound by the extant regulations framed by the respective State Electricity Regulatory Commissions. The regulations are also binding on the respective State Electricity Regulatory Commissions. In the matter of HVPNL vs HERC & Ors Appeal No 102 of 2011 Decided on 18.04.2012 Hon'ble APTEL has held as under:

*12. Section 181 (2)(zd) of the Act gives powers to the State Commissions to frame Regulations specifying Terms and Conditions for determination of tariff under section 61 of the Act. Similarly, Section 178 (s) of the Act gives powers to the Central Commission to frame Regulations specifying Terms and Conditions for determination of tariff under section 61 of the Act. The powers of Central Commission under section 179 and powers of State Commissions under section 181 are independent of each other. Section 61 of the Act requires of the appropriate Commission to specify terms and conditions for determination of tariff and while doing so it shall be, inter alia, guided by the principles and methodologies specified by the Central Commission. The rationale for incorporating this provision is to ascertain uniformity, to the extent possible, in the Regulations framed by various State Commissions. If the intention of the legislature was that the State Commission would adopt the provisions of the Regulations framed by the Central Commission, the legislature would have used the term 'shall follow' rather than the term 'shall be guided by' in section 61(a) of the Act.*

*13. The crux of the above discussions is that the State Commissions are independent statutory bodies having full powers to frame its own Regulations specifying terms and conditions for determination of tariff and once such Regulations are notified, the State Commission is bound by these Regulations.*

11. **Comment:** The petitioner has failed to demonstrate that any of the claims for capitalisation is in terms of the Regulations of this Hon'ble Commission. Thus the instant petition is devoid of any merit and is liable to be dismissed.

12. **Comment:** That, it is humbly prayed that the prudence check, carried out by the Hon'ble MPERC, be shared with this respondent and any reasoning/ rationale advanced in support for inclusion of above indicated Costs with the Capital Cost of the Project deserves to be summarily rejected/ ignored. The Respondent also seeks liberty to deal with/ respond to the Case Laws referred/ quoted at appropriate stage.
13. **Comment:** That, it is further prayed that per MW cost of similar plants in India, which have been commissioned in recent past, may be kept in mind at the time of decision in this instant Petition.
14. **Comment:** 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 a later stage

#### ***Petitioner's Reply***

*The Petitioner has incurred Rs 0.32 Crore towards the cost of construction of road from Plant gate to STP area to enable better accessibility to STP area. Roads, drainage, STP are also part of the Power Plant. Hence the said claim of the Petitioner clearly falls within the ambit of Regulation 20.3 (c) of the MPERC Tariff Regulation 2015 and for reasons explained above the same shall be allowed.*

17. *The Petitioner has incurred 0.09 Crore towards the cost of construction of Boundary wall at Barrage Area for improving the safety of the Barrage. Barrage is also a part of the Power Plant. Hence the said claim of the Petitioner clearly falls within the ambit of Regulation 20.3 (c) of the MPERC Tariff Regulation 2015 and for reasons explained above the same shall be allowed.*
18. *That Petitioner has also incurred 0.02 Crore qua procurement of Portable Gas Analyzer. The installation of analyzer had become essential in order to comply with the stringent new environment norms under the MP State Pollution Control Board norms. Thus, the claim of the Petitioner for additional capitalisation on account of Portable Gas Analyser is due to change in law and/or compliance with the existing law, which is permissible under Regulation 20.3 (b) of MPERC Tariff Regulations, 2015.*
19. *It is well settled position of law that once the asset is put to use for generation, the capitalization is to be allowed. The servicing of the capital expenditure through*

*tariff is not to be deferred after the asset is put to use and the assets put to use optimize the plant performance. The benefit of such improved performance goes to the beneficiaries immediately and there is no reason for not allowing such capital expenditure.*

## **II. PARAWISE REPLY**

20. *That the contents of Para 1 of the reply are matter of record and do not merit any rejoinder.*
21. *That the contents of Para 2 and 3 of the reply as stated are wrong and denied to the extent are contrary to the submissions of the Petitioner. The contention of the MPPMCL that none of the claims of the Petitioner made in the Petition are admissible, as they fall outside the allowed heads for the additional capitalisation specified in Regulation 20 of the MPERC Tariff Regulations, 2015 are baseless, irrational and are denied. It is respectfully submitted that all the claims of the Petitioner are in terms of the Regulation 20.3 of the MPERC Tariff Regulations, 2015. The Petitioner reiterates the preliminary submissions hereinabove and states that the contentions and averments of the MPPMCL to the contrary are wrong and are denied.*
22. *That the contents of the Para 4 and 5 only reproduce and rephrase the provisions of the Regulations framed by the Hon'ble Commission. However, the contentions of the MPPMCL based on the said provisions are misconceived and denied. Petitioner craves leave to refer to the applicable provisions at the time of hearing.*
23. *That the contents of the Para 6 and of the reply as stated are wrong and denied to the extent are contrary to the submissions of the Petitioner. It is wrong and denied that any expenditure incurred after the cut-off date cannot be capitalised for the purpose of tariff determination. It is respectfully submitted that capitalisation of expenditure incurred by Petitioner beyond cut-off date is permissible in terms of Regulation 20.3 the MPERC Tariff Regulations, 2015 which specifically provides for "capital expenditure, in respect of existing generating station incurred or projected to be incurred on the following counts after the cut-off date, may be admitted by the Commission." Thus, any contentions and averments of the MPPMCL to the contrary are wrong and denied. Petitioner reiterates the preliminary submissions hereinabove same are not reiterated for sake of brevity.*
24. *That the contents of Paras 8 and 9 of the reply as stated are wrong and denied for detailed reason mentioned above at Para 13 in the preliminary submissions of the Rejoinder and are not repeated for sake of brevity.*
25. *That the contents of Paras 10 and 11 of the reply as stated are wrong and denied for detailed reason mentioned above at Para 15 in the preliminary submissions of the Rejoinder and are not repeated for sake of brevity.*

26. *That the contents of Paras 12, 13 and 14 of the reply as stated are wrong and denied for detailed reason mentioned above at Para 16 to 18 in the preliminary submission of the Rejoinder and are not repeated for sake of brevity.*
27. *That the contents of Paras 15 and 16 of the reply as stated are wrong and denied to the extent contrary to submissions of the Petitioner. It is wrong and vehemently denied that Petitioner has failed to demonstrate that any of the claims for capitalization is in terms of Regulations of this Hon'ble Commission. It is reiterated that all the claims of the Petitioners may be allowed in terms of the Regulation 20.3 of MPERC Tariff Regulations, 2015 subject to prudence check by this Hon'ble Commission. Further, capital expenditure on aforesaid assets has resulted in improving the performance of the plant and benefit of such improved performance goes to the beneficiaries immediately and there is no reason for not allowing such capital expenditure as claimed by MPPMCL. Petitioner reiterates the contents of the Petition and the preliminary submissions hereinabove and states that the averments of the MPPMCL to the contrary are wrong and are denied.*
28. *That the contents of Para 17 of the reply as stated are wrong and denied to the extent contrary to the submissions of the Petitioner. It is respectfully submitted that Units of the Petitioner's Plant were commissioned in 2012 and 2013 and it cannot be compared with recent commissioned plants as bench mark norms for coal based power plants were different during 2012-2013 as compared to recent bench mark norms for recently commissioned coal based power plants.*
29. *That the contents of Paras 18 of the reply as stated are wrong and denied. It is stated that the MPPMCL had failed to appear or file counter affidavit on multiple opportunities given by this Hon'ble Commission and has filed the present counter affidavit at a belated stage. Therefore, no further opportunity shall be granted by this Hon'ble Commission to file any other affidavit by the MPPMCL.*
30. *That the contents of Para 19 of the reply are matter of record and do not merit any rejoinder.*
31. *That in view of the submissions made above, it is most respectfully prayed that reply of the Respondent, MPPMCL is devoid of merits and seeks to misdirect the proceedings before this Hon'ble Commission. It is, therefore, most respectfully prayed that the present petition may kindly be allowed by this Hon'ble Commission.*