

---

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION**

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



**Petition No. 63 of 2023**

**PRESENT:**

**S.P.S Parihar, Chairman**

**Gopal Srivastava, Member (Law)**

**Prashant Chaturvedi, 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 2022-23 determined by MP Electricity Regulatory Commission vide Multi Year Tariff Order dated 30<sup>th</sup> April, 2021.**

**M/s Jaiprakash Power Ventures Ltd., Noida (UP):  
(Unit: Jaypee Bina Thermal Power Plant)**

**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 22<sup>nd</sup> February, 2024)

1. M/s Jaiprakash Power Ventures Limited (hereinafter called “the petitioner” or “JPVL”) has filed the subject petition for True-up of Generation Tariff for FY 2022-23 in respect of its 2x250 MW (Phase I) Coal based Thermal Power Station at Bina determined by the Madhya Pradesh Electricity Regulatory Commission (hereinafter called “the Commission or MPERC”) vide Multi Year Tariff (MYT) Order dated 30<sup>th</sup> April, 2021.
2. The subject true-up petition has been filed under Sections 62 and 86(1)(a) of the Electricity Act, 2003 and based on the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 {RG- (IV) of 2020} (herein after referred to as “Regulations’ 2020”) for the control period from FY 2019-20 to FY 2023-24 notified in the Madhya Pradesh gazette on 28<sup>th</sup> February, 2020.
3. Bina Thermal Power Station (Phase I) comprises of two generating Units of 250 MW each. Date of Commercial Operation (CoD) of both the units are as given below:

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

Sl. No	Units	Installed Capacity (in MW)	Date of Commercial Operation
1	Unit No. 1	250 MW	31 <sup>st</sup> August, 2012
2	Unit No. 2	250 MW	7 <sup>th</sup> April, 2013

4. The petitioner executed long term Power Purchase Agreement (PPA) on 5<sup>th</sup> January, 2011 with MP Power Management Company Ltd., (hereinafter called “MPPMCL” or “Respondent No. 1”) for supply of 65% power of the installed capacity of the Project at regulated tariff determined by the Commission. The petitioner has executed another Power Purchase Agreement on 20<sup>th</sup> July, 2011 with the Government of Madhya Pradesh for supply of 5% of net power generated at variable charges determined by the Commission.
5. The petitioner had earlier filed Petition No. 44 of 2020 for determination of Multi Year Tariff for Unit No. 1 and 2 of its generating station for the control period from FY 2019-20 to FY 2023-24 based on MPERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2020. Vide Order dated 30<sup>th</sup> April, 2021 in the aforesaid petition, the Commission determined the multi-year tariff of project subject to true-up based on the Annual Audited Accounts for the respective financial year.
6. The details of Annual Capacity (Fixed) Charges for both the units of Bina Thermal Power Station for FY 2022-23 determined vide Commission’s MYT Order dated 30<sup>th</sup> April, 2021

are as given below:

**Table 2: Annual Capacity (Fixed) Charges for FY 2022-23 determined in MYT Order:**

Particulars	Amount (Rs. Crore)
Return on Equity	163.68
Interest on Loan Capital	70.46
Depreciation	180.22
Operation & Maintenance Expense	182.80
Interest on Working Capital	52.33
<b>Annual Capacity (Fixed) Charges</b>	<b>649.48</b>
Less: Non-Tariff Income	2.40
<b>Net Annual Capacity (Fixed) Charges</b>	<b>647.08</b>
<b>Annual Capacity (Fixed) Charges corresponding to 65% of the installed capacity of the project</b>	<b>420.60</b>

7. In the subject petition, the petitioner has sought true-up of Annual Capacity (fixed) Charges for FY 2022-23 in respect of additional capital expenditure incurred during FY 2022-23 in accordance with Regulation 9.4 of the Regulations, 2020, which provides as under:

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

8. In the subject petition, the petitioner filed additional capitalization of Rs. 9.53 Crore and de-capitalization of Rs. 0.66 Crore during FY 2022-23. Therefore, the net additional capitalization of Rs.8.86 Crore claimed by the petitioner during the year. On the basis of the aforesaid additional capitalization in the subject petition, the petitioner claimed the following Annual Capacity (fixed) Charges for Bina Thermal Power Station:

**Table 3: Annual Capacity (Fixed) Charges claimed in petition for FY 2022-23:**

S. No.	Particulars	Amount (Rs. Crore)
1	Return on Equity	201.54
2	Interest on Loan Capital	73.61
3	Depreciation	182.26
4	Interest on Working Capital	49.40
5	O & M Expenses	182.80

5A	O & M expenses (400kV Transmission Lines & Bay)	0.40
6	Lease Rent Payable	0.43
	<b>Total Annual Capacity (Fixed) Charges</b>	<b>690.43</b>
7	Less:-Non Tariff Charges	0.85
<b>8</b>	<b>Net Annual Capacity (Fixed) Charges</b>	<b>689.58</b>
<b>9</b>	<b>Annual Capacity (Fixed) Charges corresponding to 65% of the installed capacity of the Units</b>	<b>448.23</b>

9. With the above submission, the petitioner prayed the following:
- True up the Capacity Charges for FY 2022-23 in terms of the Additional Capital Expenditure incurred by Petitioner after net addition of Rs. 8.86 Crs, as per Tariff Regulations, 2020;*
  - Allow recovery of Electricity Duty and Energy Development Cess on power being scheduled by the MPPMCL and Plant Auxiliary Consumption at actuals;*
  - Allow recovery of actual water charges paid to Water Resources Department, Government of Madhya Pradesh in proportion to the contracted capacity;*
  - Allow the recovery of the filing fees paid to the Commission and also the publication expenses from the beneficiaries;*
10. The subject petition has been examined by the Commission in accordance with the principles, methodology and the norms specified in the Regulations, 2020, Annual Audited Accounts for FY 2022-23, Asset-cum-Depreciation Register for FY 2022-23 and other supplementary submissions filed by the petitioner in response to the additional information/ details sought by the Commission along with all other documents placed on record by the petitioner. The Commission has also examined the subject true up petition in light of the comments/ suggestions offered by the Respondent No.1 and the response of petitioner on the same.
11. In this true-up Order, the Commission has considered opening figures of Gross Fixed Assets, Equity, Loan and Accumulated Depreciation as per the last true-up order for Bina Thermal Power Station issued on 2<sup>nd</sup> March, 2023 for FY 2021-22 in Petition No 75 of 2022.

### **Procedural History**

12. Subject true-up petition was admitted in motion hearing held on 29<sup>th</sup> November, 2023. Vide daily order dated 29<sup>th</sup> November, 2023, the petitioner was directed to serve the copies of its petition to all Respondents. Respondents were also asked to file their responses on the petition within 15 days. The petitioner was asked to file rejoinder within

a week, thereafter.

13. Vide Commission's letter dated 19<sup>th</sup> December, 2023, information gaps and requirement of additional details/ documents were communicated to the petitioner seeking its comprehensive reply with supporting documents by 10<sup>th</sup> January, 2024.
14. By affidavit dated 2<sup>nd</sup> January, 2024 petitioner filed reply to the issues communicated to it by the Commission.
15. The public notice for inviting comments/ objections/ suggestions from stakeholders was published on 4<sup>th</sup> January, 2024 in the following newspapers:
  - (i) Dainik Jagran (Hindi), Bhopal,
  - (ii) Dainik Jagran (Hindi), Rewa and
  - (iii) Central Chronicle (English), Bhopal

The last date for filing comments/suggestions was 25<sup>th</sup> January, 2024. No comments from any stakeholder were received in the office of the Commission in this matter.

16. By affidavit dated 12<sup>th</sup> January, 2024, Respondent No. 1 (M.P. Power Management Co. Ltd.) filed its response/comments on the subject petition.
17. In the aforesaid response, MPPMCL has submitted that the MPPMCL and three M.P. Discoms have entered into a Management and Corporate Functions Agreement dated 05.06.2012. In terms of aforesaid agreement, the Respondent No. 1 (MPPMCL), has been engaged by Respondent No. 2 to 4 (three MP Discoms) to represent and facilitate all proceedings relating to Power Procurement and Tariff Petitions filed or to be defended on behalf of three MP Discoms before various judicial and regulatory authorities including this Commission, to represent the case and coordinating all activities concerning such proceedings. Therefore, the response is being filed on behalf of the Respondent No. 1 (MPPMCL) and the three M.P. Discoms (Respondent Nos. 2 to 4) also.
18. By affidavit dated 23<sup>rd</sup> January, 2024, Petitioner filed its rejoinder to the response/ comments filed by Respondent No 1. The Petitioner responses on each comment offered by the Respondent No 1 along with observations of the Commission are mentioned in Annexure-I of this Order.
19. The public hearing in the subject petition was held on 13<sup>th</sup> February, 2024 through video conferencing, wherein the representatives of Petitioner and Respondent No. 1 appeared.

## Disclaimer for Rounding

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

## Capital Cost as on 1<sup>st</sup> April, 2023

### Petitioner's Submission:

21. The petitioner has considered opening capital cost of Rs 3572.42 Crore. as on 1<sup>st</sup> April, 2022. The details of opening Gross Fixed Assets as on 01.04.2022 along with asset additions during FY 2022-23, deletions during FY 2022-23 and closing Gross Fixed Assets as on 31.03.2023 as filed by the petitioner are as given below:

**Table 4: Capital Cost considered by the Petitioner: (Rs in Crore)**

Gross Block as on 01.04.2022	Addition during 2022-23	Deletions during FY 2022-23	Gross Block as on 31.03.2023
3572.42	9.53	0.66	3581.28

### Provision in Regulations:

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

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

- (i) *the capital cost admitted by the Commission prior to 1.4.2019 duly trued up by excluding liability, if any, up to last true-up order issued by the Commission;*
- (ii) *additional capitalization and de-capitalization for the respective year of tariff as determined in accordance with these Regulations;*
- (iii) *capital expenditure on account of renovation and modernization as admitted by the Commission in accordance with these Regulations;*
- (iv) *capital expenditure on account of ash disposal including handling and transportation facility;*
- (v) *capital expenditure incurred towards railway infrastructure and its augmentation for transportation of coal upto the receiving end of generating station but does not include the transportation cost and any other appurtenant cost paid to the railway; and*
- (vi) *capital cost incurred or projected to be incurred by a thermal generating station,*

on account of implementation of the norms under Perform, Achieve and Trade (PAT) scheme of Government of India shall be considered by the Commission subject to sharing of benefits accrued under the PAT scheme with the beneficiaries”;

**Commission’s Analysis:**

23. In the subject petition, the petitioner filed Opening Gross Fixed Assets of Rs. 3572.42 Crore as on 1<sup>st</sup> April, 2022. On perusal of the Annual Audited Accounts of Jaypee Bina Thermal Power Plant (JBTPP) filed with the petition, it was observed that the opening balance and closing balance of Gross Fixed Assets (GFA) filed in the subject petition and those recorded in Note-2 of the Annual Audited Accounts for FY 2022-23 were at variance.
24. Vide Commission’s letter dated 19<sup>th</sup> December, 2023, the petitioner was asked to clarify the difference in figures recorded in Annual Audited Accounts and those filed in the subject petition. The petitioner was also asked to file reasons for difference in figures approved in last true-up order dated 2<sup>nd</sup> March, 2023 for FY 2021-22 and those considered in the subject petition as on 01<sup>st</sup> April, 2022.
25. By affidavit dated 5<sup>th</sup> January, 2024, the petitioner submitted reply to the aforesaid issues raised by the Commission. On perusal of the reply, the Commission has observed that the difference between the figures filed in the form TPS 5B of the subject Petition (Rs. 3,572.42 Crores) as on 01/04/2022 and as recorded in Note 2 of the Annual Audited Account (Rs. 3,555.75 Crores) is due to disallowances in additional capitalization made by the Commission in earlier true up orders. It is also observed that there is no difference in figure of addition(s)/deletion(s) during FY 2022-23 as recorded in Note 2 of the Annual Audited Accounts and figures of Additions filed in TPS 5B.
26. Hence, the Commission observed that the petitioner while filing GFA as on 01<sup>st</sup> April, 2022 has considered the GFA which had been disallowed by the Commission on account of additional capitalization in true-up orders of respective financial years.
27. The Commission has considered the opening Gross Fixed Assets of Rs. 3526.65 Crore as on 1<sup>st</sup> April, 2022 as admitted by the Commission (as on 31<sup>st</sup> March, 2022) in last true-up order for FY 2021-22 dated 2<sup>nd</sup> March, 2023 in Petition No. 75 of 2022 in this Order. Break-up of the capital cost components as on 1.4.2022 considered in this Order is as given below:

**Table 5: Break-up of the Capital Cost as on 1.4.2022 considered in this Order (Rs Crore)**

S. No.	Capital Cost Components	Capital cost as on 31.03.2022 considered by Commission
1	Land and site development	9.55

2	Plant and Equipment (excluding deletion of Rs 0.94 Crore)	2286.80
3	Civil Works	453.13
4	Over Heads	253.05
5	IDC and Financing Charges	524.11
<b>Total Capital Cost</b>		<b>3526.65</b>

### Additional Capitalization

28. The petitioner claimed additional capitalization of Rs. 9.53 Crore during FY 2022-23. Out of this, Rs 4.34 Crore has been claimed towards the civil structure (Roads & township), Rs. 4.13 Crore has been incurred towards purchase of misc. plant and machinery, Rs. 0.57 Crore has been incurred towards purchase of various office equipments and Rs.0.49 Crore has been incurred towards the purchase of vehicles during FY 2022-23.
29. Furthermore, the petitioner submitted that the assets of Rs. 0.66 Crore were de-capitalized in the Generating Station for which suitable downward adjustments have been taken into account while computing the capital cost for FY 2022-23. Therefore, the net additional capitalization (after adjustment of de-capitalized assets) of Rs. 8.67 Crore is claimed by the petitioner.
30. With regard to the additional capitalization claimed in the petition, the petitioner in para 11 of the petition has submitted the following:
- i. Rs. 0.49 Crore were incurred towards the purchase of vehicles to facilitate the manpower engaged in generation of power directly or indirectly. This will improve/enhance overall efficiency.*
  - ii. Rs. 4.34 Crore have been incurred towards the civil structure (Roads & township) to facilitate the man power in order to provide them better facility.*
  - iii. An amount of Rs. 0.57 Crore have been incurred towards purchase of various office equipments in order to improve the technology, human safety and replacement of old items.*
  - iv. An amount of Rs. 4.13 Crore have been incurred towards purchase of misc. plant and machinery in order to improve the technology/ efficiency.*

### Provisions in Regulations

31. Regarding additional capitalization in respect of existing generating station, within the original scope and after the cut-off date, Regulation 27.1 and 27.2 of the Regulations, 2020 provides as under:

*27.1 The additional capital expenditure incurred or projected to be incurred in respect of an existing project or a new project on the following counts within the original*

---

scope of work and after the cut-off date may be admitted by the Commission, subject to prudence check:

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

27.2 In case of replacement of assets deployed under the original scope of the existing project after cut-off date, the additional capitalization may be admitted by the Commission, after making necessary adjustments in the gross fixed assets and the cumulative depreciation, subject to prudence check on the following grounds:

- (a) The useful life of the assets is not commensurate with the useful life of the project and such assets have been fully depreciated in accordance with the provisions of these Regulations;
- (b) The replacement of the asset or equipment if necessary, on account of change in law or Force Majeure conditions;
- (c) The replacement of such asset or equipment is necessary on account of obsolescence of technology; and
- (d) The replacement of such asset or equipment has otherwise been allowed by the Commission.

32. Regarding additional capitalization in respect of existing generating station, beyond the original scope of work, Regulation 28.1 of the Regulations, 2020 provides as under:

**28. Additional Capitalization beyond the original scope:**

28.1 The capital expenditure in respect of existing generating station incurred or projected to be incurred on the following counts beyond the original scope, may be admitted by the Commission, subject to prudence check:

- (a) Liabilities to meet award of arbitration or for compliance of the order or directions of the any statutory authority, or order or decree of any court of law;
- (b) Change in law or compliance of any existing law;
- (c) Force Majeure Events;
- (d) Any capital expenditure to be incurred on account of need for higher security

and safety of the plant as advised or directed by appropriate Government Agencies or statutory authorities responsible for national security/ internal security;

- (e) *Deferred works relating to ash pond or ash handling system in addition to the original scope of work, on case-to-case basis:*

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

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

### **Commission's Analysis**

33. The petitioner has claimed additional capitalization of Rs. 9.53 Crore during FY 2022-23. Details of the assets claimed under additional capitalization are as given below:

**Table 6: Additional Capitalization claimed by the petitioner for FY 2022-23**

<b>S. No.</b>	<b>Details of Assets/Works</b>	<b>Amount (Rs in Crore)</b>
1	Civil Structure (Roads & Township)	4.34
2	Plant & Machinery	4.13
3	Office Equipments	0.57
4	Vehicles	0.49
	<b>TOTAL</b>	<b>9.53</b>

34. Vide Commission's letter dated 19<sup>th</sup> December, 2023, the petitioner was asked to file a comprehensive reply to the various issues related to additional capitalization communicated to it by the Commission. By affidavit dated 2<sup>nd</sup> January, 2024, the petitioner filled response on each issue raised by the Commission. The issue-wise response filed by the petitioner is summarized as below:

#### **Issue**

- i) **Whether capitalization of additional loop line and other minor assets are under original scope of works of the project? If so, the cost of these works under original scope of works vis-a-vis the actual expenditure be informed. The petitioner was also asked to clarify whether addition of assets was as per Regulation 27.1 of the Regulations, 2020.**
- ii) **If additional capitalization claimed beyond the Original Scope of work, the petitioner was asked to clarify whether the addition of asset was as per Regulation 28.1 of the Regulations, 2020.**

#### **Petitioner's Response**

*It is submitted that the Additional capitalization claimed towards the Additional Loop Line (WHEEL & AXLE WITH FINAL DRIVE and TRANSMISSION HDR as Insurance*

Spares worth Rs 2.17 Crores as a part of Additional Loop Line disallowed in PNo.75/2022), under the Railway Siding (P&M) and other minor assets forms part of the original scope of work. It is relevant to mention that the expenditure made till 31.03.2023 on account of assets (including additional capitalization) claimed by the Petitioner by way of the present Petition still falls well within the overall budget of Rs 3,575 Crores approved by Board of Directors plus Rs. 23.46 Crs allowed by Commission vide para 4.30 & 4.31 of the order dated 26/11/2014 in P. No. 40/2012. Board Resolution approving Final Cost of JBTPP at Rs 3,575/- Crores is also submitted.

The TPS Form 5B with complete break-up of capital cost components as per original estimates is attached in this submission. The Commission should note that though there are some minor variations within the sub-groups of the Project Cost, the overall capital expenditure up to 31.03.2023 falls way behind estimated cost of completion of Rs 3,575 Crs plus Rs. 23.46 Crs allowed by the Commission vide para 4.30 & 4.31 of the order dated 26/11/2014 in P. No. 40/2012.

The petitioner informed that the Query No. (ii) does not require any reply as the capitalization claimed by petitioner towards the Additional Loop and other minor assets forms part of the original scope of work, therefore, **Regulation 28 of MPERC Tariff Regulations is not applicable to the case of the Petitioner.**

**Issue**

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

**Details of Additional Capitalization:**

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

**Petitioner's Response:**

List of assets capitalised (other than P&M – for P&M provided in reply to above query with detailed reason is submitted.

**Issue**

- iv) The petitioner was asked to file copy of work orders/purchase orders placed to different vendors for additional capitalization claimed in the petition along a statement indicating date of orders, price at which orders were awarded and whether the work was carried out within the specified time. If there was

any delay in completion of works on account of contractor, the details of penalty if any, imposed on the contractor be also informed.

**Petitioner's Response:**

*The list of orders placed to different vendors for additional capitalisation with order reference, date of order placement and price on which order is placed were also submitted by the petitioner.*

**Issue:**

- v) **The petitioner was asked to file copy of the bills/invoices of all such assets under additional capitalization be also filed.**

**Petitioner's Response:**

*Copy of the bills of all the assets capitalised during the FY 2022-23 along with a summarized statement were also submitted by the petitioner.*

**Issue:**

- vi) **The petitioner was also asked to file actual Loan drawn and Equity infused towards additional capitalization during FY 2022-23 claimed in the subject petition.**

**Petitioner's Response:**

*The petitioner informed that funds for the entire assets that has been capitalised during the FY 2022-23 have been met from revenues generated during the year/internal resources.*

35. On perusal of aforesaid petitioner's response on additional capitalization claimed in the subject petition, the Commission has observed the following:
- i. The petitioner submitted that additional capitalization claimed in the subject petition is within the estimated project cost approved by the Board of Directors dated 17<sup>th</sup> May, 2014 and capitalized after cut-off date of the project. Therefore, the petitioner has filed such additional capitalization under Regulation 27 of the Regulations, 2020.
  - ii. The petitioner has submitted the details/statement of assets/works under additional capitalization in the format prescribed by the Commission. In the aforesaid statement, the petitioner indicated the details of payments made to different vendors/suppliers towards works cover under additional capitalization. The

- petitioner also filed the copy of bills raised by the contractors in support of payment made towards assets/works under additional capitalization in this regard.
- iii. The petitioner has filed a list of orders placed to different vendors for the assets/works under additional capitalization indicating name of assets, name of supplier/contractor, order reference number, date of issue of order, price at which the contract was awarded and amount capitalized during FY 2022-23.
  - iv. Regarding funding of additional capitalization, the petitioner mentioned that funds for the entire assets capitalised during FY 2022-23 have been met from revenues generated during the financial year through internal resources.
  - v. The petitioner has also filed the statement for reconciliation of assets under additional capitalization claimed in the subject petition with the Asset-cum-Depreciation Register and Annual Audited Accounts of FY 2022-23 for thermal power station.
36. By affidavit dated 12<sup>th</sup> January, 2024, Respondent No. 1 (MPPMCL) filed its response on the additional capitalization claimed in the subject petition. The response filed by Respondent No. 1 (MPPMCL) is summarized as below:

*In Paras 10 and 11, the petitioner has given details of its claims of Additional Capital Expenditure stated to have been incurred during FY 2022-23. It is humbly submitted that the said claims of Additional Capital Expenditure are not admissible under the provisions of the Regulations, 2020 as explained in the following paragraphs of the Reply. Therefore, it is prayed that this Commission may graciously be pleased to reject the said claims of Additional Capital Expenditure.*

*It is submitted that all the claims of Additional Capital Expenditures amounting to Rs. 9.53 Crore made in Paragraphs 10 and 11 of the present true-up Petition for FY 2022-23, are not eligible to be considered as Additional Capital Expenditure because they do not meet the criteria laid down in Regulations 27 or 28. Therefore this Commission may graciously be pleased to reject the same.*

*Without prejudice and in addition to above, following is submitted in respect of various claims of Additional Capital Expenditures during FY 2022-23.*

*In Para 11 (i) of the Petition, the Petitioner has stated that Rs. 0.49 Crore have been incurred towards purchase of vehicles. The Petitioner has tried to justify the expenditure claiming that the same will improve / enhance overall efficiency. The justification provided is very vague. The Petitioner has failed to provide any evidence/ proof as to how the said purchase of vehicles is going to improve/*

enhance overall efficiency. Therefore, this Commission may graciously be pleased to reject the same.

In Para 11 (ii) of the Petition, the Petitioner has stated that Rs. 4.34 Crore have been incurred towards civil structure (Roads & Township) to provide better facility to the manpower. As submitted in foregoing paragraphs, this Additional Capital Expenditure has been incurred long after the Cut-Off Date of the Project, therefore cannot be allowed. Therefore, this Commission may graciously be pleased to reject the same.

In Para 11 (iii) of the Petition, the petitioner has stated that it has incurred Rs. 0.57 Crore towards purchase of various Office Equipment. These items are routine items which do not form part of Capital Expenditure. Such expenditure is to be met out of normative Operation & Maintenance (O&M) expenditure allowed for the Project. Such expenditure cannot be allowed separately. Therefore, this Commission may graciously be pleased to reject the same.

In Para 11 (iv) of the Petition, the petitioner has stated to have incurred Rs. 4.13 Crore towards purchase of misc. Plant and Machinery. The petitioner has failed to provide any justification for procurement of these items after about 7 years of operation of the Project. The items procured also do not appear to be within Original Scope of Work of the Project.

37. The Commission has examined the claim of additional capitalization filed by the petitioner in light of Annual Audited Accounts, Asset-cum-Depreciation register, original scope of work approved by the BoD of petitioner's company and provisions under the Regulations, 2020.

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

38. On perusal of the details regarding additional capitalization filed in the subject petition, the Commission observed that the assets towards additional capitalization of Rs. 9.53 Crore claimed by the petitioner has been capitalized and recorded in Note 2 of the Annual Audited Accounts for FY 2022-23 and also recorded at Page No 185 of the Asset-cum-Depreciation Register of Bina thermal power station filed by the petitioner along with the subject petition.

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

39. By affidavit dated 2<sup>nd</sup> January, 2024, the petitioner submitted that the additional capitalization claimed in the subject petition is within the original scope of work (Rs. 3,575 Crore) approved by the BoD vide Resolution dated 17<sup>th</sup> May, 2014. In the

aforesaid submission, petitioner filed the detailed break-up of original scope of work for the project along with the actual expenditure as on 31<sup>st</sup> March, 2023 on each capital cost component of the power station.

40. The petitioner has also submitted that, in final tariff petition (P No. 40 of 2012), it had claimed interest of Rs 21.76 Crore for 218 days (from COD of Unit I to COD of Unit II) on common facilities allocated to Unit No. 2 as on COD of Unit 1 and same was capitalized in Annual Audited Accounts. Vide order dated 26<sup>th</sup> November, 2014, the Commission considered aforesaid interest under IDC component. Therefore, the petitioner has submitted that the capital cost approved by the Board including aforesaid interest amount is Rs. 3596.76 Crore (i.e., Rs 3575 Crore + Rs 21.76 Crore = Rs 3596.76 Crore).
41. Based on the above, break-up of capital cost approved by the BoD, capital cost (as on 31.03.2022) considered by the Commission in last true-up order dated 2<sup>nd</sup> March, 2023, net additions **claimed** by the petitioner during FY 2022-23 and closing project cost as on 31.03.2023 is as given below:

**Table 7: Break-up of Capital Cost: (Rs. Crore)**

S. No.	Capital Cost Components	Project Cost approved by BoD	Capital cost as on 31.03.2022 considered by Commission	Net Asset Addition claimed during FY 2022-23	Project Cost as on 31.03.2023
1	Land and site development	6.86	9.55	-	9.55
2	Plant and Equipment	2360.41	2286.80	4.52	2291.32
3	Civil Works	453.97	453.13	4.34	457.47
4	Over Heads	253.05	253.05	-	253.05
5	IDC and Financing Charges	522.47	524.11	-	524.11
<b>Total Capital Cost</b>		<b>3596.76</b>	<b>3526.65</b>	<b>8.86</b>	<b>3535.50</b>

**Note 1: Difference Amount of Rs 21.76 Crore in Project Cost approved by BOD (Rs 3596.76 Crore- Rs 3575 Crore) is the interest amount which was part of common facilities allocated to Unit No 2 of the Project.**

**Note 2\*: Land & Site Development exceeded due to stamp duty charges allowed in FY 2019-20 & 2020-21 under Regulation 28.1 (a) of the Regulations, 2020.**

42. In view of the above, it is observed that the total net additional capitalization of Rs 8.86 Crore claimed by the petitioner during the year is within the project cost of Rs 3596. 76 Crore approved by the BoD of petitioner's company.

**C. Cut-off Date**

43. Regarding the Cut-off date of the project, Regulation 4.1 (j) of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012 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 the project, and in case the 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:*

44. 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 was 31<sup>st</sup> March, 2016 in accordance with the above provision under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012. The additional capitalization filed by the petitioner is **beyond the cut-off date of the project**. Therefore, the claim of additional capitalization has been examined in light of the Regulations 27 of the Regulations, 2020 as below:

**D. Analysis of Additional Capitalization in light of the Regulations:**

**a) Additional Capitalization of Rs. 4.34 Crore towards Civil Structure (Roads and Township):**

45. In the subject petition, the petitioner filed additional expenditure of Rs 4.34 Crore towards Civil Structure works (Roads and Township). Vide Commission’s letter dated 19<sup>th</sup> December, 2023, the petitioner was asked to justify claim of additional capitalisation in light of the provisions under the Regulations, 2020.
46. By affidavit dated 2<sup>nd</sup> January, 2024, the petitioner submitted the break up with detailed reasons for expenses being incurred towards construction of Roads and Township after ten years of commissioning of Plant as under:

<b>S. No.</b>	<b>Particulars</b>	<b>Amount (Rs Cr)</b>
1	Road	0.81
2	Shop(s)	0.13
3	Temple	3.41
	<b>TOTAL</b>	<b>4.34</b>

***Reasons and justifications given by the petitioner:***

***Road:*** An approach road has been constructed from main gate to weigh bridge (Length \* Width \* Height = 850 mtr \* 7 mtr \* 0.3 mtr). This road is being used for the transportation of Fly Ash. Earlier there was an old or unmetalled (Kacha) road in existence. As it is a well known fact that with the passage of time, any road/ unmetalled road not only becomes uneven but unsafe as well, that it why an **approach road has been constructed for smooth and safe transportation of Fly Ash from plant premise.**

*Shop & Temple: Along with the generation and supply of power, JBTPP also ensures the welfare of workers/staff living and working in plant premise. Accordingly, arising out of daily needs and religious/ spiritual belief of the workers/ staff and their families (living in plant premises) shop(s) and temple were constructed to cater the same.*

47. On examination of the petitioner's response on the issue related to construction of roads and township works, the Commission has observed the following:
- The petitioner submitted that Rs 4.34 Crore have been incurred towards the civil structure such as roads, temples and shops to facilitate the manpower in order to provide them better facility with better infrastructure facilities.
  - While claiming the aforesaid asset addition of Rs. 4.34 Crore, the petitioner has not mentioned any specific provision of the Regulation and submitted that aforesaid additional capitalization is claimed under Regulation 27 of the Regulations, 2020.
  - Petitioner further submitted that the claim for roads and townships works formed part of the original scope of work of the project, however, the same could not be completed within the cut-off date on account of reasons mentioned by the petitioner.
48. On perusal of the contents under subject petition and additional details and documents filed by the petitioner, the Commission observed that the petitioner has completed and capitalized additional assets towards civil works during FY 2022-23, i.e., seven years after the cut-off date.
49. It is further observed that the amount under additional capitalization towards construction of roads and townships works of Rs 4.34 Crore was within the total estimated capital cost of the project approved by the BoD. However, the works were completed and capitalized after the cut-off date of the project.
50. It is also observed that the petitioner has claimed capitalization of Rs 0.81 Crore towards work for construction of approach road from main gate to weigh bridge for smooth and safe transportation of Fly Ash from plant premise. Aforesaid additional capitalization is claimed under Regulation 27.1 (iii) of the Regulations, 2020. Regulation 27.1 (iii) provides for deferred works relating to ash pond or ash handling system including ash transportation facility in the original scope of work after cut-off date. Since, the aforesaid capitalization is related to ash ponds and ash transportation facilities related works in order to ensure 100% ash utilization as per MoEF&CC notification towards Ash Utilization, hence, additional capitalization of Rs 0.81 Crore towards Approach Road is considered in this Order under Regulation 27.1 (iii) of the Regulations, 2020.

51. Further, while examining the reasons for other additional capitalisation towards Shops and Temples in light of the provisions of the Regulations, 2020, it is noted that the aforesaid additional capitalisation neither falls under Regulation 27.1 nor under Regulation 27.2 of the Regulations, 2020. Therefore, additional capitalisation towards civil structure (Townships-Shop & temples) of Rs. 3.54 Crore (Rs. 0.13 Crore + Rs. 3.41 Crore) is not covered under provisions of the Regulations, 2020, hence not considered in this Order.

**b) Additional Capitalization of Rs 4.13 Crore towards Plant & Machinery Works:**

52. The petitioner has claimed additional capitalization of Rs 4.13 Crore towards plant and machinery works, out of which, Rs 2.17 Crore pertains to procurement of Insurance Spares for additional loop line and Rs 1.96 Crore pertains to other miscellaneous equipments. By affidavit dated 2<sup>nd</sup> January, 2024, the petitioner filed details of additional capitalization towards purchase of miscellaneous plant & machinery under which such additional capitalization is filed.

53. With regard to aforesaid miscellaneous assets related to Plant & Machinery Works claimed under additional capitalization, the Commission has observed the following:

**i. Insurance Spares (Wheel Axle with Final Drive and Transmission HDR) of Railway Siding (Loop Line):** The petitioner has claimed capital expenditure of Rs 2.17 Crore towards the purchase Insurance Spares (Wheel Axle with Final Drive and Transmission HDR) of Railway Siding (Loop Line). The list of assets pertaining to Insurance Spares procured in FY 2022-23 submitted by the petitioner is as follows:

**Table 8: List of Insurance Spares capitalised in FY 2022-23**

S. No.	Asset	Amount (INR)	Reason for Add Cap
1	WHEEL & AXLE WITH FINAL DRIVE	47,20,000	Insurance Spares for maintenance of Plant & Machinery for Emergency Breakdown.
2	WHEEL & AXLE WITH FINAL DRIVE	50,64,433	
3	WHEEL & AXLE WITH FINAL DRIVE	50,64,433	
4	TRANSMISSION HDR	68,34,560	
	<b>TOTAL (B)</b>	<b>2,16,83,425</b>	

54. By affidavit dated 2<sup>nd</sup> January, 2024, the petitioner submitted the following justification regarding Insurance Spares:

*“Out of total amount of Rs. 4.13 Crs under the head Plant and Machinery, an amount of Rs. 2.17 Crs pertains to Insurance Spares (WHEEL & AXLE WITH FINAL DRIVE and TRANSMISSION HDR. It is pertinent to mention here that the Petitioner had claimed Additional Capitalization of Rs 7.31 Crores towards Additional Loop Line in True Up (FY 2021-22) Petition No.75/2022 which was*

*disallowed by Commission which the petitioner has chosen to challenge the said disallowance with Hon'ble APTEL vide Appeal No.581 of 2023. It may also be critical to note that, detailed justification regarding the additional loop line has already been provided in response to Query No.3 of MPERC letter no. MPERC/D(T)/2022/2639 dated: 20/12/2022 in the Petition No.75/2022 filed for the FY 2021-22. Since Additional Loop Line was claimed under Regulation 27.1(iv), 27.2(a) & 27.2(b), the Petitioner is claiming Insurance Spares (WHEEL & AXLE WITH FINAL DRIVE and TRANSMISSION HDR) under the same Regulation. The petitioner again prays Commission to invoke Regulation 66.1 which grants it to relax the Regulations.*

*Insurance spares are major items and parts kept in hand to ensure the uninterrupted operation of the asset/ machine/ plant/ station.*

*In other words, if there is an unexpected breakdown, the same may be used immediately to ensure regular operation of asset/ machine/ plant/ station.*

*It is also to mention here that insurance spares do not include items that are generally consumed or replaced during the regular maintenance cycle.*

55. On perusal of the aforesaid submission of the petitioner, the Commission has observed the following:
- i. On perusal of the contents under subject petition and additional details and documents filed by the petitioner, the Commission observed that the petitioner has purchased additional assets towards Insurance Spares for additional loop line during FY 2022-23 after the cut-off date.
  - ii. It is further observed that the amount under additional capitalization towards purchase of Insurance Spares for additional Loop Line amounting to Rs. 2.17 Crore was within the total estimated capital cost of the project approved by the BoD. However, the works were completed and capitalized after the cut-off date of the project. Petitioner has also submitted that since additional loop line claimed in the true up petition filed for FY 2021-22 in Petition No.75/2022 was claimed under Regulation 27.1(iv), 27.2(a) & 27.2(b), the petitioner is claiming Insurance Spares under the same Regulation, i.e., Regulation 27.1(iv) and 27.2(a) & (b) of the Regulations, 2020.
  - iii. Regulation 27.1 is applicable on additional capitalization within the original scope of work and after cut-off date of the project. Further, clause (iv) of the Regulation 27.1 is applicable on "liability of works executed prior to the cut-off date".
  - iv. The aforesaid works related to procurement of Insurance Spares for additional loop line claimed under additional capitalization are completed and capitalized

in FY 2022-23, therefore, these works towards purchase of Insurance Spares are not covered under Regulation 27.1(iv) the Regulations, 2020.

- v. The petitioner has also invoked Regulation 27.2 (a)&(b) of the Regulations, 2020 which provides that 'in case of replacement of assets deployed under the original scope of the existing project after cut-off date, the additional capitalization may be admitted by the Commission, after making necessary adjustments in the gross fixed assets and the cumulative depreciation, subject to prudence check'. Clause (a) and (b) of the Regulation 27.2 provides that:

*(a) The useful life of the assets is not commensurate with the useful life of the project and such assets have been fully depreciated in accordance with the provisions of these Regulations;*

*(b) The replacement of the asset or equipment if necessary, on account of change in law or Force Majeure conditions;*

- vi. On examination of the contention of the petitioner, it is observed that the assets proposed under additional capitalization were put to use and capitalized during FY 2022-23, whereas, Regulation 27.2 is for replacement of assets deployed under the original scope of the existing project after cut-off date. The aforesaid works related to purchase of Insurance Spares for additional loop line are new and these works were completed and capitalized during FY 2022-23 as per Annual Audited Accounts. As such these assets cannot be classified as replacement of existing assets.
- vii. In view of the above-mentioned Regulation 27.1 (iv) and under Regulation 27.2 (a) & (b) of the Regulations, 2020, it is noted that the aforesaid additional capitalisation neither fall under Regulation 27.1 nor under Regulation 27.2 of the Regulations, 2020. Therefore, additional capitalisation towards purchase of Insurance Spares of Rs 2.17 Crore is not considered in this Order.

- ii Other Miscellaneous Equipments:** The petitioner has claimed capital expenditure of Rs 1.96 Crore for other miscellaneous equipments such as SCADA, transformers, brush cutter back pack, Lawn Mower, Portable Flue Gas Analyser, Demolition Hammer, Desolved Oxygen Analyser, Magnetic Separator, Drill Machine, Grease Pump etc. The petitioner has also filed the list of assets capitalised and claimed towards other miscellaneous equipments during FY 2022-23.

### **Commission's Analysis:**

56. On perusal of the aforesaid details, it is observed that the petitioner has claimed capitalisation of the aforementioned items for better efficiency and operation of plant

under Regulations 27 of the Regulations 2020. However, the specific counts of Regulation 27 of the Regulations, 2020, under which the particular assets are capitalised and claimed is not mentioned in the subject petition as well as additional submission filed by the petitioner by affidavit dated 2<sup>nd</sup> January, 2024.

57. In view of the above and list of assets capitalized towards other miscellaneous equipments filed by the petitioner, it is observed that the aforesaid expenditure under additional capitalization is actually made after the cut-off date of the project and are not covered under any counts of the Regulation 27 of Regulations, 2020. Hence, the said expenditure of Rs 1.96 Crore towards purchase of miscellaneous plant & machinery minor items is not considered in this Order.

**c) Additional Capitalization of Rs 0.57 Crore towards Office Equipments:**

58. The petitioner has claimed additional capitalization of Rs 0.57 Crore towards Office Equipments such as stabilizers, AC, Desert Coolers, Exhaust Fan, Washing Machine, CCTV, Fire Extinguisher Systems, Brush Cutter, Treadmill, Ceiling Fans, etc. under Regulation 27 of the Regulations, 2020. The petitioner submitted that the above capitalisation is incurred in order to improve the technology, human safety and replacement of old items. However, the petitioner has not mentioned specific provisions of Regulation 27 of the Regulations, 2020 under which aforesaid additional capitalization towards various office equipments are claimed. Since, the said expenditure towards office equipments is capitalized and claimed after the cut-off date and does not meet the conditions stipulated in Regulations 27.1 & 27.2 of the Regulations, 2020 hence, not considered in this Order.

59. Further, the amount of additional capitalization towards purchase of CCTV Cameras and fire extinguisher systems is not considered under Regulation 28.1 (d) of the Regulations, 2020 in this Order because the petitioner has not submitted any advisory/directive by appropriate Government Agencies or Statutory Authorities in this respect.

**d) Additional Capitalization of Rs 0.49 Crore towards purchase of vehicles:**

60. The petitioner has claimed additional capitalization of Rs 0.49 Crore towards the purchase of vehicles to facilitate the manpower engaged in generation of power directly or indirectly to improve/enhance the overall efficiency. The petitioner claimed the capitalisation of these assets under Regulation 27 of the Regulations, 2020. However, the petitioner has not cited specific provisions of the Regulation 27 of the Regulations, 2020 under which additional capitalization towards purchase of vehicles is claimed. Since, the said expenditure towards purchase of vehicles is claimed after the cut-off date and does not meet the stipulations in Regulations 27.1 & 27.2 of the Regulations,

2020, hence, not considered in this Order.

61. In view of the above, the total additional capital expenditure of Rs 0.81 Crore only towards approach road constructed for smooth transportation for fly ash is considered in this Order during FY 2022-23 in accordance to the Regulation 27.1 (iii) of the Regulations, 2020.
62. The Commission has observed that the balance assets of Rs 8.06 Crore related to Plant & Machinery and other civil works claimed by the petitioner under additional capitalization during FY 2022-23 were capitalized beyond the cut-off date of the project and are not covered under any of the provisions of Regulation 27 of the Regulations, 2020, hence not considered in this Order.

**Write-off/ Adjustment of Assets:**

63. The petitioner submitted that the assets of Rs. 0.66 Crore were de-capitalized in the Generating Station for which suitable downward adjustments have been taken into account while computing the capital cost for FY 2022-23.
64. With regard to de-capitalisation of assets, Regulation 28.2 of the Regulation, 2020 provides as under:

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

65. On scrutiny of the details regarding write-off/ de-capitalization filed by the petitioner, the Commission has observed that the assets of Rs. 0.66 Crore have been adjusted/decapitalized in Annual Audited Accounts and recorded in Asset-cum-Depreciation register of the project. Therefore, the Commission has considered de-capitalization of Rs. 0.66 Crore during FY 2022-23 in this Order. With regard to the funding of write-off/ de-capitalization assets, it is observed that in Asset-cum-depreciation register, the date of 'put to use' for such decapitalized assets has not been mentioned, therefore, the Commission has considered the normative Debt:Equity ratio 70 : 30 for reduction of equity and debt components. Therefore, the equity and loan component of decapitalized assets are reduced accordingly.
66. In view of the above, the details of additional capitalization and de-capitalization considered during FY 2022-23 in this Order are as given below:

S. No.	Particular	Additions	Deletions
1.	Addition/Deletions of Assets admitted in Order	0.81	0.66
	<b>Total</b>	<b>0.81</b>	<b>0.66</b>

67. Considering the above, the opening Gross Fixed Assets, adjustment of assets, addition during the year and closing Gross Fixed Assets considered in this Order are as given below:

Opening Capital cost as on 01.04.2022 as per last order dated 2 <sup>nd</sup> March, 2023	Additions during FY 2022-23	Adjustment/Deletion of Assets	Closing Capital Cost as on 31.03.2023 considered in this Order
3526.65	0.81	0.66	3526.80

#### **DEBT –EQUITY RATIO**

68. Regarding the sources of funding for additional capitalization claimed in the subject petition, the petitioner in form TPS 10 has mentioned that the sources of funding is entirely from the equity/internal resources. Thus, for the purpose of computation of Return on Equity and Interest on loan, the petitioner has considered funding of additional capitalization in the ratio of 70:30 in accordance to the Regulation 33 of the Regulations, 2020.

#### **Provision in Regulation:**

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

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

*Provided that:*

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

*Explanation.-The premium, if any, raised by the generating company while issuing share capital and investment of internal resources created out of its free reserve, for the funding of the project, shall be reckoned as paid up capital for the purpose*

*of computing return on equity, only if such premium amount and internal resources are actually utilised for meeting the capital expenditure of the generating station.*

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

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

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

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

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

### **Commission's Analysis**

70. With regard to funding of additional capitalisation, vide letter dated 19<sup>th</sup> December, 2023, the petitioner was asked to inform actual loan draws and equity infusion towards additional capitalization during FY 2022-23 claimed in the subject petition.
71. By affidavit dated 2<sup>nd</sup> January, 2024, the petitioner submitted that funds for the entire assets capitalised during the FY 2022-23 have been met from its own resources.
72. The Commission in true up Order for FY 2021-22 issued on 2<sup>nd</sup> March, 2023 has approved the closing Loan & Equity as on 31<sup>st</sup> March, 2022. The same closing figures of capital cost, loan and equity as on 31<sup>st</sup> March, 2022 are considered as opening balance as on 01<sup>st</sup> April, 2022 in this Order. In view of the submissions and provisions under Regulation 33.1, the Commission has considered the Debt: Equity ratio of 70:30 for additional capitalization of Rs 0.81 Crore as considered by the petitioner. Further, the impact of write off/deletion of the assets of Rs 0.66 Crore has been considered with corresponding reduction of Debt and Equity in the ratio of 70% and 30% respectively as

submitted by the petitioner.

73. The details of the opening balance of capital cost as on 1<sup>st</sup> April, 2022, adjustment of assets, addition during the year and closing balance of capital cost as on 31<sup>st</sup> March, 2023 considered in this Order are as given below:

**Table 11: Source of Funding** (Rs. in Crore)

Sr No.	Particulars	Asset	Loan	Equity
1	Closing balance as on 31 <sup>st</sup> March, 2022 (as per last true-up order dated 02.3.2023)	3526.65	838.98*	1058.00
2	Write-off/ Adjustment	0.66	0.46	0.20
3	Addition during FY 2022-23	0.81	0.57	0.24
4	Closing balance as on 31 <sup>st</sup> March, 2023	3526.80	839.09	1058.04

(\*Before Repayment) (for current year)

**Annual Capacity (fixed) Charges:**

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

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

**a. Return on Equity:**

**Petitioner's Submission:**

75. The petitioner filed the Return on Equity during FY 2022-23 in form TPS 1(II) of the petition as given below:

**Table 12: Return on Equity claimed**

Sl. No.	Particulars	Unit	Amount
1	Opening Equity	Rs. Crore	1,071.73
2	Add: Increase due to addition during the year/period	Rs. Crore	2.86
3	Less: Decrease due to de-capitalization during the year/period	Rs. Crore	0.20
4	Less: Decrease due to reversal during the year/period	Rs. Crore	-
5	Add: Increase due to discharges during the year/period	Rs. Crore	-
6	Closing Equity	Rs. Crore	1,074.39
7	Average Equity	Rs. Crore	1,073.06
8	Base Rate of ROE	%	15.50%
9	Tax rate considered MAT	%	17.47%
10	Pre-Tax Rate of Return on Equity	%	18.78%
11	Return on Equity	Rs. Crore.	201.54

76. While claiming the Return on Equity, the petitioner considered the base rate of return on equity of 15.50%, which is grossed up with MAT rate of 17.47%.

**Provision in Regulations:**

77. Regarding the Return on Equity, Regulation 34 & 35 of the Regulations, 2020, provides as under:

**34 . Return on Equity:**

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

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

*Provided that*

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

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

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

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

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

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

**35. Tax on Return on Equity:**

- 35.1 The base rate of return on equity as allowed by the Commission under Regulation 34 shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual*

---

tax paid in the respective financial year in line with the provisions of the relevant Finance Acts by the concerned generating company. The actual income tax on other income stream including deferred tax liability (i.e., income from non-generation business) shall be excluded for the calculation of “effective tax rate”.

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

$$\text{Rate of pre-tax return on equity} = \text{Base rate} / (1-t)$$

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

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

$$\text{Rate of return on equity} = 15.50 / (1 - 0.2096) = 19.610\%$$

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

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

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

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

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

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

---

**Commission's Analysis:**

78. While calculating the Return on Equity, the equity balance as on 31<sup>st</sup> March, 2022 as admitted by the Commission in last true-up order dated 2<sup>nd</sup> March, 2023 for FY 2021-22 is considered as the base figure for opening equity balance as on 01<sup>st</sup> April, 2022 in this Order. Further, the Commission has considered the normative equity addition of 30% in the admitted additional capitalization i.e. 30% of Rs 0.81 Crore (Rs 0.24 Crore).
79. The Commission has also considered reduction of equity of Rs. 0.20 Crore in respect of the assets de-capitalized during the year. Therefore, closing equity as on 31.03.2023 has been worked out accordingly.
80. The petitioner has claimed Return on Equity during the year by grossing up the base rate of return with Minimum Alternate Tax (MAT). Regulation 35.1 of the Regulations, 2020 provides that the base rate of return on equity as allowed under Regulation 34 shall be grossed up with the effective tax rate of the respective financial year. For this purpose, effective tax rate shall be considered on the basis of actual tax paid in respective financial years, in line with the provisions of relevant Finance Acts by the concerned generating company. Regulation 35.3 further provides that the generating company shall true-up the grossed-up rate of return on equity at the end of every financial year based on actual tax paid.
81. On perusal of the subject petition, it was observed that the petitioner's company had not paid any income tax/MAT for Jaypee Bina TPP as well as for Jaiprakash Power Ventures Limited (JPVL) for FY 2022-23. Vide Commission's letter dated 19<sup>th</sup> December, 2023, the petitioner was asked to explain/submit the following:

As per the Annual Audited Accounts of Jaypee Bina Thermal Power Plant and JPVL Corporate's Annual Audited Accounts for FY 2022-23, the current tax amount is indicated as nil, whereas, the petitioner has claimed the Return on Equity by grossing up base rate of return with MAT. In view of aforesaid observations, the petitioner was asked to file the basis of tax amount claimed while, it has not paid any income tax for Jaypee Bina TPP and JPVL for FY 2022-23. Petitioner was further asked to file the copy of Challan for the income tax, if any, paid during FY 2022-23 along with the copy of the income tax return.

82. Vide affidavit dated 2<sup>nd</sup> January, 2024, the petitioner submitted that:

*Since generating station has recorded a profit of Rs 81.55 Lacs (approx.) during FY 2022-23, the Petitioner has accordingly claimed Return on Equity ("RoE") grossing up with MAT.*

---

*It is further submitted that MAT was introduced under Section 115JB of the Income Tax Act, w.e.f. 1.4.2001. The intention behind the introduction of MAT was that where the income tax payable by a company on its taxable income, as computed under the Income Tax Act, for any financial year is less than a specified percentage of the book profit of the company for that year, the book profit of the company is deemed to be the taxable income of the company for that year and income tax is payable at the specified rate on such taxable income which is known as the MAT.*

*It is an admitted position that Jaypee Bina Thermal Power Plant is not a corporate legal entity/Company, as it is only a division/Generating station of JPVL and hence is not liable or eligible to pay MAT. For this reason, the payment towards MAT for FY 2022-23 has been shown NIL in the annual Audited Accounts of Jaypee Bina Thermal Power Plant.*

*However, as per JPVL's Corporate/Consolidated Annual Audited Accounts for FY 2022-23 which shows a profit of Rs 226.70 Crores, but owing to the accumulated losses suffered by JPVL & other exemptions/deductions under Income Tax Act, current tax amount is indicated as NIL.*

*The Petitioner is entitled to claim grossing up of RoE with Income Tax on Normative basis, even if no tax has been paid because of carry forward of losses. JBTPP has earned profit during the current year from the generation and sale of power and does not earn income from any other business.*

*Income Tax needs to be computed and applied on the income related to generation and sale of power of the Generating Station (Regulated Business).*

*Taxable income of a regulated business should be computed on standalone basis irrespective of impact of other business on the overall liability.*

*Moreover, the grossing up of RoE with effective Tax Rates must be allowed by considering the current year only and it must be insulated from performance of previous years/ other units/ businesses. To put it alternatively, had there not been accumulated losses, certainly the JPVL would have been liable to pay MAT or Normal Tax.*

*It is respectfully submitted that Income Tax return of JPVL has been filed and acknowledgement of the same is attached.*

83. On perusal of the aforesaid response filed by the petitioner, the Commission observed the following:
- i. The petitioner submitted that since the generating station has recorded book profit of Rs 81.55 Lakh during FY 2022-23, the petitioner has accordingly claimed return on equity grossing up with MAT. The petitioner further submitted that Jaypee Bina TPS is only a division of JPVL and hence is not liable to pay MAT.

- ii. The petitioner mentioned that payment towards MAT for FY 2022-23 has been shown nil in the Annual Audited Accounts of Bina Thermal Power Station as well as JPVL's Corporate Annual Audited Accounts.
  - iii. The petitioner further submitted that, as per JPVL Corporate's Annual Audited Accounts for FY 2022-23 which shows a book profit of Rs 226.70 Crore, but owing to the accumulated losses suffered by JPVL & other exemptions/ deductions under Income Tax Act, current tax amount is indicated as NIL.
  - iv. The petitioner also submitted Income Tax return of JPVL for the financial year (2022-23) (assessment Year 2023-24) dated on 26<sup>th</sup> October, 2023.
84. Regarding the claim of the petitioner towards MAT, the Commission observed the following:
- i. The petitioner filed Annual Audited Accounts of Jaypee Bina Thermal Power Plant (JBTPP) along with Consolidated Annual Audited Accounts of Jaiprakash Power Ventures Limited (JPVL) as on 31<sup>st</sup> March, 2023. Both Annual Audited Accounts recorded profit, but with nil tax payment during FY 2022-23.
  - ii. Consolidated Annual Audited Accounts of Jaypee Power Ventures Limited (JPVL) comprises of the financials of other power plants also including Bina TPS in the subject petition.
  - iii. In the instant case, JPVL has not paid any tax, therefore, despite the fact that Bina thermal power station is earning profit, the grossing up of ROE with MAT cannot be considered in accordance to the Regulations, 2020, as neither JPVL nor Jaypee Bina has paid income tax/MAT for the FY 2022-23.
85. In view of above observations, the Commission while following the same approach that has been followed in all earlier tariff/true-up orders in this matter has not considered any basis for grossing up the base rate of ROE with MAT in accordance to the provisions under the Regulations, 2020.
86. In compliance to Regulation 34.2, by affidavit 2<sup>nd</sup> January, 2024, the petitioner submitted that its thermal power plant meets both the requirements i.e., RGMO/FGMO was duly installed at the time of COD of the project and the petitioner's project has been duly operating under RGMO/ FGMO and both the units of the Project have been operating with the ramp rate of over 1% per minute.
87. Accordingly, the Return on equity for FY 2022-23 is worked out in this Order as given below:

**Table 13: Annual Return on Equity for FY 2022-23 considered in this Order**

Sr. No.	Particulars	Unit	Amount
1	Opening Equity as on 01.04.2022	Rs. Crore	1058.00
2	Equity reduction towards decapitalized assets	Rs. Crore	0.20
3	Normative Equity Addition During the Year	Rs. Crore	0.24
4	Closing Equity as on 31.3.2023	Rs. Crore	1058.05
5	Average Equity	Rs. Crore	1058.02
6	Base Rate of Return on Equity	%	15.50
<b>7</b>	<b>Annual Return on Equity</b>	Rs. Crore	<b>163.99</b>

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

88. The petitioner has worked out and claimed annual depreciation in form TPS 12 of the petition as given below:

**Table 14: Depreciation Claimed (Rs. in Crore)**

<i>Particulars</i>	<i>FY 2022-23</i>
<i>Opening Capital Cost</i>	<i>3,572.45</i>
<i>Closing Capital Cost</i>	<i>3,581.31</i>
<b><i>Average Capital Cost</i></b>	<b><i>3,576.88</i></b>
<i>Rate of Depreciation</i>	<i>5.10%</i>
<b><i>Depreciation on Capital Cost</i></b>	<b><i>182.26</i></b>
<b><i>Depreciation (Annualized)</i></b>	<b><i>182.26</i></b>
<b><i>Depreciation for the period</i></b>	<b><i>182.26</i></b>
<b><i>Cumulative Depreciation at the end of the period</i></b>	<b><i>1,819.60</i></b>
<b><i>Less :- Cumulative Depreciation Adjustment on account of de-capitalization</i></b>	<b><i>0.47</i></b>
<b><i>Net Cumulative Depreciation at the end of the period</i></b>	<b><i>1,819.13</i></b>

**Provision in Regulations:**

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

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

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

37.2 *The value base for the purpose of depreciation shall be the capital cost of the asset*

*admitted by the Commission. In case of multiple units of a generating station, weighted average life for the generating station shall be applied.*

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

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

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

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

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

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

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

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

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

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

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

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

**Commission’s Analysis:**

90. For determining the annual Depreciation, the Commission has considered the closing Gross Fixed Assets as on 31<sup>st</sup> March, 2022, as admitted in the last true-up Order dated 2<sup>nd</sup> March, 2023 for FY 2021-22, as opening Gross Fixed Assets as on 1<sup>st</sup> April, 2022 in this Order.
91. The Commission has considered additional capitalization of Rs 0.81 Crore in this Order. Further, the write off/ deletion of fixed assets of Rs. 0.66 Crore during the FY 2022-23 has also been considered in this Order to work out the closing Gross Fixed Assets as on 31<sup>st</sup> March, 2023.
92. 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 specified in the Regulations, 2020.
93. According, depreciation is worked out by considering the weighted average rate of depreciation as filed by the petitioner in the subject petition as given below:

**Table 15: Annual Deprecation considered in this Order**

Sr. No.	Particular	Units.	Amount
1	Opening Gross Fixed Assets	Rs Crore	3526.65
2	Assets de-capitalised during the year	Rs Crore	0.66
3	Assets Addition during the year	Rs Crore	0.81
4	Closing Gross Fixed Assets	Rs Crore	3526.80
5	Average Gross Fixed Assets	Rs Crore	3526.73
6	Weighted Average Rate of Depreciation	%	5.10%
<b>7</b>	<b>Annual Depreciation Amount</b>	Rs Crore	<b>179.86</b>
8	Opening Cumulative Depreciation	Rs Crore	1629.23
9	Closing Cumulative Depreciation	Rs Crore	1809.09
10	Less: Cum Dep adjustment on account of Decapitalization	Rs Crore	0.47
11	Closing Cumulative Dep at the end of the year	Rs Crore	1808.62

**c. Interest on loan Capital:****Petitioner's Submission:**

94. In form TPS 5M of the petition, the petitioner worked out the interest on loan capital as given below:

**Table 16: Interest on Loan Capital Claimed (Rs in Crore)**

<b>Particulars</b>	<b>Amount</b>
<b>Gross Normative Loan - Opening</b>	<b>2,500.70</b>
<i>Cumulative Repayment of Normative Loan upto Previous Year</i>	<i>1,638.05</i>
<b>Net Normative Loan-Opening</b>	<b>862.65</b>
<i>Add: Increase due to addition during the year</i>	<i>6.67</i>
<i>Less: Decrease due to de-capitalization during the year</i>	<i>-</i>
<b>Repayment during the year</b>	<b>182.26</b>
<b>Closing Loan</b>	<b>687.05</b>
<b>Average Loan-Normative</b>	<b>774.85</b>
<i>Weighted average Rate of Interest on actual Loans</i>	<i>9.50%</i>
<b>Interest on Normative loan</b>	<b>73.61</b>

**Provision in Regulations:**

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

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

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

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

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

*adjustment for interest capitalized:*

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

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

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

**Commission's Analysis:**

96. For determination of interest on loan capital, closing loan balance as on 31<sup>st</sup> March, 2022 as admitted in the Commission's last true up order for FY 2021-22 issued on 2<sup>nd</sup> March, 2023 is considered as the opening loan balance as on 1<sup>st</sup> April, 2022 in this Order.
97. The petitioner mentioned that the assets under additional capitalization has been funded through equity component/internal resources. Accordingly, the petitioner claimed corresponding normative loan i.e. 70% of net additional capitalization. Hence, the Commission has considered the loan addition of Rs. 0.57 Crore in respect of additional capitalization during FY 2022-23 in this Order. The Commission has also considered the reduction of loan amount of Rs. 0.46 Crore in respect of the assets de-capitalized during the same financial year. Since, the accumulated depreciation of Rs. 0.46 Crore in respect of the assets decapitalized has been adjusted in reduction of loan amount, hence, loan reduction amount is treated as nil.
98. With regard to weighted average rate of interest filed in the petition, vide letter dated 19<sup>th</sup> December, 2023, the petitioner was asked to file detailed computation of actual weighted average rate of interest during FY 2022-23 in excel along with supporting documents such as banker's certificates in respect of actual weighted average rate of interest claimed in the petition. The petitioner was also asked to confirm that any interest on interest on loan amount or any penalty should not be a part of interest on loan amount.
99. By affidavit dated 2<sup>nd</sup> January, 2024, the petitioner submitted the Banker's Certificate in respect of interest rate as claimed in the petition. Further, the petitioner confirmed that any interest on interest on loan or any penalty due to default in repayment has not been considered while calculating the Rate of Interest on Loan.
100. In view of the above, the interest on loan is worked out by the Commission based on

the following:

- (a) Gross normative opening loan of Rs. 838.98 Crore has been considered as per last true-up Order dated 2<sup>nd</sup> March, 2023.
- (b) Since, the accumulated depreciation of Rs. 0.46 Crore in respect of the assets decapitalized has been adjusted in reduction of loan amount, hence, loan reduction amount is treated as nil.
- (c) Addition of normative loan amount of Rs. 0.57 Cr. (70% of additional capital expenditure) is considered.
- (d) Annual repayment of loan equal to annual depreciation is considered in accordance to the tariff Regulations.
- (e) Weighted average rate of interest @ 9.50% as filed by the petitioner is considered.

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

**Table 17: Annual Interest on Loan Capital for FY 2022-23 considered in this Order**

Sr. No	Particulars	Unit	Amount
1	Opening Loan	Rs. Crore	838.98
2	Loan adjustment towards decapitalized assets	Rs. Crore	0.00
3	Loan Addition during the year	Rs. Crore	0.57
4	Repayment during the Year considered	Rs. Crore	179.86
5	Closing Loan	Rs. Crore	659.69
6	Average Loan	Rs. Crore	749.34
7	Weighted average Rate of Interest	%	9.50%
8	Interest on loan Capital	<b>Rs. Crore</b>	<b>71.19</b>

**d. Operation and Maintenance Expenses:**

**Petitioner's Submission:**

102. Petitioner filed the Operation and Maintenance expenses for generating units in the petition as given below:

**Table 18: O&M Expenses claimed for generating unit (Rs. in Crore)**

Phase – 1	Particulars	FY 2022-23
Unit I & II	O & M Expenses	182.80

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

**Table 19: O&M Expenses of Transmission Line & Bay (Rs. in Crore)**

Particulars	Particular	FY 2022-23
400kV Transmission Line and bay	O & M Expenses	0.40

**Provision in Regulations:**

104. The norms for Operation and Maintenance Expenses for thermal generating units commissioned on or after 01/04/2012 are specified under Regulation 40.2 of the Regulations, 2020 for the generating Unit of “250 MW Series” for FY 2022-23 which are as given below:

**Table 20: Normative O&M Expenses for FY 2022-23**

Units (MW)	Rs. Lakh/MW/Year
200/210/250 MW	36.56

**Commission’s Analysis:**

105. For Thermal Power Station, the Commission worked out annual operation and maintenance expenses as per above Regulations. Accordingly, the operation and maintenance expenses for Jaypee Bina TPS for FY 2022-23 are determined as given below:

**Table 21: Operation & Maintenance Expenses considered in this Order (Rs in Crore)**

Sr. No.	Phase – 1	Capacity	Normative O&M Expenses	Annual O&M Expenses as per norms
		MW	Rs In Lakhs/MW	Amount in Rs Crore
1	Unit I & II	2 X 250	36.56	182.80

106. With regard to operation & maintenance expenses of Transmission lines & Bay, vide Commission’s letter dated 19<sup>th</sup> December, 2023, the petitioner was asked to justify its claim in this regard in light of the Regulations, 2020.
107. By affidavit dated 2<sup>nd</sup> January, 2024, the petitioner submitted the following: -

*The O&M expenses of the Dedicated Transmission Line are legitimate costs incurred by the Petitioner with regards to generation and supply of power to MPPMCL and such cost are a pass through in a cost-plus tariff regime. Therefore, in terms of the express mandate of Section 61 and 62 of the Act, it is the statutory right of the Petitioner to recover such legitimate cost from MPPMCL through the tariff determined by this Commission.*

*The Petitioner has never made any submission or given any undertaking before this Commission declaring its intention to not claim the O&M expenses for the Dedicated Transmission Line.*

*The Petitioner has incurred substantial cost in maintaining these Dedicated Transmission Lines consequent to the statutory mandate and for the purpose of generating and supplying power. Therefore, such prudent and legitimate cost of the*

*Petitioner, which is permissible in terms of the express mandate of Section 61 and 62 of the Act, cannot be withheld.*

*This Commission under section 86(1)(b) of the Act is vested with the power to regulate the tariff of generating companies and that the concept of regulatory jurisdiction provides for comprehending all facts not only specifically enumerated in the Act, but also embraces within its fold the powers incidental to the Regulation. Further, it has been consistently held that the word “regulate” has a broad impact having wide meaning and cannot be construed in a narrow manner.*

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

108. On perusal of the aforesaid submission filed by the petitioner, the Commission has observed that no separate norms are provided in the Regulations, 2020 for operation & maintenance expenses of dedicated transmission lines and Bay as claimed in the subject petition. Further, the cost of dedicated transmission lines had been appropriately considered in the project capital cost of petitioner’s power plant, while determining the final capital cost of the project.
109. Further, in all earlier tariff/true-up orders since COD of the project, the Commission had taken the consistent approach on this issue and separate O&M expenses for dedicated transmission line and bay had not been considered. The petitioner also filed several Appeals with Hon’ble Appellate Tribunal for Electricity on this issue of disallowance of O&M expenses on transmission line and Bay and all the such Appeals are sub-judice.
110. Since the Commission had not considered separate O&M expenses for dedicated transmission line and bay in MYT order dated 30.04.2021 (main order) for control period FY 2019-20 to FY 2023-24, therefore, the claim of petitioner for O&M expenses of dedicated transmission line is not considered in this true up order also for FY 2022-23.
111. In view of above background and facts and since this case is currently pending for adjudication before the Hon’ble Appellate Tribunal for Electricity under several Appeals filed by the petitioner against the tariff/true-up orders issued by the Commission therefore, the claim of the petitioner for separate Operation and Maintenance expenses of dedicated transmission line and bay is not considered in this Order.

**e. Interest on Working Capital**

**Petitioner Submission:**

112. The petitioner claimed the interest on working capital in form TPS 5N of the petition as under:

**Table 22: Interest on Working Capital Claimed (Rs in Crore)**

<b>S. No.</b>	<b>Particulars</b>	<b>Basis</b>	<b>2022-23</b>
1	Cost of Coal/Lignite	60 days' coal stock	189.11
2	Cost of Main Secondary Fuel Oil (HFO)	2 months of sec oil purchase	1.39
3	O & M expenses	1 month of O&M expenses	15.23
3A	O & M expenses (Transmission Lines & Bay)	1 month of O&M expenses	0.03
4	Maintenance Spares	20% of O&M expenses	36.56
4A	Maintenance Spares (Transmission Line & Bay)	20% of O&M expenses	0.08
5	Receivables	45 days of total receivables	228.08
6	<b>Total Working Capital</b>		<b>470.49</b>
7	Rate of Interest		10.50%
8	<b>Interest on Working Capital</b>		<b>49.40</b>

**Provision in Regulations:**

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

**38.1 "The Working Capital shall cover:**

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

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

be provided during the tariff period.”

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

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

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

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

**Commission’s Analysis:**

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

(i) Two month’s Cost of coal and two month’s Cost of secondary fuel of main oil equivalent to normative plant availability factor as considered in Commission’s MYT Order dated 30<sup>th</sup> April, 2021 in Petition No. 44 of 2020 are considered as follows:

Particulars	FY 2022-23 (Rs in Crore)
Cost of Coal for 60 days	189.11
Cost of Secondary Fuel Oil for two Months	1.39

(ii) Maintenance spares as considered in Commission’s MYT Order dated 30<sup>th</sup> April, 2021 as stated below is considered:

Particulars	FY 2022-23 (Rs in Crore)
Maintenance Spares (20% of O&M Expenses)	36.56

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

Particulars	FY 2022-23 (Rs in Crore)
Variable Charges- 45 Days (As considered in Order dated 30 <sup>th</sup> April, 2021)	142.95
Annual Fixed Charges- 45 Days determined in this Order	79.62
<b>Total</b>	<b>222.57</b>

- (iv) O&M expenses for one month for the purpose of working capital as considered in Commission's MYT Order dated 30<sup>th</sup> April, 2021 is considered:

Particulars	FY 2022-23 (Rs in Crore)
O & M Expenses for One Month	15.23

115. Regarding the rate of interest on working capital, Regulation 38.3 of the Regulations, 2020 provides that:

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

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

116. With regard to Bank Rate, Regulation 3.1 (7) of the Regulations, 2020 provides that Bank rate means the one-year marginal cost of lending rate (MCLR) of the State Bank of India issued from time to time plus 350 basis points. Accordingly, one-year MCLR of State Bank of India applicable as on 1.4.2022 is 7.00%, therefore, the rate of interest on working capital is considered 10.50% (7.00% + 3.50%) in this Order.
117. Considering the above, the interest on working capital worked out by the Commission for FY 2022-23 in this true-up order is as given below:

**Table 23: Interest on Working Capital considered in this Order**

Sr. No.	Particulars	Unit	FY 2022-23
1	Cost of coal for 60 Days considering non pit head power station	Rs. Crore	189.11
2	Cost of main secondary fuel oil for two months	Rs. Crore	1.39
3	O&M Charges for one month	Rs. Crore	15.23
4	Maintenance Spares 20% of the O&M charges	Rs. Crore	36.56

5	Receivables for 45 Days	Rs. Crore	222.57
6	<b>Total Working Capital</b>	Rs. Crore	<b>464.86</b>
7	Rate of Interest (SBI 1-Year MCLR+350 Basis Points)	%	10.50%
8	<b>Interest on Working Capital</b>	<b>Rs.Crore</b>	<b>48.81</b>

**f. Lease Rent: -**

118. The petitioner has claimed Rs. 0.43 Crore towards lease rent payable for land during the year. Vide Commission's letter dated 19<sup>th</sup> December, 2023, petitioner was asked to justify its claim towards lease rent for the land in light of the amount recorded in Annual Audited Accounts for FY 2022-23.

119. By affidavit dated 2<sup>nd</sup> January, 2024, the petitioner submitted the following:

*It is submitted that the petitioner is paying lease rent on account of Land Lease and Railway Lease Rent to the Statutory Body/Govt. Body, which is a part of the Project. On this basis, the petitioner has prayed that the payable Lease Rent be allowed while arriving at AFC.*

*It is to be noted that this Commission, in the past, has allowed expense towards lease and rent. In this regard, the following orders of this Commission are relied upon:*

*Order dated 31.05.2015 in Petition No. 49 of 2018 filed by JPVL for True up of FY 2017-18:-*

*Order dated 16.12.2020 in Petition No. 47 of 2019 filed by JPVL for True up of FY 2018-19. In the said Order, this Commission after considering the nature of expenses, observed as under*

*Further, petitioner submits that Lease Rent of Rs 5,81,069/- (Rs 5,20,522+Rs 60,547) & Railway Land Lease Rent of Rs 36,89,911/-, totalling Rs 42,70,980/-.*

*Lease rent of Rs 5, 81,069/- has been paid through challans and been booked under "Lease rent of land" head in Note-30, however, due to IND AS Adjustment same is reflected as NIL. However, the transaction of the same is reflected in Note 34 (b) wherein the same has been shown as paid.*

*Further, Railway Land Lease Rent of Rs 36,89,911/- is grouped under "Other Expenses" (Note-30) and are recorded against "Taxes & fees". The amount recorded against "Taxes & fees" also includes certain other expenses such as 'Rates and Taxes – Other', 'License & Application Fee' and 'Environment/ Pollution control Fee'. Petitioner has claimed only the relevant expenses of Rs. 36,89,911/- pertaining to "Railway Land Lease Rent"/ statutory charges.*

---

*The relevant documents in support of "Lease" payment and relevant pages of Balance Sheet are submitted.*

120. In the MYT proceeding, petitioner was asked to inform under what provisions of the Regulations, 2020, these expenses are claimed by the petitioner. In response, the petitioner had submitted that this Commission may exercise its regulatory power and allow the expenditure on account of lease rent. Further, even the Regulations, 2020 envisages the provisions of 'Power to Relax' and 'Power to Remove Difficulty'. Accordingly, considering the nature of the said expenditure, it is prayed to allow Rs. 0.40 Crore incurred/to be incurred by the petitioner for lease rent.
121. It is thus observed that petitioner has not justified its claim towards lease rent payable during the year in accordance with the Regulations, 2020. Since, there is no provision in the Regulations, 2020 for recovery of lease rent, separately, hence, the Commission has not considered the expenditure towards lease rent payable by the petitioner.

**g. Non-Tariff Income:**

122. In the subject true-up petitioner, the petitioner filed Rs. 0.85 Crore as non-tariff income during the year.

**Provision in Regulations:**

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

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

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

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

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

**Commission's Analysis:**

124. With regards to non-tariff income for FY 2022-23 filed by the petitioner, it is observed that the petitioner has filed the total non-tariff income of Rs. 0.85 Crore during FY 2022-23 whereas, in Note 25 of Annual Audited Accounts "other income" is shown as Rs. 10.02 Crore. Vide letter dated 19<sup>th</sup> December, 2023, the petitioner was asked to explain the reasons for aforesaid discrepancy in non-tariff income recorded in Annual Audited Accounts vis-a-vis filed in the subject petition. The petitioner was also asked to file detailed break-up of non-tariff income in accordance with the Regulation 58.1 of the Tariff Regulations, 2020 duly reconciled with the Annual Audited Accounts.

125. By affidavit dated 2<sup>nd</sup> January, 2024, the petitioner submitted the following:

*It is submitted that the petitioner has submitted the details of Non-Tariff income of Rs. 1.70 Crores in accordance with the Regulation 58.1 in TPS-17. In TPS-1, the petitioner has reduced 50% of Rs 1.70 Crores i.e. Rs 0.85 Crores from Total Capacity Charges. However, the detailed breakup of Non-Tariff Income as submitted in TPS-17 is submitted as under:-*

S. No.	Particulars	Amount (INR)
1	Sale of Fly Ash (Note 24)	6,67,578/-
2	SALE- Scrap	1,47,87,224/-
3	Rent Received	15,59,565/-
4	<b>Total Non-tariff Income during FY 2021-22</b>	<b>1,70,14,367/-</b>
	<b>TOTAL (in Crore)</b>	<b>1.70</b>
	50% of above (Claimed in the Petition)	<b>0.85</b>

Reconciliation between Non-Tariff Income submitted in the instant petition and figures recorded in Annual Audited Accounts is as under:-

**As per books:**

S. No.	Particulars	Amount (INR)	Remarks
1	Sale of Fly Ash	6,67,578/-	Pl refer Note-24 of Audited Accounts
2	Other Income As per Annual Audited Accounts	10,02,04,366/-	Pl refer Note 25 of Audited Accounts
	<b>Total (1+2)</b>	<b>10,08,71,944/-</b>	

**Reconciliation with the books:**

S. No.	Particulars	Amount (INR)
A	Total Non-tariff Income during FY 2022-23 as per Table 3 above	<b>1,70,14,367/-</b>
1	Add: Insurance claim	4,35,39,788/-
2	Add: Credit Balances written back/	2,32,59,121/-

<i>Liabilities no longer required written back</i>		
3	<i>Add: Ind. AS Adjustments</i>	<i>36,56,319/-</i>
4	<i>Add: Interest on bank FDR</i>	<i>1,20,28,529/-</i>
5	<i>Add: Interest from Others</i>	<i>13,73,820/-</i>
	<b>TOTAL</b>	<b>10,08,71,944/-</b>

The petitioner clarifies that in Table above, figures appearing at Sr. No.1 reflects the receipt against insurance claim received. Since Insurance Premium is always treated as Expense in books of account, therefore, the proceeds on account of surrender or maturity also are treated as Income as a matter of Accounting Principles. It is further submitted that Insurance is a means of protection from financial loss. It is a form of risk management, primarily used to hedge against the risk of a contingent or uncertain loss. Insurance Premium is never paid in anticipation of a return, but it is merely an expense made out to create a cushion against a predetermined set of unwarranted events, hence, it does not fall under the ambit of Regulation 58.

Figure appearing at S.No.2 is the writing back of excess provision; therefore, this also does not qualify to be included in Non-Tariff Income as per Regulation 58.

Figure appearing at S.No.3 against the IND AS adjustment has not been included or considered as Non-Tariff since it is only adjustments in the books of account arisen out of applicability of IND AS.

Figures appearing at S. No. 4 are the interest received/ accrued from the FDR made out of the Return on Equity that is why, the Petitioner has excluded the same from Non-Tariff Income as per Proviso to Regulation 58.

Figures appearing at S. No. 5 pertain to the billed amount of Surcharge raised on MPPMCL and other customers in respect of sale of energy; hence it is part of the Tariff Income and not included in Non-Tariff Income.

126. Considering the above justification and reconciliation of non-tariff income with the figures recorded in Annual Audited Accounts, the total non-tariff income of Rs 0.85 Crore as claimed by the petitioner is considered by the Commission in this Order. The break-up of non-tariff income considered is as given below:

**Table 24: Non-tariff Income considered in this Order during FY 2022-23: (Rs. in Crore )**

<b>S. No.</b>	<b>Parameter</b>	<b>Amount</b>
1	Sale of Fly Ash	0.07
2	Sale- Scrap	1.48
3	Rent Received	0.15
	<b>Total</b>	<b>1.70</b>
	<b>50% of Non-Tariff Income</b>	<b>0.85</b>

**Other Charges:**

127. In the subject true-up petition, the petitioner claimed following other charges:

- 
- (i) Recovery of Electricity Duty and Energy Development Cess on power being scheduled by the MPPMCL and Plant Auxiliary Consumption at actuals;
  - (ii) Recovery of actual water charges paid to Water Resources Department, Government of Madhya Pradesh;
  - (iii) Recovery of the filing fees paid to the Commission and also the publication expenses from the beneficiaries.

128. Regarding the other charges, In Para 162 to 164 of the tariff order dated 30<sup>th</sup> April, 2021, the following was mentioned by the Commission:

- In view of the above, the petitioner is allowed to recover the fee paid to MPERC and publication expenses as per Regulation 65.1 (i) of the Regulations, 2020 on submission of documentary evidence.
- The petitioner is also allowed to recover the electricity duty on plant auxiliary consumption, Energy Development Cess on energy supplied to MPPMCL and water charges paid to Water Resources Department, Government of MP as per Regulation 65.2 of the Regulations, 2020 on submission of documentary evidence.

129. With regard to Application fee, publication expenses and other statutory charges, Regulation 65 of the Regulations, 2020 provides as under:

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

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

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

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

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

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

132. The details of the Annual Capacity (fixed) Charges for FY 2022-23 determined in this true-up order vis-a-vis those determined in the MYT Order dated 30<sup>th</sup> April, 2021 at normative Plant Availability Factor are summarized in the following table:

**Table 25: Annual Capacity Charges at normative availability considered in this Order:**

(Rs in Crore)

S. No	Particulars	Allowed in MYT Order dated 30.04.2022 for FY 2022-23	Allowed in this true-up order for FY 2022-23	True-up amount
A	B	C	D	E=D-C
1	Return on Equity	163.68	163.99	0.31
2	Depreciation	180.22	179.86	-0.36
3	Interest on Loan Capital	70.46	71.19	0.73
4	O & M Expenses	182.80	182.80	0.00
5	Interest on Working Capital	52.33	48.81	-3.52
6	<b>Total Annual Capacity (Fixed) Charges</b>	<b>649.48</b>	<b>646.65</b>	<b>-2.83</b>
7	Less:- Non-Tariff Income	2.40	0.85	-1.55
8	Net Annual Capacity (Fixed) Charges	647.08	645.80	-1.28
9	<b>Annual Capacity(fixed) Charge corresponding to 65% of the installed Capacity</b>	<b>420.60</b>	<b>419.77</b>	<b>-0.83</b>

133. Annual Capacity (Fixed) Charges as determined above for FY 2022-23 are at Normative Plant Availability and these charges are based on Annual Audited Accounts of Jaypee Bina Thermal Power Plant for FY 2022-23.

134. Above Annual Capacity (Fixed) Charges are determined corresponding to the contracted capacity under long term PPA. The recovery of Annual Capacity (Fixed) Charges shall be made by the petitioner in accordance with Clause 42.2 of the Tariff Regulations, 2020 on pro rata basis with respect to actual Annual Plant Availability Factor.
135. Regarding the performance-based truing-up of energy charges on account of controllable parameters, Regulation 56.1 of the Regulations 2020 provides that the generating company shall work out gains based on the actual performance of applicable controllable parameters as under:
- Station Heat Rate
  - Secondary Fuel Oil Consumption
  - Auxiliary Energy Consumption
136. In view of the above Regulations, it is observed by the Commission that the generating company shall carry out the truing-up of tariff of generating station based on the controllable performance parameters like Station Heat Rate, Secondary fuel oil consumption and Auxiliary Energy consumption. Vide Commission's letter dated 19<sup>th</sup> December, 2023, the petitioner was asked to file the annual details of aforesaid performance parameters actually achieved vis-à-vis normative parameters under the Tariff Regulations, 2020. The petitioner was also asked to file details of financial gain if any, on account of controllable parameters and shared with the beneficiaries in light of the Regulation 56.2 of the Regulations, 2020.
137. In response to above, by affidavit dated 2<sup>nd</sup> January, 2024, the petitioner submitted month wise comparison of aforesaid performance parameters actually achieved vis-a-vis normative parameters. On perusal of the details filed by the petitioner, it is observed that actual parameters achieved by the petitioner during FY 2022-23 are inferior than the normative parameters under the Regulations, therefore, the petitioner incurred loss of Rs 15.23 Crore on account of inferior performance and poor actual operating parameters achieved by it during FY 2022-23.
138. Regulation 56.2 of the Tariff Regulations, 2020 provides that financial gains by a generating company on account of controllable parameters shall be shared between generating company and the beneficiaries in the ratio of 50:50 on annual basis. The aforesaid Regulation do not provide for sharing of loss incurred by the generating company. Therefore, the loss incurred by the petitioner on account of inferior operating parameters shall not be passed on to the beneficiary.

**Implementation of the Order**

139. The petitioner must take steps to implement the order after giving seven days public notice in accordance with clause 1.30 of MPERC (Details to be furnished and fee payable by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004 and its amendments and recalculate its bills for the energy supplied to Distribution Companies of the State/ M.P. Power Management Company Ltd. since 1<sup>st</sup> April, 2022 to 31<sup>st</sup> March, 2023.
140. The petitioner is also directed to provide information to the Commission in support of having complied with this Order. The surplus amount as a result of this order shall be passed on to MP Power Management Company Ltd. / three Distribution Companies of the state in terms of Regulation 9.11 of the Regulations, 2020 in six equal monthly instalments during FY 2024-25.
141. With the above directions, this Petition No. 63 of 2023 is disposed of.

**(Prashant Chaturvedi)**  
**Member**

**(Gopal Srivastava)**  
**Member (Law)**

**(S.P.S Parihar)**  
**Chairman**

**Date: 22<sup>nd</sup> February, 2024**

**Place: Bhopal**

**Annexure-I**

**Response of Petitioner on the comments offered by the MPPMCL and observations of the Commission:**

**ADDITIONAL CAPITALIZATION**

**MPPMCL's Response-**

MPPMCL has submitted the following submission regarding the claim of additional capitalization by the petitioner in the subject petition:

- i. As stated by the Petitioner in Para 9.11 of the Petition, Unit # 1 and Unit # 2 of the Project achieved their commercial operation (CODs) on 31.08.2012 and 07.04.2013 respectively. Consequently, in terms of Regulation 3.1(14) of 2020 Tariff Regulations, the Cut-Off Date for the Project is 31.04.2016.
- ii. Regulations 27 and 28 of 2020 Tariff Regulations provide for criteria for admitting Additional Capital Expenditure in an Existing Project after Cut-off Date. Regulation 27.1 exhaustively enumerates admissible Additional Capital Expenditure for an existing Project (or a new project) within original scope of work and after the cut-off date subject to prudence check. Regulation 28.1 exhaustively enumerates admissible Additional Capital Expenditure for an existing Project (or a new project) beyond original scope of work subject to prudence check.
- iii. All the claims of Additional Capital Expenditures amounting to ₹ 9.53 Crore made in Paragraphs 10 and 11 of the present true-up Petition for FY 2022-23, are not eligible to be considered as Additional Capital Expenditure because they do not meet the criteria laid down in Regulations 27 or 28. Therefore, this Commission may graciously be pleased to reject the same.
- iv. In Para 1.5 of the Petition, the Petitioner has given the details of true up of various expenditures sought in the present Petition. The claims of Additional Capital Expenditures claimed by the Petitioner are not admissible under the provisions of the 2020 Generation Tariff Regulations. Therefore, it is prayed that in view of the submissions made in the present Reply, the said claims may not be allowed.
- v. Also, in respect to the statement of the petitioner, it is submitted that contentions of the Petitioner in P.No. 49/2018 in respect of its claim towards Carpet Coal, in P. No. 47/2019 in respect of claim in respect of Coal Blending Management System and in P.No. 75/2022 in respect of Railway Siding have been strongly opposed by the Answering Respondents. The said claims are also being strongly opposed in various Appeals filed by the petitioner before Hon'ble APTEL.
- vi. In Para 11 (i) of the Petition, the Petitioner has stated that ₹ 0.49 Crore have been incurred towards purchase of vehicles. The Petitioner has tried to justify the expenditure claiming that the same will improve / enhance overall efficiency. The justification provided is very

vague. The Petitioner has failed to provide any evidence/ proof as to how the said purchase of vehicles is going to improve/ enhance overall efficiency. Therefore, this Commission may graciously be pleased to reject the same.

- vii. In Para 11 (ii) of the Petition, the Petitioner has stated that Rs 4.34 Crore have been incurred towards civil structure (Roads & Township) to provide better facility to the manpower. As submitted in foregoing paragraphs, this Additional Capital Expenditure has been incurred long after the Cut-Off Date of the Project, therefore cannot be allowed. Therefore, this Commission may graciously be pleased to reject the same.
- viii. In Para 11 (iii) of the Petition, the petitioner has stated that it has incurred Rs.0.57 Crore towards purchase of various Office Equipment. These items are routine items which do not form part of Capital Expenditure. Such expenditure is to be met out of normative Operation & Maintenance (O&M) expenditure allowed for the Project. Such expenditure cannot be allowed separately. Therefore, this Commission may graciously be pleased to reject the same.
- ix. In Para 11 (iv) of the Petition, the Petitioner has stated to have incurred Rs. 4.13 Crore towards purchase of misc. Plant and Machinery. The Petitioner has failed to provide any justification for procurement of these items after about 7 years of operation of the Project. The items procured also do not appear to be within Original Scope of Work of the Project. Hence, may kindly be not allowed.

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

*Respondents vide its reply has raised a contention that all the claims of Additional Capital Expenditure are not permissible under Regulation 27 of the Tariff Regulations, 2020.*

1. *At the outset, it is clarified that the additional capital expenditure claimed by the Petitioner falls within the original scope of the Project. On a bare perusal of Regulation 27 of the Tariff Regulations, 2020, it is evident that an additional capital expenditure which falls within the original scope of work and is incurred after the cut-off date may be admitted by this Commission after prudence check.*
2. *It is submitted that the following additional capital expenditure falls within the original scope of work and is incurred after the cut-off date: -*
  - (a) *Amount of Rs. 0.49 Crores have been incurred by the petitioner towards the purchase of vehicles to facilitate the manpower engaged in generation of power directly or indirectly leading to improvement in the overall efficiency of the Project.*
  - (b) *Amount of Rs. 4.34 Crores have been incurred by the petitioner towards the civil structure (Roads & township) to facilitate the manpower in order to provide them better facility. It is submitted that under the head civil structure (Roads & Township) following assets have been capitalized: -*

<b>S.No.</b>	<b>Particulars</b>	<b>Amount (Crs)</b>
1	Road	0.81

2	Shop(s)	0.13
3	Temple	3.41
	<b>Total</b>	<b>4.34</b>

- (c) It is submitted that a road has been constructed from main gate to weigh bridge (length\*Width\*Height= 850 mtr \* 7 mtr \* 0.3 mtr) for the transportation of fly ash. Earlier there was an old or unmetalled (Kacha) road in existence. As it is a well-known fact that with the passage of time, any road/unmetalled road not only becomes uneven but unsafe as well, that is why an approach road has been constructed for smooth and safe transportation of fly ash from plant premise.
- (d) Along with the generation and supply of power, Jaypee Bina Thermal Power Plant (“**JBTPP**”) also ensures the welfare of workers/staff living and working in plant premise. Accordingly, arising out of daily needs and religious/spiritual belief of the workers/staff and their families (living in plant premises) shop(s) and temple were constructed to cater the same.
- (e) In light of the above, it is requested before this Hon’ble Commission to allow the additional capital expenditure.
- (f) Amount of Rs. 0.57 Crores have been incurred by the Petitioner towards purchase of various office equipment’s in order to improve the technology, human safety, replacement of old items.
- (g) Amount of Rs. 4.13 Crores have been incurred towards purchase of misc. plant and machinery in order to improve the technology/efficiency. Out of the total amount of Rs. 4.13 Crores under the Plant and Machinery, an amount of Rs. 2.17 Crores pertains to Insurance Spares (Wheel & Axle with final drive and transmission HDR) of Railway Siding (loop line). It is pertinent to mention herein that the Petitioner had claimed Additional Capitalization of Rs. 7.31 Crores towards Additional Loop Line in True Up (FY 2021-22) in Petition No. 75 of 2022 which was disallowed by this Hon’ble Commission.
- (h) However, the same has been challenged by the Petition before the Hon’ble Appellate Tribunal for Electricity (“**Hon’ble Tribunal**”) in Appeal No. 581 of 2023. It is apposite to highlight herein that the detailed justification regarding the additional loop line has already been provided by the Petitioner in Petition No. 75 of 2022. Since, Additional Loop Line was claimed under Regulation 27.1(iv), 27.2(a) and 27.2(b), hence, the Petitioner is claiming Insurance Spares (Wheel & Axle with Final Drive and Transmission HDR) under the same Regulations. The Petitioner prays before this Commission to invoke Regulation 66.1 of the Tariff Regulations, 2020 and allow the prayer of the Petitioner made in the present Petition.
- (i) It is submitted that Insurance spares are major items and parts kept in hand to ensure the uninterrupted operation of the asset/machine/plant/station. In other words, if there is an unexpected breakdown, the same may be used immediately to ensure regular operation of asset/machine/plant/station.

*In light of the submissions made above, it is submitted that the objection of MPPMCL that the additional expenditure incurred beyond cut-off date cannot be admitted under Regulation 27 of the Regulations, 2020 is untenable and is liable to be rejected and accordingly, the claim of the petitioner is ought to be allowed by the Commission.*

3. *The petitioner further replied:*

*a) It is incorrect to state that the claims of the additional capital expenditure are not admissible under the Regulations, 2020. The petitioner above has specifically demonstrated that in terms of Regulation 27 of the Tariff Regulations, 2020, the additional capital expenditure incurred within the original scope of work but after the cut-off date, may be admitted by this Commission after prudence check. The contents of the para regarding carpet coal are vehemently denied. It is submitted that the petitioner has by way of various Appeals before the Hon'ble Tribunal has challenged the findings of this Commission which are sub-judice and have not attained finality.*

*b) The contents of Paragraph of the aforementioned Reply are incorrect and denied. It is submitted that the petitioner has procured Vehicles for transportation purposes within the plant site, thereby, promoting a sustainable approach to mobility of the manpower(s). Thus, the expense incurred by the petitioner towards the purchase of vehicles amounting to Rs. 0.49 Crores is for the purposes of improving as well as enhancing the overall efficiency and effectiveness of the Petitioner's Project. Further, the Petitioner reiterates and reaffirms the contents of the Petition and the present Rejoinder. The Petitioner craves liberty to rely upon the submissions at the time of hearing.*

#### **Observation-**

The additional capitalization claimed in the petition has been examined thoroughly by the Commission in accordance to the provisions under the Regulations, 2020, Annual Audited Accounts of the petitioner for FY 2022-23, Asset-cum-Depreciation Register for FY 2022-23 and other supplementary submissions filed by the petitioner and other documents placed on record by the petitioner. Partial ACE of Rs 0.81 Crore is considered as against claim of Rs 9.53 Crore as per provisions of the Regulations, 2020.

#### **MPPMCL's Response-**

In Para 12 and 13 of the Petition, the Petitioner has stated that it has decapitalized assets worth Rs. 66,47,341/- during FY 2022-23. In Annexure-1 (at Page No. 30 to 36) a list of assets de-capitalised during FY 2022-23 has been given. From the said List it is observed the amounts indicated against various assets proposed to be decapitalized appear to be their "original

---

costs”.

Regulation 37.9 of the Regulations, 2020 provides that cumulative depreciation recovered in tariff by the decapitalized asset during its useful services. The relevant part of the Regulation is extracted below for ready reference :

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

In view of above it is prayed that the decapitalization of the assets may be considered only in accordance with the provisions of the Regulations, 2020 and for the assets which are installed and used in the Project for Generation of Power

**Petitioner’s Reply-**

*The contents of Paragraphs of the Reply do not require reply as de-capitalization of assets were done in conformity with the Regulations, 2020. The due and proper adjustments have also duly been made in the relevant TPS Forms and Asset Cum Depreciation Register.*

**Observation-**

De-capitalisation of assets of Rs 0.66 Crore has been considered in accordance with the provisions under the Regulations, 2020, Asset-cum-Depreciation Register and Annual Audited Accounts of FY 2022-23.

**MPPMCL’s Response-**

In Para 14 of the Petition and in Annexure-2, head-wise claim of Annual Capacity Charges have been given in a Table. At Sl.No. 5A of the Table and also at Page No. 38 of the Petition, an amount of ₹ 0.40 Crore has been claimed as O & M Expenses for 400 KV Transmission Lines and Bay. At Page 41 the purported basis and calculations for claiming separate O & M Expenses for 400 KV Dedicated Transmission Line and Bay has been given. In Form TPS-5N, the Petitioner has also included separate O & M Expenses for 400 KV Dedicated Transmission Line and Bay.

The separate claim of O & M Expenses for 400 KV Dedicated Transmission Line and Bay and its inclusion in calculation of Interest on Working Capital (Form TPS-5N) is strongly opposed as it is completely erroneous, misconceived and contrary to the provisions of 2020 Generation Tariff Regulation. The said separate claim of O & M Expenses impermissible because –

- (i.) *The said 400 KV Transmission Line is a Dedicated Transmission Line in terms of Section 10 (1) of the Electricity Act 2003. It is the duty of the Generating Company to establish, operate and maintain the same. Section 10 (1) of the Electricity Act 2003 is extracted below for ready reference :*

---

*“10(1). Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.”*

- (ii.) *In terms of Regulation 3.1(44) of 2020 Generation Tariff Regulations, “Thermal Generating Station” includes “Dedicated Transmission Line/System” as may be required. The relevant part of the Regulations is extracted below for ready reference :*

*“3. Definitions:*

*3.1 In these Regulations, unless the context otherwise requires-*

*(1) .....;*

*.....*

*(44) ‘Project’ means :*

*(i) In case of thermal generating station, all components of the thermal generating station and includes pollution control system, effluent treatment plant, dedicated transmission line/system, as may be required, and*

*(ii) In case of a hydro generating station, all components of hydro generating station and includes dam, intake water conductor system, power generating station and generating units of the scheme, as apportioned to power generation;”*

- (iii.) *Capital Cost of the 400 KV Dedicated Transmission Line and Bay has already been allowed along with total Capital Cost of the Generating Station.*
- (iv.) *Dedicated Transmission Line is an integral part of the Generating Station along with other Electrical Systems viz. Switchyard, Transformers, Bus Bars, Feeder Bays etc., whose O & M Expenses are already covered under Normative O & M Expenses provided in the 2020 Generation Tariff Regulations on per MW basis.*
- (v.) *2020 Generation Tariff Regulations do not provide for separate O & M Expenses for Dedicated Transmission Line. 2020 Generation Tariff Regulations have not been challenged by the Petitioner, thus are binding.*

- (vi.) *There is no evidence inadequacy of normative O & M Expenses allowed with respect to actual O & M Expenses incurred for the Project including Dedicated Transmission Line and Bay.*
- (vii.) *If the claim of the Petitioner for separate O & M Expenses is allowed then it would amount to over-compensation and unjust enrichment of the Petitioner at the expense of common consumers of electricity.*
- (viii.) *The separate claim of Dedicated Transmission Line has been consistently rejected by this Commission in all previous Tariff and True-up Petitions. The decision of this Hon'ble Commission on this issue has been challenged by the Petitioner in a number of Appeals filed before Hon'ble Appellate Tribunal of Electricity (APTEL), New Delhi, which are pending adjudication.*

**Petitioner's Reply-**

*The contents of Paragraphs of the Reply are denied. The Petitioner reiterates and reaffirms the contents of the Petition and the present Rejoinder. The Petitioner craves liberty to rely upon Para above in support of its contention. The Petitioner craves liberty to rely upon the submissions at the time of hearing.*

**Observation-**

The Commission has considered O&M expenses in accordance to provisions under the Regulations, 2020. Further, the issue of separate O&M of dedicated transmission line and bay is subjudice before Hon'ble Appellate Tribunals for Electricity in various Appeals filed by the petitioner.

**MPPMCL's Response-**

In Paras 16 and 17 of the Petition, the petitioner has claimed Electricity Duty, Energy Development Cess and Water Charges. These may be allowed only in accordance with the provisions of the Regulations, 2020. Details of claim of Electricity Duty, Development Cess and Water charges have not been given in the Petition. It is prayed that this Commission may kindly direct the Petitioner to give the said details for scrutiny.

It is also to submit that as per Ministry of Environment, Forest and Climate Change (MoEFCC) Notification dated 07.12.2015, Thermal power plants have to meet specific water consumption up to Maximum of 3.5 m<sup>3</sup>/MWh. Accordingly, the water requirement as per actual generation of power and as per the norms prescribed by MoEFCC may only be allowed.

**Petitioner's Reply-**

*With reference to Paragraphs of the Reply, the contents of the same are hereby denied. It is submitted that this Commission vide its Order dated 30.04.2021 passed in Petition 44 of 2020 has already granted liberty to the Petitioner to recover Electricity Duty and Energy*

---

Development Cess on plant auxiliary consumption and energy supplied to MPPMCL and Water Charges paid to Water Resources Department, GoMP as per Regulation 65.2 of the Tariff Regulations, 2020. With regard to the Electricity Duty & Energy Development Cess and Water Charges, it is humbly submitted that Petitioner has been regularly submitting all the details in the office of MPPMCL as details are an integral part of the 'bills of reimbursement' which contains the payment challans, detailed calculation of total amount paid and amount reimbursable from MPPMCL. A summarized statement of Electricity Duty & Electricity Development Cess has already been provided by the Petitioner and annexed as Annexure-4 to the Petition.

On a bare perusal of Regulation 65.2 of the Tariff Regulations, 2020, it is clear that Generator is entitled to claim the Electricity Duty & Energy Development Cess considering the Normative Parameters subject to true up. In other words, Generator shall continue to claim on Normative Parameters and during the proceedings of True-up, if it is found that Actual Parameters differs from the Normative Parameter (whether on higher or lower side) differential amount shall be claimed by either party. (Generator/Procurer). Hence, it is requested to allow the claim of the Petitioner amounting to Rs. 18,09,640/- towards Electricity Duty and Energy Development Cess.

Further, it is submitted that JBTPP has been adhering all the specified norms specified. With regard to payment of Water Charges is concerned, it is submitted that Concerned Authority raises bill on monthly basis on JBTPP which is duly paid by JBTPP. Accordingly, along with the bill of concerned authority and payment proof thereof, JBTPP raises bill on MPPMCL for reimbursement purpose. Respondent always reimburses such charges on the basis of such documentary evidence. Therefore, this Commission may allow the claim of the Petitioner directly from the Respondent on submission of documentary evidence i.e., bill of concerned authority and payment proof thereof. The details of the Water Charges are part of Annexure-4 of the Petition. On a bare perusal of Regulation 65.2 of the Tariff Regulations, 2020, it is clear that Generator is entitled to claim the Electricity Duty & Energy Development Cess considering the Normative Parameters subject to true up. In other words, Generator shall continue to claim on Normative Parameters and during the proceedings of True-up, if it is found that Actual Parameters differs from the Normative Parameter (whether on higher or lower side) differential amount shall be claimed by either party. (Generator/Procurer). Hence, it is requested to allow the claim of the Petitioner amounting to Rs. 18,09,640/- towards Electricity Duty and Energy Development Cess.

Further, it is submitted that JBTPP has been adhering all the specified norms specified. With regard to payment of Water Charges is concerned, it is submitted that Concerned Authority raises bill on monthly basis on JBTPP which is duly paid by JBTPP. Accordingly, along with the bill of concerned authority and payment proof thereof, JBTPP raises bill on MPPMCL for reimbursement purpose. Respondent always reimburses such charges on the basis of such documentary evidence. Therefore, this Commission may allow the claim of the petitioner

directly from the Respondent on submission of documentary evidence i.e., bill of concerned authority and payment proof thereof. The details of the Water Charges are part of Annexure-4 of the Petition.

**Observation-**

Statutory Charges such as Electricity Duty and Energy Development Cess on plant auxiliary consumption and energy supplied to MPPMCL and Water Charges paid to Water Resources Department, GoMP is considered as per the Tariff Regulations, 2020.

**MPPMCL's Response-**

It is also submitted that Regulation 56 of Tariff Regulations, 2020 provides for sharing of any gains due to variation in norms on the basis of Controllable Parameters. It is therefore most prayed that Commission may graciously be pleased to direct the Petitioner to provide necessary month-wise details of actual parameters to arrive at any gain/ loss on account of controllable parameters and share the gains due to variation in normative parameters with the Answering Respondents.

**Petitioner's Reply-**

*In response to above Paragraph, it is submitted that the petitioner has already provided the month wise detailed comparison of the performance parameters actually achieved vis-a-vis normative parameters along with the details of financial gain at Annexure 15 of the Supplementary Response letter dated 02.01.2024 to this Commission.*

**Observation-**

Petitioner has provided necessary month-wise details of actual parameters to arrive at financial gain on account of controllable parameters in its additional submission dated 2<sup>nd</sup> January, 2024. On perusal of the details filed by the petitioner, it is observed that actual parameters achieved by the petitioner during FY 2022-23 are inferior than the normative parameters under the Regulations, therefore, the petitioner incurred loss of Rs 15.23 Crore on account of inferior performance and poor actual operating parameters achieved by it during FY 2022-23.