

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

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



Petition No. 07 of 2019

PRESENT:

Dr. Dev Raj Birdi, Chairman

Mukul Dhariwal, Member

IN THE MATTER OF:

True-up of Generation Tariff of 2 x 660 MW Super Critical Coal based Thermal Power Station at Nigrie, District Singrauli (M.P.) for FY 2017-18 determined by MP Electricity Regulatory Commission vide MYT Order dated 29th November' 2018 in Petition No. 07 of 2018.

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

PETITIONER

Vs.

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

RESPONDENTS

ORDER
(Passed on this day of 22nd October' 2019)

1. M/s Jaiprakash Power Ventures Limited (hereinafter called "the petitioner" or JPVL) has filed the subject petition on 30th January' 2019 for true-up of the Generation tariff for FY 2017-18 in respect of its 2 x 660MW super critical coal based Thermal Power Station at Nigrie, District Singrauli, Madhya Pradesh, determined by the Madhya Pradesh Electricity Regulatory Commission (hereinafter called "the Commission or MPERC") vide its Multi Year Tariff (MYT) order dated 29th November' 2018 in Petition No. 07 of 2018.
2. The subject true-up petition has been filed under Section 62 and 86(1)(a) of the Electricity Act, 2003 and the provisions under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 (herein after called "the Regulations' 2015"). The subject petition is based on the Annual Audited Accounts of FY 2017-18 of Nigrie thermal power station.
3. The Nigrie Thermal Power Station under the subject petition comprises of two generating Units of 660 MW each. Date of Commercial Operation (CoD) of both the Units of petitioner's power plant are as given below:

Table 1: CoD of Unit No.1&2

Sr. No.	Units	Installed Capacity (in MW)	Date of Commercial Operation (CoD)
1	Unit No. 1	660 MW	3 rd September' 2014
2	Unit No. 2	660 MW	21 st February' 2015

4. The petitioner had earlier filed Petition No.07 of 2018 for determination of Multi Year Tariff for Unit No. 1 and 2 of its generating station for the control period from FY 2016-17 to FY 2018-19 based on the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015.
5. Vide order dated 29th November' 2018 in the aforesaid petition, the Commission determined the multi-year tariff of Unit No. 1 and 2 of the power station subject to true-up based on the Annual Audited Accounts for the respective year.
6. In the aforesaid MYT order dated 29th November' 2018, the following Annual Capacity (fixed) Charges were determined by the Commission for FY 2017-18:

Table 2: Annual Capacity (fixed) Charges determined for FY 2017-18

Sr. No.	Particulars	Unit	Amount
1	Return on Equity	Rs. Crore	364.25
2	Interest on Loan	Rs. Crore	741.15
3	Depreciation	Rs. Crore	536.69

4	Interest on Working Capital	Rs. Crore	70.72
5	O & M Expenses	Rs. Crore	228.36
6	Lease rent payable for Land (yearly)	Rs. Crore	0.44
7	Annual capacity (fixed) charges	Rs. Crore	1,941.61
8	Less: Non-Tariff Income	Rs. Crore	3.64
9	Net AFC (after adjusting Non-tariff Income)	Rs. Crore	1,937.97
10	AFC corresponding to 30% of the installed capacity of the power station	Rs. Crore	581.39

7. Aggrieved with the Commission's aforesaid order dated 29th November' 2018, the petitioner filed an Appeal No. 96 of 2019 before the Hon'ble Appellate Tribunal for Electricity on the following issues:
- (i) Disallowance of Operation and Maintenance expenses of the dedicated transmission line and cost of spares of the same in computation of interest on working capital.
 - (ii) Disallowance of ROM price, additional premium and incidence of the taxes thereon while computing the cost of coal for control period from FY 2016-17 to FY 2018-19 for the purpose of working out interest on working capital.
 - (iii) Disallowance of inadequate capacity charges on the 7.5 % of the contracted energy under the power purchase agreement dated 06.09.2011.
8. The aforesaid Appeal is sub-judice with the Hon'ble Appellate Tribunal for Electricity
9. In para 151 of the MYT order dated 29th November' 2018, it was mentioned that the generation tariff under the Multi-Year Tariff framework for the control period from FY 2016-17 to FY 2018-19 is determined under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulation' 2015. The petitioner was directed to file true-up petition for the respective years based on the Annual Audited Accounts.
10. Accordingly, the petitioner filed subject petition for true-up of FY 2017-18 based on the Annual Audited Accounts. In the subject true-up Petition, the petitioner has sought true-up of FY 2017-18 in respect of the additional capital expenditure incurred during FY 2017-18 in accordance with Regulation 8.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 which provides as under:

“A Generating Company shall file a petition at the beginning of the Tariff period. A review shall be undertaken by the Commission to scrutinize and true up the Tariff on the basis of the capital expenditure and additional capital expenditure

actually incurred in the Year for which the true up is being requested. The Generating Company shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred for the period from 1.4.2013 to 31.3.2016, duly audited and certified by the auditors.”

11. The petitioner has broadly submitted the following in the subject petition:
- a. *Pursuant to the allocation of Amelia (North) mine and Dongri Tal- II mine under the government dispensation route in October 2005, the Madhya Pradesh State Mining Corporation (“MPSMCL”) invited tenders to identify the Mines Developer and Operator (MDO) to develop the coal mines and establish a link with power plants in Madhya Pradesh. Subsequently, JAL was selected as MDO for both the mines and the letter of intent was issued by MPSMCL on November 11, 2005 and May 1, 2007 with a condition that the coal would be utilized in a thermal power plant required to be set up by JAL in the State of Madhya Pradesh. Accordingly, the Project was envisaged on the basis that entire coal requirement will be sourced from two captive coal blocks of Amelia (North) and Dongri Tal- II.*
 - b. *Thereafter, a Memorandum of Understanding (hereinafter referred to as “MoU”) dated 16.01.2007 was entered into between the GoMP and JAL for setting up a 500 MW thermal power station. The said MoU dated 16.01.2007 was subsequently amended from time to time on 08.12.2007 and 27.03.2008 for setting up a plant of 1,320 MW. The said project under the MoU was to be setup by the Petitioner.*
 - c. *GoMP and the Petitioner thereafter signed and executed an Implementation Agreement dated 12.12.2007 which was subsequently amended on 27.03.2008 (hereinafter referred to as “IA”). As per the IA, GoMP or its nominated agency has the first right to purchase power from the Project, up to 30% of the installed capacity over a period of 20 years at a tariff to be determined by the Commission, and a further 7.5% of the net power at a price equivalent to the variable charge / cost to be determined by the Commission provided that the Petitioner is allocated a dedicated coal block in the State for supply of coal to the Project.*
 - d. *Consequently, the Petitioner entered into a long-term Power Purchase Agreement with Respondent No. 1 on 05.01.2011. Under the Power Purchase Agreement dated 05.01.2011, the Petitioner is required to supply 30% of the installed capacity of the Project to the Respondent No. 1 at a tariff determined by the Commission.*
 - e. *The Petitioner and Respondent No. 1 further entered into a second Power Purchase Agreement on 06.09.2011 for supply of 7.5% of the net power from*

the Project to the Respondent No. 1 at variable charges. The power supplied by the Petitioner to the Respondent No. 1 under the PPAs ensures the benefit of Respondent No. 2 to Respondent No. 4 (distribution licensees) engaged in the business of distribution and supply of electricity in the state of MP.

- f. Whilst the Petitioner was in the process of executing the Project, the Hon'ble Supreme Court of India, on the issue of the validity of coal blocks allotted by the Screening Committee of the Central Government as also the allotments made through Government dispensation route, examined in a batch of proceedings [W.P.(Crl) No.120 of 2012] wherein, the Hon'ble Supreme Court of India declared majority of allocation of coal blocks made by the Central Government since 1993 as arbitrary and illegal vide its judgement dated 25.08.2014 and order dated 24.09.2014 in M.L. Sharma v. The Principal Secretary and Others,(2014) 9 SCC 516, and thus, cancelled the allotment of 204 coal blocks allotted through such route. The Amelia (North) coal block was among the 204 blocks cancelled vide the foregoing judgement. Consequently, the allotment in favour of MPSMCL stood cancelled.*
- g. Pursuant to the cancellation of the blocks, the Central Government promulgated the Coal Mines (Special Provisions) Ordinance, 2014 (hereinafter referred to as the "Ordinance") and the Coal Mines (Special Provisions) Rules, 2014 (hereinafter referred to as the "Rules") which provided for auction and allotment of the various cancelled coal blocks. The Ordinance and the Rules provided for the appointment of a 'Nominated Authority' to conduct the tender process to auction the various de-allocated coal mines.*
- h. The Union Ministry of Coal issued order dated 26.12.2014 specifying the methodology for fixing floor/reserve price for the auction and allotment of coal mines/blocks. It provided for the auction to be conducted vide the methodology of 'reverse bidding' wherein the bidders were required to bid below the ceiling price of CIL fixed at the Run of Mine (hereinafter referred to as the "RoM") price of equivalent grade. In effect, the Coal Order provided for the possibility of a winning bid of 'zero'. The same was nothing but a notional value in view of the peculiar nature of the bid, which was premised on the efficiency in the mining operations, as the RoM price when understood in the commercial sense, being contingent on several expenses like labour, maintenance of machines etc. can never be 'zero' in absolute terms.*
- i. Vide Corrigendum dated 31.01.2015, the Nominated Authority clarified that in the event of a bid of 'zero', the selection of the preferred bidder shall be on the basis of the highest 'Additional Premium' quoted by it on the basis of the*

quantum of coal extracted. The Petitioner, in dire need of the Amelia (North) coal block since its power plant was premised on the supply from the said block and investment of Rs. 11,700 Crores was jeopardized on account of its cancellation, bid a price of 'zero' at the auction with the aim to get the Amelia coal block and emerged as the successful bidder as it quoted an Additional Premium of Rs. 612 per tonne.

- j. It is pertinent to mention that at the time of Bidding for Amelia (North) coal block (17.02.2015), Nigrie Plant was generating and the Mine [Amelia (North)] was also functional. Thus, JPVL was left with no option but to ensure availability of fuel/coal for its Project, which was established on the basis of tender conditions for bidding for Amelia (North) coal block.
- k. Pursuant to tender and e-auction process conducted in accordance with the Coal Mines (Special Provisions) Rules, 2014, the Petitioner was declared as the successful bidder for Amelia (North) coal mine. Accordingly, the Coal Mine Development and Production (hereinafter referred to as "CMDP") Agreement was executed on 02.03.2015 and subsequently 'Vesting Order' was issued to the Petitioner on 23.03.2015.
- l. Subsequent to its successful bid, the Petitioner entered into the CMDP Agreement dated 02.03.2015 with the Nominated Authority. The said agreement stipulated the fixed monthly payment of Rs. 100 per tonne alongwith an additional premium of Rs. 612 per tonne with respect to the quantum of coal extracted every month and payment of fixed amount relating to land and mine infrastructure & cost of obtaining permits/approvals.
- m. Subsequently, the Petitioner filed Petition No. 72 of 2015 on 07.12.2015 before the Commission for determination of tariff for supply of power from the Project from 03.09.2014 to 31.03.2015. The Commission after deliberation on its part approved the Final Tariff for FY 2014-15 and Provisional Tariff for FY 2015-16 vide Order dated 24.05.2017 subject to be Trued Up as per the annual audited accounts of FY 2015-16.
- n. The Petitioner has challenged certain portions of the Order dated 24.05.2017 in Appeal No. 244 of 2017 before the Hon'ble Appellate Tribunal of Electricity on 21.07.2017 (hereinafter referred to as the "Tariff Appeal").
- o. The Petitioner also filed a True Up petition No. 41 of 2017 before the Commission along with details of additional capital expenditure incurred by the Petitioner during FY 2015-16 which was also adjudicated vide Order dated 20.07.2018 which also challenged by the Petitioner on certain issues.

- p. *The Petitioner, meanwhile had also filed Multi Year Tariff Petition for control period FY 2016-17 to FY 2018-19 namely, Petition No. 07/2018 in accordance with the MPERC Tariff Regulations seeking determination of the Generation Tariff for the said Control Period which was also adjudicated by the Commission vide Order dated 29-11-2018. In the said Order, though the Petitioner had filed actual data for FY 2016-17, the Commission determined the Tariff based on the Capital Cost upto 31-03-2016 as determined by the Commission.*
- q. *Subsequent to the MYT Order dated 29.11.2018, the petitioner filed true-up petition for FY2016-17 before the Commission as petition No. 05/2019 for the truing-up of the tariff determined by the Commission for FY 2016-17.*
- r. *The Petitioner is filing the present Petition before the Commission along with details of additional capital expenditure incurred by the Petitioner during FY 2017-18 for the truing up of the Tariff determined by the Commission for FY 2017-18.*
- s. *The Petitioner reserves the right to amend the present petition on the basis of the Judgment passed by the Hon'ble Appellate Tribunal of Electricity in the Appeal No. 95/2016, Appeal No.244/2017, Appeal No. 293/2018 and the Appeal against the Order dated 29-11-2018 in the Petition No. 07/2018 which is yet to be filed.*
12. In the subject true-up petition, the petitioner claimed additional capitalization of Rs. 12.03 Crore in its Nigrie Thermal Power Station. The petitioner also filed write-off/ deletion of assets for Rs. 0.60 Crore. Accordingly, the net additional capitalization of Rs. 11.42 Crore during FY 2017-18 is claimed by the petitioner based on Annual Audited Accounts in the subject matter. In addition to above, the petitioner also claimed additional capitalization of Rs. 149.50 Crore towards Amelia Coal Mine during FY 2017-18.
13. Based on the aforesaid additional capitalization and de-capitalization filed in the petition during FY 2017-18, the following Annual Capacity (fixed) charges for UnitNo.1&2 of Nigrie Thermal Power Station are claimed in the subject petition:

Table 3: Annual Capacity (Fixed) Charges claimed for FY 2017-18

Sr.No.	Particulars	Amount (Rs in Crore)
1	Depreciation	558.96
2	Interest on Loan	803.25
3	Return on Equity	383.41
4	Interest on Working Capital	111.15

5	O & M Expenses	228.36
6	O & M Expenses (400 kV Transmission Line & Bay)	1.27
7	Lease rent payable for Land (yearly)	0.50
8	Total Annual Capacity (fixed) Charges	2,086.89
9	Less: -Non-Tariff Income	15.15
10	Add:- FERV on actual interest paid on FCCB on 31.03.2015 not allowed for FY 2014-15	3.06
11	Net Annual Capacity Charges	2,074.80
12	32.43% of Annual Capacity (fixed) charges	672.86

14. The petitioner filed a copy of the Annual Audited Accounts of Jaypee Nigrie Thermal Power Project, Annual Audited Accounts of Amelia Coal Mine and the Consolidated Balance Sheet of Jayprakesh Power Ventures Limited (JPVL) as on 31st March' 2018 with the petition. The petitioner also filed a copy of Asset-cum-depreciation register containing capitalization of assets as on 31st March' 2018 for thermal power station and Amelia Coal Mine separately.
15. With the above submission, the petitioner prayed the following:
- True-up of Capacity Charges for FY 2017-18 in terms of Additional Capital Expenditure incurred by the petitioner,*
 - Allow the recovery of the filing fees paid to the Commission and also the publication expenses from the beneficiaries.*

Procedural History

16. Motion hearing in the subject true up petition was held on 5th March' 2019 wherein the petition was admitted and the petitioner was directed to serve the copies of its petition to all respondents in the matter. The respondents were also asked to file their comments/response on the petition by 30th March' 2019.
17. Vide Commission's letter dated 11th March' 2019, the information gaps/ requirement of additional details and document on preliminary scrutiny of the petition were communicated to the petitioner seeking its comprehensive reply by 10th April' 2019.
18. By affidavit dated 18th April' 2019, the petitioner filed its reply to the issues communicated to it by the Commission.
19. By affidavit dated 18th April' 2019, Respondent No. 1 (M.P. Power Management Co. Ltd.) filed its response/comments on the subject petition.
20. The next hearing in the subject matter was held on 23rd April' 2019, wherein the petitioner sought two weeks' time for filing its rejoinder on the response filed by the Respondent No.1. Vide order dated 23rd April' 2019, the petitioner was asked to file its rejoinder on the response filed by Respondent No. 1 by 7th May' 2019.

21. By affidavit dated 4th May' 2019, the petitioner filed rejoinder to the reply/ comments filled by the Respondent No. 1 (MPPMCL). The petitioner's response on each comment offered by the Respondent No. 1 is mentioned in **Annexure I** of this Order.
22. The public notice for inviting comments/ suggestions from stakeholders was published on 4th May' 2019 in the following newspapers:
 - i. Danik Jagran (Hindi), Bhopal,
 - ii. Danik Jagran (Hindi), Rewa
 - iii. The Times of India (English), Bhopal and
 - iv. The Times of India (English), Indore
23. The last date for filing comments/ objections was 25th May' 2019. The Commission has received no comments from any stakeholder. Vide letter dated 27th May' 2019, the petitioner also confirmed that it has not received any objections/comments/suggestions from the stakeholders.
24. In this matter, the public hearing was held on 28th May' 2019, wherein the representatives of the petitioner and Respondent No. 1 only were appeared.
25. The Commission has examined the subject petition in accordance with the provisions under MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2015 and Annual Audited Accounts of Jaypee Nigrie Thermal Power Station for FY 2017-18. The Commission has also examined the subject true up petition in light of the comments/suggestions offered by the Respondent No. 1 (MPPMCL) and the response of petitioner on the same.

CAPITAL COST**Petitioner's Submission:**

26. The petitioner filed the opening Gross Fixed Asset of Rs. 10759.72 Crore as on 1st April' 2017 for Nigrie thermal power station. The petitioner has also filed net additions of Rs. 11.42 Crore during FY2017-18. Therefore, the closing Gross Fixed Assets of Rs. 10,771.13 Crore filed by the petitioner. In para 7.1 of the petition, the petitioner filed the component-wise break-up of capital cost of power station as given below:

Table 4: Break-up of Capital Cost filed by the petitioner: Rs. Crore

Sr. No.	Particular	Total Capital Cost as on 31.03.2017	Net Addition during FY 2017-18	Total Capital Cost as on 31.03.2018
1	Land	37.01	-	37.01
2	BTG	5,017.56	0.45	5,018.01
3	BOP	1,601.79	1.99	1,603.77
4	Civil	1,513.74	8.99	1,522.72
5	Total Hard Cost	8,170.10	11.42	8,181.52
6	Establishment Charges	268.13	-	268.13
7	Start Up Fuel	221.82	-	221.82
8	Interest during Constructions (IDC)	2,282.68	-	2,282.68
9	Interest During Construction on Debt Component of Unallocated portion from 03-09-2014 to 20-02-2015	29.69	-	29.69
10	Foreign Exchange Rate Variation	(91.95)	-	(91.95)
11	Liquidated Damages	(120.77)	-	(120.77)
12	Total Soft Costs	2,589.62	-	2,589.62
Total Capital Cost		10,759.72	11.42	10,771.13

Provision in Regulations:

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

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

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

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

- (a) *The assets forming part of the project, but not in use;*
- (b) *De-capitalisation of Asset;*

- (c) *In case of hydro generating station any expenditure incurred or committed to be incurred by a project developer -----*
- (d) *The proportionate cost of land which is being used for generating power from generating station based on renewable energy:*

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

Commission’s Analysis

28. The petitioner has considered opening capital cost of Rs. 10,759.72 Crore considering
- (i) the capital cost as on 31st March’ 2016 admitted by the Commission in true-up order dated 20th July’ 2018 for FY 2015-16 and
 - (ii) additional capitalization during FY 2016-17 claimed in true-up petition No. 05 of 2019. However, at the time of filing the subject true-up petition, the petition No. 05 of 2019 was under process with the Commission.
29. The Regulation 15.3 of MPERC Tariff Regulations, 2015 provides that the capital cost for existing projects admitted by the Commission prior to 1.4.2016 duly tried up by excluding liability, if any, as on 1.4.2016 shall form the opening capital cost.
30. In Note 1(a) of the Annual Audited Accounts for FY 2017-18 filed by the petitioner, it is mentioned that the Company has adopted accounting policies that comply with Indian Accounting Standards. Vide letter dated 11th March’ 2019, the petitioner was asked to reconcile the various figures under GFA as on 31.03.2018 based on transition from Ind. GAAP to Ind. AS certified by the Auditor. The petitioner was also asked to file a detailed note explaining the difference if any, in the figures and their consequential impact on tariff.
31. By affidavit dated 18th April’ 2019, the petitioner, while stating that the Ind. AS was applicable from 1st April’ 2016, submitted the reconciliation statement due to transition from Ind. GAAP to Ind. AS as on 31.03.2018 with its reply as given below:

Table 5: Reconciliation of GFA as on 31.03.2018:

(Rs. Crore)

Sr. No.	Particular	Closing GFA as on 31.03.2018	GFA not recognized as Fixed Asset as per new Indian AS applicable w.e.f. 1.4.2016	Closing GFA as on 31.03.2018
		As per IND. GAAP		As per IND. AS

1	LAND Free hold Land Lease hold Land	33.86 3.52	3.52	33.86 -
2	Building, Road & Bridges	1,186.42	-	1,186.42
3	Plant and Machinery	9,629.15	-	9,629.15
4	Furniture & Fixtures	4.23	-	4.23
5	Office Equipment	5.11	-	5.11
6	Vehicles	3.16	-	3.16
7	Ships & Boats	0.0096	-	0.0096
8	Transmission Line	516.51	-	516.51
9	Railway Sidings	137.41	-	137.41
	Total	11,519.38	3.52	11,515.86

32. On perusal of the aforesaid reconciliation statement filed by the petitioner, it is observed that in "Ind GAAP", the amount of Rs. 3.52 Crore towards lease hold land was part of Gross Fixed Assets however, the same has not been considered under Gross Fixed Assets in "Ind. AS", hence, there is no change in the amount of other components of Gross Fixed Assets under Ind. GAAP vis-à-vis "Ind. AS". It is also observed that there is no change in the amount of additional capitalization claimed during FY 2017-18 in Ind. GAAP and Ind. AS.
33. On further scrutiny of the capital cost, it was observed that the petitioner has not mentioned the detailed break-up of original project cost estimate as per investment approval of the project in format 5B enclosed with the subject petition. It was also observed that in the aforesaid form 5B, the petitioner filled up the total actual expenditure as on 31st March' 2018 for thermal power station and for Amelia Coal Mine combinedly.
34. In view of the above, vide letter dated 11th March' 2019, the petitioner was asked to file TPS Form 5B with complete break-up of capital cost components as per original estimates (as per investment approval) and liability as on 31st March' 2018 along with detailed reasons for variation if any, in the capital cost components.
35. By affidavit dated 18th April' 2019 the petitioner submitted the following:
"The break-up of original project cost in TPS-5B format along with the component wise variance and explanation thereto is attached herewith as Annexure-2. The Commission may be pleased to note that though there are some minor variations within the sub-groups of the Project Cost, the overall capital expenditure as on 31.03.2018 plus liability as on March 31st, 2018 is well within the estimated cost of completion of Rs 11,700 Crores.
- Actual expenditure separately for Power Station & Amelia Coal Mine upto March 31st, 2018 is attached as Annexure-3.1 & Annexure-3.2 respectively."*

36. In view of the above, it is observed that the petitioner has now filed the revised Form 5B with the detailed break-up of capital cost components as on 31st March' 2018. The petitioner has also filed the detailed break-up of actual expenditure of capital cost components up to 31st March' 2018 for power station and for Amelia Coal Mine separately.
37. In the subject true-up petition the petitioner has claimed opening capital cost of Rs. 10,759.72 Crore as on 1st April' 2017. The Commission had considered the opening GFA of Rs. 10,585.56 Crore as on 31st March' 2016 in MYT order dated 29th November' 2018. The aforesaid capital cost was considered based on the capital cost approved in last true-up order for FY 2015-16 issued on 20th July' 2016. In next true-up order for FY 2016-17 dated 25th July' 2019 (in petition No. 05 of 2019), the Commission admitted the closing GFA of Rs. 10759.70 Crore as on 31st March' 2017. Therefore, the same closing GFA of Rs. 10759.70 Crore based on the last true-up order for FY 2016-17 is considered as opening GFA as on 1st April' 2017 in this order.

ADDITIONAL CAPITALIZATION

Petitioner Submission:

38. In the subject true-up petition, the petitioner claimed additional capitalization of Rs. 12.03 Crore in its Nigrie Thermal Power Station. The petitioner also filed de-capitalization/adjustment of assets for Rs. 0.60 Crore. Accordingly, the net additional capitalization of Rs. 11.42 Crore during FY 2017-18 is claimed by the petitioner based on Annual Audited Accounts of generating station in the subject matter. In addition to above, the petitioner also claimed additional capitalization of Rs. 149.50 Crore during FY 2017-18 towards Amelia Coal Mine. The details of additional capitalization and de-capitalization filed by the petitioner during FY 2017-18 are as given below:

Table 6: Additional Capitalization and Decapitalization (Amount in Rs. Crores)

Sl. No.	Particulars	Addition in Generating Station during FY 2017-18			Addition in Amelia Mines during FY 2017-18	Total Addition during FY 2017-18
		Addition	Adjustments / Deletions	Net Addition		
1	Land	-	-	-	1.55	1.55
2	BTG	0.45	-	0.45	-	0.45
3	BOP	2.59	0.60	1.99	2.29	4.27
4	Civil	8.99	-	8.99	-	8.99
5	Total	12.03	0.60	11.42	3.83	15.26
6	Intangible Assets	-	-	-	-	-
7	Cost of ownership of Mining Rights	-	-	-	145.67	145.67
8	Grant Total	12.03	0.60	11.42	149.50	160.93

39. On perusal of the form 5B filed with the petition, it was observed that there is difference in re-grouping of asset addition in power station under the head of BTG and BOP vis-a-vis the asset addition filed in para 5.1 of the petition. In form 5B, the amount of asset addition towards BTG and BOP is Rs. 0.36 Crore and Rs. 2.68 Crore respectively thus, the total addition in BTG & BOP is Rs. 3.04 Crore. However, as per para 5.1 of the petition, the asset addition towards BTG and BOP is Rs. 0.45 Crore and Rs. 2.59 Crore respectively making the total addition of Rs. 3.04 Crore in BTG & BOP.
40. In para 6.1 (a) of the petition, the petitioner confirmed that the amount of Rs. 0.36 Crore is capitalized towards BTG and the same has been mentioned in form 5B of the petition. The head-wise asset addition as per form 5B are as given below:

Table 7: Additional Capitalisation claimed by the Petitioner

Particulars	Amount in Rs. Crore
Land	-
BTG	0.36
BOP	2.68
Civil	8.99
Total	12.03

41. The petitioner filed the following detailed reasons for the aforesaid additional capitalization claimed under the BTG, Balance of Plant and Civil works during FY 2017-18:

“(a) Addition on account of BTG equipment:

The Petitioner incurred an expenditure of Rs. 0.36 Crores in respect of Boiler-2 on account of payment made towards consultancy charges. This was part of the Original Scope of Work of the project and was executed in FY 2014-15. However, the bill for the same was paid during FY 2017-18. Therefore, the said amount has been capitalized in FY 2017-18.

(b) Addition on account of BOP equipment:

It is submitted that the Petitioner incurred an additional capital cost of Rs. 2.68 Crores attributed to the BOP equipments, details of which can be summarized as under: -

- (i) *An amount of Rs 0.09 Crores was incurred towards procurement of Kirloskar make Turbine Pump for installation at CMB (Control Monitoring Basin) to pump out water from CMB and supply to HRSCC for Clear Water Tank.*

An amount of Rs 0.04 Crores was also incurred towards procurement of KSB make Pump Set (KS072) for installation at modified RO Permeate Tank to feed RO water for backwash of RO membrane.

- (ii) An expenditure of Rs.0.04 Crore was incurred on account of payment made to Ion Exchange India Ltd towards Supply, erection & commissioning for Water Treatment Plant at generating station. This task was a component of the Original Scope of Work and was executed during FY 2014-15. However, the bill for the same was paid during FY 17-18. Therefore, the said amount has been capitalized in FY 2017-18.*
- (iii) An expenditure of Rs. 0.04 Crore was incurred towards payment of mandatory spares for Fuel oil system at the Generating Station. This was part of the Original Scope of Work and was executed during FY 2014-15. However, the bill for the same was paid during FY 2017-18. Therefore, the said expenditure was capitalized during FY 2017-18.*
- (iv) An expenditure of Rs.0.19 Crores was incurred on account of payment made to M/s Voltas Ltd. towards discharging the dues in relation to A.C & ventilation system with respect to the Generating Station. This was part of the Original Scope of Work and was executed during FY 2014-15. However, the bill for the same was paid during FY 2017-18. Therefore, the said expenditure was capitalized during FY 2017-18.*
- (v) An expenditure of Rs.0.06 Crore was incurred on account of payment made to M/s Agnace towards Supply, erection & commissioning of fire protection system at the Generating Station. This was part of the Original Scope of Work and was executed during FY 2014-15. However, the bill for the same was paid during FY 2017-18. Therefore, the said expenditure was capitalized during FY 2017-18.*
- (vi) An expenditure of Rs 0.22 Crores was incurred on account of payment made towards supply, erection & commissioning of Public Address & Closed-Circuit Television System for efficient safety system at plant. This was part of original scope of work and was executed during FY 2014-15, However, the bill for same paid FY 2017-18. Therefore, the said expenditure was capitalized during FY 2017-18.*
- (vii) The Petitioner submit that the Rs. 0.10 Crore was incurred for procurement of Portable Centrifuge Machine which are primarily used in Oil system including Lube oil and Control oil system of ID, FD, and PA fans and various other boiler auxiliaries. These equipment's help purifying control oil and lube oil of impurities and moisture which in turn reduces the oil wastage thereby improving the oil consumption and improving the overall operational efficiency of the boiler auxiliaries.*

- (viii) *It is further submitted that Dozers of various sizes & Capacity, JCB, Loader, Water Tanker, Diesel Tanker, Service Van, & other Construction Equipments deployed by our Civil Contractor at Petitioner's site were procured from Civil Contractor at heavily depreciated value for Area Grading, civil work, coal handling work & other misc work at plant. The combined values of them are Rs 0.88 Crores, whereas the original cost of these equipment was Rs 6.87 Crores and new equipments would have costed us much more than Rs 6.87 Crores.*
- (ix) *Misc other smaller equipments such as Drill Machine, Trimeter, Brush Cutter, Petrol Chain Saw Machine, KSB make submersible Pump having combined value of Rs 0.04 Crores were also procured.*
- (x) *An expenditure of Rs.0.09 Crore was incurred on account of payment made towards procurement of office equipments, various computers, printers & other IT related items during FY 2017-18.*
- (xi) *An amount of Rs 0.41 Crores was incurred towards procurement of Complete Set of SF6 Circuit Breaker which is critical spare for 400kV Switchyard Transmission Line's Circuit Breaker. Unavailability of this component during failure of Circuit Breaker, evacuation of power may be hampered.*
- (xii) *An amount of Rs 0.47 Crores was incurred towards procurement of ATN make Self Propelled Boom Lift to be used in 400kV Switchyard & Transformer Yard. It is used for safe maintenance and testing of transformer, switchyard and other electrical equipments. Installation of this results in preventive maintenance time by almost 80% and increase plant reliability.*
- (xiii) *Payment of Rs 0.01 Crores made to M/s Statcon for towards Supply, erection & commissioning for Battery & Battery Charger at generating station. This was part of original scope of work and was executed during FY 2014-15, However, the bill for same paid FY 2017-18. Therefore, the said expenditure was capitalized during FY 2017-18.*
- (c) Addition in Capital Cost on account of Civil equipment:**
A total addition of Rs 8.99 Crores has been made on account of civil works have been made. A detailed break up of additions along with the reasons thereof is being provided as under: -

- (i) *Amount of Rs 5.77 Crores was spent during FY 2017-18 towards increasing height of Ash Pond-II for storage of wet Fly Ash.*
- (ii) *An expenditure of Rs 0.05 Crores was incurred on account of payment made to Kirloskar Brothers towards Supply, erection & commissioning for Weir & Intake Pump House at generating station. This was part of original scope of work and was executed during FY 2014-15. However, the bill for same was paid during FY 2017-18. Therefore, the said expenditure was capitalized during FY 2017-18.*
- (iii) *An amount Rs 0.20 Crores was spent during FY 2017-18 towards construction of drainage system at power plant to provide the way to natural flow of water.*
- (iv) *An amount Rs 2.97 Crores was spent during FY 2017-18 towards construction of roads & culverts at power plant to provide the way to natural flow of water.”*

42. Regarding the de-capitalization of assets of Rs. 0.60 Crore during FY 2017-18 at generating station, the petitioner submitted the following:

- i. *“Many old items such as Computers, Printers, IT peripherals, UPS, Air Coolers, Geysers, Wireless Instruments, Walkie Talkies, Room Heaters, Refrigerators, Fans, Inverters & other miscellaneous items worth Rs 0.37 Lacs were discarded & scrapped on 31.03.2018 i.e. during FY 2017-18 and duly removed from Depreciation-Cum-Asset Register as on 31.03.2018.*
- ii. *It is further submitted that 200KVA Transformer valuing Rs 0.23 Crores was sold off on 31-03-2018 i.e. during FY 2017-18 and duly removed from Depreciation-Cum-Asset Register as on 31-03-2018.*
- iii. *In sum, the Petitioner respectfully submits that while claiming Annual Capacity Charges for FY 2017-18 the above decapitalization of Rs. 0.60 Crores has been duly reduced from the capital cost and due depreciation adjustment has also been made.”*

Provision in Regulations:

43. With Regard to additional capitalization of the generating station, Regulation 20.1 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:

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

- a. *Undischarged liabilities recognized to be payable at a future date;*
- b. *Works deferred for execution*
- c. *Procurement of initial capital spares within the original scope of work, subject to the provisions of Regulation 19;*
- d. *liabilities to meet award of arbitration or for compliance of order or decree of a court, of law and*
- e. *Change in Law or compliance of any existing law.*

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

Commission's Analysis:

44. In the subject true-up petition, the petitioner filed the additional capitalization of Rs.12.03 Crore and de-capitalization of Rs. 0.60 Crore for Jaypee Nigrie Thermal Power Plant, thus net additional capitalization of Rs. 11.42 Crore is claimed by the petitioner based on the Annual Audited Accounts. The petitioner also claimed additional capitalization of Rs. 149.50 Crore for FY 2017-18 in respect of Amelia Coal Mines. The petitioner has filed the Annual Audited Accounts for FY 2017-18 for Nigrie Thermal Power Station and Amelia Coal mines separately. The petitioner also filed a copy of consolidated Annual Audited Accounts of M/s JPVL for FY 2017-18.
45. Regarding the aforesaid additional capitalization claimed during FY 2017-18, the petitioner submitted that most of the works were executed in FY 2014-15 but the bills for same were paid during FY 2017-18 hence, these assets were capitalised in FY 2017-18. Vide Commission's letter dated 11th March' 2019, the petitioner was asked to explain the reasons for such delay more than three years in payment of the works executed during FY 2014-15 and capitalised during FY 2017-18.
46. By affidavit dated 18th April' 2019, the petitioner submitted the following:

"As rightly observed by the Commission regarding Additional Capitalization of Rs 12.03 Crores in Power Station during FY 2017-18, it is humbly submitted that the main works were executed in FY 2014-15. However, in view of the complexities, numerous works and sub works and the high value of contracts,

finishing works take time and contract closing negotiations and final account / work reconciliation spills over. The main quantum involved in the spill over is on account of negotiations and claims and counter claims on the issue of price variation claims, which was part of the works contract.

It is submitted that as mentioned above, the main works were completed in FY 2014-15, however, finishing works and final negotiations / reconciliations take time because of which actual capitalisation spills over to next periods.”

47. In view of the above, it is observed that the main works under additional capitalization were completed in FY 2014-15 however, the balance/final payment has been made during FY 2017-18 due to completion of finishing works and final negotiations / reconciliations take place during FY 2017-18. Therefore, the actual capitalisation of the assets took place in FY 2017-18.
48. In para 6.1 of the petition, it was observed that the addition is again claimed in some of the heads wherein, the additions have been claimed in last true up petition for FY 2015-16 and FY 2016-17. Vide letter dated 11th March' 2019, the petitioner was asked to inform the reasons for claiming additional capitalization in piece meal for such works which were completed in FY 2014-15 and the reasons for claiming additional capitalization in same heads which have already been claimed in last true up petitions for FY 2015-16 and FY 2016-17.
49. By affidavit dated 18th April' 2019, the petitioner submitted the following:
“As observed by the Commission, the Petitioner has claimed Additional Capitalization for FY 2017-18 in some of the heads for which the Petitioner had claimed Additional Capitalization either in FY 2015-16 or FY 2016-17 or in both the years. On close scrutiny of TPS 5B of FY 2015-16 & FY 2016-17, it is observed that heads for which Additional Capitalization has been claimed in FY 2017-18 and had also been claimed in True up Petitions of either FY 2015-16 or FY 2016-17 or both are mainly BTG, CW System, DM Water Plant, Fuel Handling & Storage System, Ash Handling System, Air Condition & Ventilation System, Fire Fighting System, Other Equipments, Switch Yard package, Railway Siding MGR & Marshalling Yard, Weir Intake Pump House. In this regard, it is humbly submitted that liability / pendency against those heads had been submitted in Annexure-18 to the Reply to MPERC Letter dated 04-03-2016 in Petition No.72/2016. In this Annexure, expected expenditure against heads cited above had either been assigned explicitly or they have been collectively assigned to “Other Equipments”. For ready reference, Annexure-18 to the Reply to MPERC Letter dated 04-03-2016 in the matter of Petition No.72/2016 is attached as Annexure-4.

It is again respectfully submitted that as mentioned above, the main works were completed in FY 2014-15, however, additional capitalization claimed are either of the nature of finishing works or payments/processing of pending bills.”

50. The Commission has examined the additional capitalization filed by the petitioner in accordance with the provisions under MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2015, Annual Audited Accounts of Jaypee Nigrie Thermal Power Station for FY 2017-18 and considering comments/suggestions offered by the Respondent No. 1 (MPPMCL) and the response of petitioner on the same. The additional capitalization has also been scrutinized based on the original scope of work of the thermal power project and additional details/documents filed by the petitioner in response to the queries raised by the Commission.

Annual Audited Accounts:

51. On perusal of the Note-2 of the Annual Audited Accounts for FY 2017-18 regarding property, plant and equipment, following discrepancies were observed by the Commission:
- i. Total asset addition of Rs.19.81 Crore during FY 2017-18 is recorded in Annual Audited Accounts wherever, the petitioner has claimed addition of Rs.12.03 Crore during the same year.
 - ii. Addition of Rs.8.99 Crore in Civil Works is claimed in the petition whereas as per Annual Audited Accounts, addition in buildings is recorded as Rs.8.93 Crore.
 - iii. Asset addition of Rs. 3.04 Crore in BTG and BOP is claimed in the petition whereas in Annual Audited Accounts, the amount in respect of Plant and Machinery is indicated as Rs. 10.77 Crore.
 - iv. The addition in respect of office equipment and furniture & fittings is recorded as Rs.0.067 Crore and Rs.0.0037 Crore respectively whereas in the subject petition, no asset addition is claimed under these heads.

In view of the above, vide letter dated 11th March' 2019, the petitioner was asked to explain the reasons for all above observations in asset addition claimed in the petition vis-à-vis recorded in Annual Audited Accounts.

52. By affidavit dated 18th April' 2019, the petitioner submitted the point-wise reply as given below:
- i. *“Reconciliation between Total Asset Addition of Rs 19.81 Crores during FY 2017-18 as recorded in Annual Audited Accounts and Assets Addition of Rs 12.03 Crores claimed in TPS 5B is as under:-*

Table 8: Asset Addition claimed

Sl. No.	Particulars	Amount in Rs. Crores	Remarks
1	Assets Addition as per Annual Accounts	19.81	Note-2 of Audited Annual Accounts
2	Less:- Foreign Exchange Rate Variation	7.78	Not claimed in TPS 5B
3	Asset Addition claimed during FY 2017-18	12.03	As per TPS 5B

- ii. Reconciliation between Addition of Rs 8.99 Crores of Civil Work as claimed in TPS 5B and Rs 8.93 Crores of Addition of Building as per Annual Audited Accounts is as under:-

Table 9: Civil Work

Sl. No.	Particulars	Amount in Rs.	Remarks
1	Addition of Buildings as per Audited Annual Accounts	8,93,73,716	Note-2 of Audited Annual Accounts
2	Add:- Weir& Intake PumpHouse claimed in Civil Work	4,88,674	Capitalized in Plant &Machinery in Accounts
3	Total Civil work claimed in Petition	8,98,62,390	
	Say,	8.99 Crores	TPS 5B

- iii. Additions in BTG and BOP as per Annual Audited Accounts is as under: -

Table 10: Asset Addition Claimed in BTG & BOP

Sl. No.	Particulars	Amount in Rs. Crore	Remarks
1	Addition in Plant & Machinery as per Annual Accounts	10.7768	Note-2 of Audited Annual Accounts
2	Add:- Office Equipments claimed in BOP in Sl.No.2.3.16 of TPS 5B	0.0875	
3	Add:- Furniture & Fittings claimed in BOP in Sl.No.2.3.16 of TPS 5B	0.0037	
4	Less:- Weir& Intake Pump House claimed in Civil Work	0.0489	Sl.No.4.16 of TPS 5B
5	Less:- Foreign Exchange Rate Variation	7.7801	Not claimed in TPS 5B
6	Total Asset Addition claimed in BTG & BOP	3.039	As per TPS 5B
	Say,	3.04	

- iv. It is submitted that the Petitioner has included additions in respect of office equipment and furniture & fittings in BOP. Addition in respect of Office Equipments of Rs 0.0875 Crores and Furniture & Fittings of Rs 0.0037 Crores are clubbed with "Other Equipments" appearing at Sl.No.2.3.16 of TPS 5B as evident from the above.

53. In view of the above submission, the Commission has observed that the petitioner filed the reconciliation of figure between the asset addition claimed in the subject petition with the Annual Audited Accounts for FY 2017-18. The additional capitalization of Rs. 19.81 Crores recorded in Annual Audited Accounts also includes FERV of Rs. 7.78 Crore on accrual basis. Therefore, the net additional capitalization as per Annual Audited Accounts (excluding FERV) is Rs. 12.03 Crore and same amount has been filed in the subject petition.
54. Regarding the mismatch in figures of civil works capitalized in Annual Audited Accounts and claimed in the subject petition, the petitioner submitted that the difference of Rs. 4,88,674 has been capitalized in the head of plant and machinery in Annual Audited Accounts.
55. Regarding the Cut of date of the project, Regulation 4.1 (j) of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:

“cut of date” means 31st March of the year closing after two years of the year of commercial operation of the Project, and in case the Project is declared under commercial operation in the last quarter of a year, the Cut-off date shall be 31st March of the year closing after three years of the year of commercial operation;

56. The Nigrie thermal Power Project has achieved its CoD on 21st February' 2015, therefore, the cut of date of the project shall be **31st March 2018** in accordance with the aforesaid provision of the Regulations 2015. Accordingly, the aforesaid additional capitalization filed in the subject petition is within the cut-off date of the project in terms of the MPERC Tariff Regulations, 2015. Therefore, the additional capitalization claimed by the petitioner needs to be examined in light of the Regulation 20.1 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.
57. Vide Commission's letter dated 11th March' 2019, the petitioner was asked to file a comprehensive reply on the various issues related to additional capitalization with all relevant supporting documents in light of the Regulation 20.1 of the Regulations, 2015. By affidavit dated 18th April' 2019, the petitioner filled its response on each issue related to additional capitalization raised by the Commission. The issue-wise reply filled by the petitioner is as given below:

Issue:

- i. Whether the addition of assets is on account of the reasons (i) to (v) in**

clause 20.1 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.

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

Petitioner's Response:

The petitioner humbly submits that the net additional capitalization of Rs 11.42 Crores (net of decapitalization of Rs 0.60 Crores) in Generating Station and Rs 149.50 Crores during FY 2017-18 in Amelia Coal Mines fall within the norms specified under Regulation 20.1 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015. The said Regulation reads as under:-

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

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

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

The Petitioner humbly submits before the Commission in the light of the above Regulation that the said additional capitalization is within the original scope of the work of Rs 12,400/- Crores authorized by the Resolution of Board of Directors dated 30th May' 2015 approving Final Project Cost attached herewith as Annexure-5 of this submission.

Issue:

- iii. The petitioner was asked to informed the Cut-off date of the project considered in the subject petition.

Petitioner's Response:

“The Petitioner would humbly like to apprise the Hon’ble commission that the definition of cut-off date as laid out by MPERC (terms and Conditions for determination of Generation Tariff) Regulations, 2012 states that “Cut-off date” means 31st March of the year closing after two years of the year of commercial operation of the Project, and in case the Project is declared under commercial operation in the last quarter of a year, the Cut-off date shall be 31st March of the year closing after three years of the year of commercial operation.”

In view of the same the Petitioner would like to submit that Unit II of Jaypee Nigrie Super Thermal Power Project achieved COD on February 21st, 2015 which fell in the last quarter of the FY 2014-15. Therefore, the cut-off date for the Project falls on 31th March 2018.”

Issue:

- iv. **The petitioner was asked to file the following information in the format as given below:**

Details of Additional Capitalization:

S. No.	Detail of work/asset with specification under Add. Cap.	Amount of Asset Additions(Rs. Cr.)	Detailed reasons of Asset Additions	Provision of Regulations under which Add. Cap. filed	Reference supporting doc. enclosed
1					
2					

Petitioner’s Response:

Information desired by the Commission in prescribed format is attached as Annexure S-1 in a separate paper book.

Issue:

- v. **The petitioner was asked to file a list of orders placed to different vendors for additional capitalization claimed in the petition along with date of order, price at which contracts were awarded and anticipated date of completion of each work. If there has been any delay in completion of works from contractor side, the details of penalty if any, imposed on the contractor be informed.**

Petitioner’s Response:

“List of the orders placed to different vendors for additional capitalization claimed in the Petition along with order details & amount of capitalization is attached herewith as Annexure-6. Further this is to inform that during FY 2017-18, no penalties have been recovered from any contractors/ vendors.”

Issue:

- vi. The petitioner was asked to file copy of the bills/invoices of all such assets under additional capitalization with a statement indicating all such details of works/assets, bill amount, invoice/bill No. date of the invoice/bill etc.

Petitioner's Response:

All the bills/invoices for the amounts capitalized during FY 2016-17 are attached in Annexure to Reply to Para 7 (iv) above.

Issue:

- vii. The assets addition claimed in the petition be reconciled with the figures recorded in the Assets cum Depreciation Register.

Petitioner's Response:

“Reconciliation between Asset Addition claimed during FY 2017-18 claimed in the Petition and Figures recorded in the Asset-cum-Depreciation Register is furnished as under: -

Table 11: Asset Addition as per Asset-cum-Depreciation Register:

Sl. No.	Particulars	Amount in Rs.	Remarks
1	Asset addition during FY 2017-18 as per Asset-cum-Depreciation Register as on 31-03-2018 in Generating Station	12,02,53,345	Pl refer Appendix-1 to TPS Form (Page-S-54 of Separate Paperback)
2	Less:- Asset deletion/adjustment during FY 2017-18 as per Asset-cum-Depreciation Register as on 31-03-2018 in Generating Station	60,17,454	
A	Net Asset addition during FY 2017-18 as per Asset-cum-Depreciation Register as on 31-03-2018 in Generating Station	11,42,35,891	
B	Asset addition during FY 2017-18 as per Asset-cum-Depreciation Register as on 31-03-2018 in Amelia Coal Mines	1,49,50,34,944	Pl refer Appendix-2 to TPS Form (Page S-115 of Separate Paperback)
C	Total Asset addition during FY 2016-17 as per Asset-cum-Depreciation Register as on 31-03-2017 in Project	1,60,92,70,835	
	Say,	160.93	In Rs Crores

Table 12: Asset Addition during FY 2017-18 as Claimed in the Petition:

Sl. No.	Particulars	Amount	Remarks
1	Asset addition during FY 2017-18 in Generating Station as per Petition (TPS 5B)	12.03	Pl refer TPS 5B (Page 44 of the Petition)
2	Less:- Asset deletion/adjustment during FY 2017-18 in Generating Station as per Petition (TPS 5B)	0.60	
A	Net Asset addition during FY 2017-18 in Generating Station as per Petition (TPS 5B)	11.42	
B	Asset addition during FY 2017-18 as per Petition (TPS 5B) in Amelia Coal Mines	149.50	
C	Total Asset addition during FY 2017-18 as per Petition (TPS 5B) in Project	160.93	

58. On detailed scrutiny of the petitioner's response on additional capitalization claimed in the subject petition vis-a-vis the issues raised by the Commission in light of the provisions under Regulation 20.1 of MPERC Tariff Regulations, 2015, the Commission has observed the following:

- i. The petitioner submitted that the assets under additional capitalization during FY 2017-18 filed in the subject petition are within the norms specified under Regulation 20.1 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 and within the cut-off date of the project.
- ii. The petitioner further submitted that the additional capitalization claimed in the subject petition is within the original scope of work of Rs. 12,400 Crore of the project as per the Resolution of Board of Directors dated 30th May' 2015, approving final project cost. The component-wise break-up of aforesaid original capital cost filed by the petitioner in petition No. 72 of 2015 for determination of final tariff are as reproduced below:

Table 13: Original Scope of Work of the project (Amount in Rs. Crore)

Particular	Project Cost approved by BoD on Dated 30.05.2015
Land	37.00
BTG (Including Taxes & Duties)	5233.00
Civil Works & Structural Works (Including Taxes)	1280.00
Barrage / Weir (including Land and Taxes)	196.00
Railway Siding	108.00
BOP Excluding Transmission Line	1259.00
Transmission line	396.00
Sub Total (A)	8509.00
Establishment Charges	366.00
Start Up Fuel	292.00
IDC/Financing Cost	2355.00
Margin Money	178.00
Sub Total (B)	3191.00
TOTAL (C = A+B)	11700.00
Development of Amelia (North) Mine (D)	700.00
TOTAL (C+D)	12400.00

- iii. The petitioner provided the details of assets/works under additional capitalization in the format prescribed by the Commission. In the aforesaid statement, the petitioner filed the details of all payments related to assets/works under additional capitalization made to different vendors/suppliers. The petitioner also submitted the detailed reasons for asset additions under additional capitalization and confirmed that all the asset additions have been capitalized under Regulation 20.1 of the Regulations,

2015. The petitioner filed the supporting documents like copy of bills/ invoices raised by the contractors in support of the payment made towards assets/works under additional capitalization.

- iv. The petitioner filed a list of order placed to different contactors/vendors for the assets/works under additional capitalization indicating the name with specification of assets, name of the supplier/contractor, order reference number, date of the order issued and amount capitalized during FY 2017-18.
- v. The petitioner submitted that the additional capitalization claimed during FY 2017-18 is as per Annual Audited Accounts and recorded in Asset-cum-depreciation register of thermal power station. The petitioner has also filed a 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 2017-18 for thermal power station.
- vi. Regarding the Liquidated damages, the petitioner submitted that no liquidated damages/ penalties have been recovered from any contractors/ vendors during the year.

Response filed by Respondent No. 1 on additional capitalization:

59. By affidavit dated 18th April' 2019, the respondent No. 1 (MPPMCL) submitted the following:
- (i) *"The Petitioner, Jaiprakash Power Ventures Ltd., has now filed the present petition praying for true-up of the Tariff for the FY 2017-18 claiming Additional Capital Expenditure of Rs. 160.93 Crores said to be incurred during FY 2017-18.*
 - (ii) *The admitted Project Capital cost as on 31.03.2016 is Rs. 10,585.56 Crore which is approx. Rs. 8.01 Crore /MW and very high in comparison to CERC notified Bench Mark Hard Capital cost of Rs. 5 Crore Therefore, no additional capital cost may kindly be allowed and the Commission ought to keep the capital cost less than Rs. 5 Crore per MW as per the CERC norms.*
 - (iii) *The petitioner has claimed Additional Capital Expenditure of Rs. 0.36 Crs. in respect of Boiler 2 on account of consultancy charges. The work was said to have been executed in FY 2014-15, however bill is said to have been paid in FY 2017-18. This claim needs due verification as there is a long gap in raising of the bill and its payment.*
 - (iv) *In Sub Para 6.1 (b), the petitioner has claimed Additional Capital Expenditure of Rs. 2.68 Crs. towards BOP equipment. In Sub Paras 6.1 (b) (i) to 6.1 (b) (xiii) the Petitioner has purportedly given details of Additional Capital*

Expenditure on individual items of BOP. It may kindly be seen that most of the works were said to have been executed in FY 2014-15, however the bills are said to have been paid in FY 2017-18.

- (v) *It is most humbly submitted that Additional Capital Expenditures on following items do not seem to be in the original scope of work:*
- a. *In Sub Para 6.1 (b)(i), amounts of Rs. 0.09 Cr. and Rs. 0.04 Cr. are said to have been incurred towards procurement of Kirloskar make Turbine Pump for installation in Control Monitoring Basin (CMB) and KSB make Pump Set (KS072) for installation at modified RO Permeate Tank for back wash of RO membrane. These items do not appear to be in the Original Scope of Work.*
 - b. *In Sub Para 6.1 (b)(vii), it is stated that an expenditure of Rs. 0.10 Cr. was incurred for procurement of Portable Centrifuge Machine, which does not appear to be in the Original Scope of Work.*
 - c. *In Sub Para 6.1 (b)(viii), it is stated that an expenditure of Rs. 0.88 Cr. was incurred for procurement of various sizes of Dozers, JCB, Loader, Water Tankers, Service Van & other construction equipment. These items do not appear to be in the Original Scope of Work.*
 - d. *In Sub Para 6.1 (b)(ix), it is stated that an expenditure of Rs. 0.04 Cr. was incurred for procurement of Drill Machine, Trimeter, Brush Cutter, Petrol Chain Saw Machine and KSB Make Submersible Pump, which do not appear to be in the Original Scope of Work.*
 - e. *In Sub Para 6.1 (b)(x), it is stated that an expenditure of Rs. 0.09 Cr. was incurred for procurement of Office Equipment etc, which do not appear to be in the Original Scope of Work.*
 - f. *In Sub Para 6.1 (b)(xi), it is stated that an expenditure of Rs. 0.41 Cr. was incurred for procurement of Complete Set of SF6 Circuit Breaker, which does not appear to be in the Original Scope of Work.*
 - g. *In Sub Para 6.1 (b)(xii), it is stated that an expenditure of Rs. 0.47 Cr. was incurred for procurement of ATN Self Propelled Boom Lift, which does not appear to be in the Original Scope of Work.*
 - h. *In Sub Para 6.1 (c)(i), it is stated that an expenditure of Rs. 5.77 Crore was incurred for increasing height of Ash Pond II for storage of wet Fly Ash, which does not appear to be in the Original Scope of Work.*
 - i. *In Sub Para 6.1 (c)(iii), it is stated that an expenditure of Rs. 0.20 Crore was incurred for construction of drainage system, which does not appear*

to be in the Original Scope of Work.

- j. In Sub Para 6.1 (c)(iv), it is stated that an expenditure of Rs. 2.97 Crore was incurred for construction of roads and culverts, which does not appear to be in the Original Scope of Work.

60. The petitioner filed additional capitalization during FY 2017-18 under three major heads i.e. BTG, Balance of Plant and Civil works. The additional capitalization under each of the aforesaid heads has been examined separately as given below:

Boiler Turbine Generator (BTG):

- (i) The petitioner has claimed additional capitalization of Rs. 0.36Crore under the head Boiler Turbine Generator (BTG). The petitioner mentioned that the payment of Rs. 0.36 Crore was made towards consultancy charges. The petitioner mentioned that the work has been executed during FY 2014-15 but the payment for the same was made during FY 2017-18. The petitioner confirmed that these works are covered under original scope of work of the project.
- (ii) The petitioner submitted a statement indicating all the payments made to M/s Development Consultants Private Limited against the invoices raised by the consultant. The petitioner also filed copies of invoices/bills towards all the payments actually made by the petitioner for the consultancy charges.
- (iii) On perusal of the original scope of work approved by the BoD vis-à-vis expenditure actually incurred by the petitioner, the Commission observed following:
- Cost of BTG as per revised capital cost approval by the BOD dated 30th May' 2015 **-Rs. 5233 Crore.**
 - Cost of BTG as on 31st March' 2015 approved by the Commission in final tariff order dated 24th May' 2017 **-Rs. 4830.90 Crore.**
 - Cost of BTG as on 31st March' 2017 approved by the Commission in true-up order dated 25th July' 2019 **-Rs. 5017.55 Crore.**
 - Cost of BTG claimed under additional capitalization during FY 2017-18 **-Rs. 0.36 Crore.**
- (iv) In view of the above, the Commission has observed that the works of Rs.0.36Crore related BTG were completed in FY 2014-15however, the payment has been made to the contractor during FY 2017-18 therefore,

the assets have been capitalised during FY 2017-18. The aforesaid assets are capitalized within cut-off date and are under the original scope of work of the project.

- (v) It is further observed that the aforesaid expenses are capitalized in Annual Audited Accounts of Jaypee Nigrie Power Plant for FY 2017-18 and recorded in Asset-Cum-Depreciation register. The Commission has therefore, considered the aforesaid expenses of Rs. 0.36 Crore towards BTG under Regulation 20.1(i) of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.

Balance of Plant (BOP) (Power Station):

- (i) The petitioner has claimed additional capitalization of Rs. 2.68 Crore towards Balance of Plant. Out of which Rs. 1.79 Crore pertains to BoP Mechanical and Rs. 0.89 Crore pertains to BoP Electrical components. By affidavit dated 18th April' 2019, the petitioner filed the component wise break-up of additional capitalization under BoP as given below:

Table 14: Break-up of assets under BOP

Sl.No.	Particular	Addition between Apr 1st, 2017 to Mar 31st, 2018
1	BOP Mechanical	
1.1	CW system	0.13
1.2	DM water Plant	0.04
1.3	Fuel Handling & Storage system	0.04
1.4	Ash Handling System	0.00
1.5	Air Condition & Ventilation System	0.19
1.6	Fire fighting System	0.06
1.7	Other Equipments	1.33
	Total BOP Mechanical	1.79
2	BOP Electrical	
2.1	Switch Yard Package	0.88
2.2	Emergency D.G. set	0.01
	Total BOP Electrical	0.89
	Total BOP	2.68

- (ii) In Para 6.1 (b) of the petition, the petitioner filed the detailed reasons for capitalization of assets under BOP and same has been reproduced in para 41 of this order. On perusal of the aforesaid component-wise details filed by the petitioner, the Commission observed that most of the assets/ works under BOP Mechanical and BOP Electrical have been completed during FY 2014-15 but payment for the same have been made during FY 2017-18 due to finishing works take time and contract closing negotiations and final account / work reconciliation spills over. Accordingly, the same has been capitalized by the petitioner during FY 2017-18. Further, the

petitioner also confirmed that all the aforesaid assets are under original scope of work of the Nigrie Thermal Power Project.

- (iii) On perusal of the original scope of work approved by the BoD vis-à-vis expenditure actually incurred by the petitioner, the Commission observed following:
- Cost of BOP as per revised capital cost approval by the BOD dated 30th May' 2015 **-Rs. 1259.00 Crore.**
 - Cost of BOP as on 31st March' 2015 approved by the Commission in final tariff order dated 24th May' 2017 **-Rs. 1228.08 Crore.**
 - Total cost of BOP as on 31st March' 2017 approved in last true-up order dated 25th July' 2019 **-Rs. 1241.39 Crore.**
 - Cost of BOP claimed under additional capitalization during FY 2017-18 **-Rs. 2.68 Crore.**
- (iv) In view of the above, the Commission has observed that most of the works of Rs.2.68 Crore related BOP were completed in FY 2014-15 and only payment was made to the contractor and these assets were capitalized during FY 2017-18. The aforesaid assets are capitalized within cut-off date and are under the original scope of work of the project.
- (v) It is further observed that the aforesaid expenses are capitalized in Annual Audited Accounts of Jaypee Nigrie Power Plant for FY 2017-18 and recorded in Asset-Cum-Depreciation register. The Commission has therefore, considered the additional capitalization of Rs. 2.68 Crore towards BOP under Regulation 20.1 (i) of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.

Civil Works:

- (i) The petitioner claimed capital addition of Rs. 8.99 Crore towards civil works, out of which works amounting to Rs. 8.94 Crore were carried out during FY 2017-18. Out of the total addition on account of Civil works carried out in FY2017-18, an amount of Rs. 5.77 Crore incurred towards increasing height of Ash Pond-II for storage of wet Fly Ash. Further, an amount of Rs. 2.97 Crore incurred towards construction of roads and culverts at plant to provide the way to natural flow of water. The balance amount of Rs. 0.20 Crore incurred towards construction of drainage system at power plant. The petitioner submitted that the aforesaid additional capitalization claimed under civil works have been completed during FY 2017-18 and capitalized within the Cut-off date of the project.

- (ii) The petitioner also incurred Rs. 0.05 Crore on account of payment made to Kirloskar Brothers towards supply, erection and commissioning for Weir & Intake Pump House in the plant. The petitioner submitted that the aforesaid work was part of original scope of work and was executed during FY 2014-15. However, the bill for same was paid during FY 2017-18 therefore, capitalized during FY 2017-18.
- (vi) On perusal of the original scope of work approved by the BoD vis-à-vis expenditure actually incurred by the petitioner, the Commission observed following:
- Cost of Civil works as per revised capital cost approval by the BOD dated 30th May' 2015 **-Rs. 1280.00 Crore.**
 - Cost of Civil works as on 31st March' 2015 approved in final tariff order dated 24th May' 2017 **-Rs. 1265.83 Crore.**
 - Total cost of Civil works as on 31st March' 2017 approved in last true-up order dated 25th July' 2019 **-Rs. 1266.24 Crore.**
 - Cost of Civil works claimed under additional capitalization during FY 2017-18 **-Rs. 8.99 Crore.**
- (vii) In view of the above, the Commission has observed that most of the works of Rs.8.99 Crore related civil works were completed and capitalized in FY 2017-18 and only the works of Rs. 0.05 Crore were completed in FY 2014-15 and payment was made to the contractor during FY 2017-18. The aforesaid assets are within cut-off date and are under the original scope of work of the project.
- (viii) It is further observed that the aforesaid expenses are capitalized in Annual Audited Accounts of Jaypee Nigrie Power Plant for FY 2017-18 and recorded in Asset-Cum-Depreciation register. The Commission has therefore, considered the additional capitalization of Rs. 8.99 Crore towards civil works under Regulation 20.1 (i) and (ii) of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.

61. In view of the above, the Commission has considered the following additional capitalization for FY 2017-18 in this order:

Table 15: Additional Capitalization approved in this order

Additional capitalization considered during FY 2017-18:			
1.	BTG	Rs. Crore	0.36
2.	BOP	Rs. Crore	2.68
3.	Civil Works	Rs. Crore	8.99
Total		Rs. Crore	12.03

Additional Capitalization in Amelia Coal Mine:

Petitioner Submission:

62. In para 6.3 of the petition, the petitioner claimed additional capitalization of Rs. 149.50 Crore in Amelia Coal Mine during FY 2017-18 with the following submission:

(a) Addition on account of Tangible Assets:

It is submitted that the petitioner incurred an additional capital cost of Rs.3.83 Crores for procuring tangible assets pertaining to Amelia mines which include:

- (i) The petitioner incurred an additional capital cost of Rs.1.55 Crore attributed to the land.*
- (ii) The petitioner incurred an additional capital cost of Rs.2.29 Crore attributed to the BOP Equipment.*

(b) Addition on account of Ownership of Mining Rights:

- (i) It is submitted that an amount of Rs. 145.67 Crores is attributed to the aforementioned head towards payment of 'Additional Premium'@ Rs. 612 per tonne of coal on 23,80,231 MT of coal received during FY 2017-18 from Amelia mines for the purpose of power generation. A brief background as to why the petitioner had to acquire tangible and intangible assets for Amelia mines and had to pay the Additional Premium is already mentioned in Paras 4.1(h) to (o) and is not repeated here for sake of brevity.*
- (ii) It is respectfully submitted that the Additional Premium is in the nature of an upfront commitment, payable on a monthly basis on the quantum of extracted coal. The true nature of the payment is to discharge the liability undertaken at the time of bidding and acquire mining rights of Amelia (North) coal mine. Therefore, the same cannot be a revenue expenditure being unrelated to the daily operations of mining.*
- (iv) It is respectfully submitted that the Additional Premium, being in the nature of an expenditure towards acquiring or bringing into existence an asset of an enduring benefit (coal mine) for the generation business, is to be allowed for the computation of fixed charges.*
- (v) It is further submitted that the fixed amount paid for procurement of assets such as land and mine infrastructure along-with the cost of obtaining statutory permits/approvals is in nature of capital expenditure being incurred on procurement of assets necessary for providing coal to the power plant. The same ought to be allowed as part of the project cost of the Project and should be considered for computation of fixed charges.*

Respondent No. 1 submission on Amelia Coal Mine:

63. By affidavit dated 19th March' 2019, the respondent No. 1 (MPPMCL) submitted the following on additional capitalization of Amelia Coal Mine:

- (i) *In the present Petition, the Petitioner, has claimed Additional Capital Expenditure of Rs. 149.50 Crore towards expenditure on Amelia coal Mine and Cost of Ownership of Amelia Coal Mine during FY 2017-18, which is not admissible under the provisions of Tariff Regulations 2015. The claim of Capital expenditure on Coal mines has already been disallowed by the Commission vide order dated 24.05.2017 passed in Petition No. 72 /2015 for determination of final tariff for FY2014-15 to FY2015-16. The answering respondent reiterate the submission made in Petition No. 72/2015.*
- (ii) *That, despite of disallowance of Capital Expenditure on Amelia Coal Mines vide order dated 24.05.2017 passed in Petition No. 72 /2015, the Petitioner had again claimed the said expenditure in Petition No.41/2017 filed for true up of tariff for FY 2015-16. The answering respondent in its reply dated 9.02.2018 filed in the aforesaid petition strongly opposed the claim and requested this commission to disallow the entire claim towards Coal Mines. The Commission vide order dated 20.07.2018 passed in Petition No. 41/2017, once again disallowed the cost claimed towards Amelia Coal Mine.*
- (iii) *That, the Petitioner, had again claimed the Capital Expenditure towards Amelia Coal Mines in Petition No.07/2018 filed for determination of Multi Year Tariff for the period FY 2016-2019. The Answering Respondent in the reply dated 06.08.2018 filed in the aforesaid Petition strongly opposed the claim and requested to disallow the entire claim towards Coal Mines..*
- (iv) *Therefore, it is most humbly prayed that the claim of Additional Capital Cost towards expenditure on Amelia Coal Mine may not be allowed as the same has been repeatedly rejected by this Hon'ble Commission.*
- (v) *It is apparent that the Additional Capital Cost and Total Capital Cost claimed in P.No. 05 of 2019 also include alleged Additional Capital Expenditure and Total Capital Expenditure incurred in Amelia Coal Mine. As this Commission has consistently rejected the claim of the Petitioner in respect of Amelia Coal Mine, because Tariff Regulations 2015 do not permit such capital expenditure.*
- (vi) *Multiple appeals on the issue of disallowance of expenditure incurred on Amelia Coal Mines are pending before Hon'ble APTEL. Despite the above facts, the petitioner has again claimed the same. The case law cited by the Petitioner has no application to the facts of the present case. The claim is totally unjust, unreasonable and not admissible under Tariff Regulations 2015 and hence kindly be disallowed.*

Commission's Analysis:

64. In Para 6.3 of the subject petition, the petitioner has claimed asset addition on account of tangible assets of Rs. 3.83 Crore in Amelia Coal Mine. The petitioner has also filed addition on account of ownership of mining rights of Rs. 145.67 Crore towards payment of additional premium @ Rs. 612 per tonne of Coal on 23,80,231 MT of coal received during FY 2017-18.
65. With regard to claim of the petitioner towards additional capitalisation on account of Tangible and Intangible assets of Amelia Mine as also the "Additional Premium" @ Rs. 612/- per ton for coal received from Amelia Mine for generation of power under PPA, the petitioner has submitted that the Additional Premium being in the nature of an expenditure towards acquiring or bringing into existence an asset of an enduring benefit (coal mine) for the generation business, it is to be allowed for the computation of fixed charge. The petitioner has further submitted that the fixed amount paid for procurement of assets such as land and mine infrastructure along-with cost of obtaining statutory permits/approvals is in nature of capital expenditure being incurred on procurement of assets necessary for providing coal to the power plant, ought to be allowed as part of the project cost of the power plant and should be considered for computation of fixed cost.
66. With regard to above claim of the petitioner, the Commission has observed that the claim of petitioner for additional capitalisation on account of Tangible and assets of Amelia Mine and also the "Additional Premium" is not in accordance with the Regulations 2015. Moreover, the issues in aforesaid claim are *sub-judice* before the Hon'ble Appellate Tribunal for Electricity in the following Appeals filed by the petitioner;
- (i) Appeal No. 95 of 2016 against the order dated 20th January' 2016 passed by the respondent state Commission in SMP 49 of 2015 regarding "review and determination of energy charges".
 - (ii) Appeal No.244 of 2017 against Commission's Order dated 24.05.2017 for determination of final generation tariff for 2X660 MW Unit No. 1&2 of Petitioner's power plant in the subject petition.
 - (iii) Appeal No.293 of 2018 against Commission's Order dated 20.07.2018 for determination of true-up of generation tariff for FY 2015-16 for petitioner's power plant in the subject petition.
 - (iv) Appeal No.96 of 2019 against Commission's Order dated 29.11.2018 for determination of Multi-year generation tariff for FY 2016-17 to FY 2018-19 for petitioner's power plant in the subject petition.
67. In view of the above, the claim towards additional capitalisation on account of assets of Amelia Mine and the "Additional Premium" is not considered by the Commission in this order also.

Write-off/ Adjustment of Assets:

68. The petitioner submitted that the assets of Rs. 0.60 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 2017-18. The petitioner further submitted that though it has decapitalized assets of Rs. 12.32 Crores in Amelia coal mines during FY 2017-18, but for the purpose of this petition, the de-capitalized amount of Amelia Coal Mine are not deleted since all said deleted Amelia Mines assets pertain to Amelia assets acquired during FY 2015-16 which was not considered by the Commission in the order dated 20.07.2018 in Petition No.41/2017.
69. Regarding the write-off/ adjustment of the aforesaid assets from the capital cost of the Nigrie Thermal Power Station, the petitioner submitted the following:
- (i) *Many old items such as Computers, Printers, IT peripherals, UPS, Air Coolers, Geysers, Wireless Instruments, Walkie Talkies, Room Heaters, Refrigerators, Fans, Inverters & other misc items worth Rs 0.37 Lacs were discarded & scrapped on 31.03.2018 i.e. during FY 2017-18 and duly removed from Asset -Cum-Depreciation Register as on 31.03.2018.*
- (ii) *It is further submitted that 200KVA Transformer valuing Rs 0.23 Crores was sold off on 31.03.2018 i.e. during FY 2017-18 and duly removed from Depreciation-Cum-Asset Register as on 31.03.2018.*
70. On scrutiny of the details regarding write-off/ de-capitalization filed by the petitioner, the Commission has observed that the assets of Rs. 0.60 Crore have been adjusted/de-capitalized in the Annual Audited Accounts and recorded in Asset-cum-Depreciation register of Nigrie Thermal Power Station. Therefore, the Commission has considered de-capitalization of Rs. 0.60Crore during FY 2017-18 in this order. With regard to the funding of write-off/ de-capitalization of assets, the Commission has considered the same Debt : Equity ratio as considered in the final tariff order dated 24.05.2017. Therefore, the equity and loan component of de-capitalized assets are reduced accordingly.
71. In view of the above, the details of additional capitalization and de-capitalization considered during FY 2017-18 in this order are as given below:

Table 16: Addition and Deletion Admitted in the Order (Rs. in Crore)

S. No.	Particular	Addition	Deletion	Net Addition
1.	Land	-	-	-
2.	BTG	0.36	-	0.36
3.	BOP	2.68	0.60	2.08
4.	Civil Works	8.99	-	8.99
	Total	12.03	0.60	11.42

72. 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:

Table 17: Gross Fixed Assets admitted during FY 2017-18 (Rs in Crore)

Opening GFA as on 01.04.2017	Adjustment/ deletion of assets	Addition during FY 2017-18	Closing GFAas on 31.03.2018
10,759.70	0.60	12.03	10771.13

Debt – Equity Ratio:

73. Regarding the source of funding for additional capitalization claimed in the subject true-up petition, the petitioner in Form TPS 10 has mentioned that the sources of funding is entirely from the equity/ internal sources. Thus, for the purpose of computation of RoE and interest on loan, the petitioner considered the funding of additional capitalization in the normative ratio of 70:30 specified under the Regulations, 2015.

Provision in Regulation:

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

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

Provided that:

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

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

- 25.2 *The generating company shall submit the resolution of the Board of the company regarding infusion of fund from internal resources in support of*

the utilization made or proposed to be made to meet the capital expenditure of the generating station.

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

Commission’s Analysis

75. The petitioner claimed the funding of additional capitalization during the year through equity/ internal sources. Regulation 25.1 provides that “where equity actually employed is in excess of 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance amount shall be considered as loan”. The Commission has considered the excess equity i.e. above 30% of the additional capitalization as normative loan. The Regulation further provides that in case of the generating station declared under commercial operation prior to 1.4.2016, debt- equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2016 shall be considered.
76. In view of the above, the Commission has considered closing figures of GFA, Equity and Loan as considered in last true-up order for FY 2016-17 dated 25th July’ 2018 as opening balance in this order. Further, the impact of write off/deletion of the assets of Rs. 0.60 Crore has also considered with corresponding reduction of Debt and Equity in the ratio of 77.82% and 22.18% respectively as admitted by the Commission in its order dated 24th May’ 2017 to work out the closing balances.
77. The details of the additional capitalization and their corresponding funding as considered by the Commission for FY 2017-18 are as given below:

Table 18: Gross Fixed Assets and Funding admitted: (Rs in Crore)

Sr. No.	Particulars	Asset	Loan	Equity
1.	Opening balance as on 31 st March' 2017 (as per last true-up order)	10759.70	7111.72	2402.55
2.	Write-off/ Adjustment	(0.60)	(0.467)	(0.133)
4.	Addition during FY 2017-18	12.03	8.42	3.61
5.	Closing balance as on 31 st March' 2018	10771.13	*7119.67	2406.02

***Before repayment**

Annual Capacity (fixed) Charges:

78. The tariff for supply of electricity from a thermal generating station shall comprise two parts, namely, capacity charge (for recovery of annual fixed cost consisting of the components as specified in Regulation 27 of Regulations, 2015) and energy charge (for recovery of primary and secondary fuel cost). The Annual Capacity (fixed) Charges consist of:
- Return on Equity;
 - Interest on Loan Capital;
 - Depreciation;
 - Interest on Working Capital;
 - Operation and Maintenance Expenses;

a. Return on Equity:

Petitioner's Submission:

79. The petitioner claimed the Return on Equity in form 1(ii) of the petition as given below:

Table 19: Return on Equity claimed by the Petitioner

Sr. No.	Particular	Unit	FY 2017-18
1	Opening Equity Normative	RsCrore	2449.46
2	Equity reduced in respect of de-capitalized assets	Rs Crore	0.18
3	Equity Additions in power plant during the year	Rs Crore	3.61
4	Equity Additions in Coal Mine during the year	Rs. Crore	44.85
5	Closing Equity Normative	Rs Crore	2497.74
6	Average Equity Normative	Rs Crore	2473.60
7	Base Rate of Return on Equity	%	15.50%
8	Tax rate considered MAT	%	00.00%
9	Rate of Return on Equity	%	15.50%
10	Return on Equity	Rs Crore	383.41

80. While claiming the Return on Equity, the petitioner considered the base rate of Return on Equity as 15.50% however, no tax has been paid by the petitioner during the year.

Provision in Regulations:

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

“Return on Equity:

- 30.1 *Return on equity shall be computed in rupee terms, on the equity base determined in accordance with Regulation 25.*
- 30.2 *Return on equity shall be computed at the base rate of 15.50% for thermal generating stations and hydro generating stations:*

Provided that:

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

31. Tax on Return on Equity:

- 31.1 *The base rate of return on equity as allowed by the Commission under Regulation 30 shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid in the respective financial year in line with the provisions of the relevant Finance Acts by the concerned generating company. The actual income tax on other income stream including deferred tax i.e., income of non-generation business shall not be considered for the calculation of “effective tax rate”.*
- 31.2 *Rate of return on equity shall be rounded off to three decimal places and shall be computed as per the formula given below: Rate of pre-tax return on equity = Base rate / (1-t)*

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

For example:- In case of the generating company paying

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

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

Commission’s Analysis:

82. For the purpose of determining the Return on Equity, the closing equity as on 31stMarch’ 2017 admitted by the Commission in true-up Order dated 25thJuly’ 2019, is considered as the opening equity as on 1stApril’ 2017 in this order. Further, the Commission has considered the equity addition of Rs. 3.61 Crore towards additional capitalization during FY 2017-18. The Commission has also considered the reduction of equity of Rs. 0.133 Crore in respect of the assets de-capitalized during the year. Therefore, the closing equity of Rs. 2406.02 Crore has been worked out in this order.

83. The petitioner claimed return on equity by applying base rate of return without grossing up with MAT. However, no tax has been paid by the petitioner during the year. Accordingly, the Return on Equity for FY 2017-18 is worked out in this order as given below:

Table 20: Return on Equity worked out in this Order

Sr. No.	Particular	Unit	Amount for FY 2017-18
1	Opening Normative Equity	Rs. Cr.	2402.55
2	Equity reduction	Rs. Cr.	0.133
3	Equity addition during the year	Rs. Cr.	3.61
4	Closing Normative Equity	Rs. Cr.	2406.02
5	Average Normative Equity	Rs. Cr.	2404.28
6	Base rate of Return on Equity	%	15.50%
7	Tax rate considered (MAT)	%	0.00
8	Applicable rate of return on equity	%	15.50%
9	Return on equity	Rs. Cr.	372.66

b. Interest and finance charges on loan:

Petitioner's Submission:

84. The petitioner claimed the Interest on Loan in form 13(A) of the petition as given below:

Table 21: Interest on Loan filed by the petitioner

Particulars	Unit	FY 2017-18
Gross Normative Loan – Opening	Rs. Crore	8299.87
Cumulative Repayment of Normative Loan upto Previous Year	Rs. Crore	1255.81
Net Normative Loan-Opening	Rs. Crore	7044.06
Loan Additions during the year (including Amelia Coal Mine)	Rs. Crore	112.65
Repayment of loan During the year	Rs. Crore	558.96
Closing Loan	Rs. Crore	6597.76
Average Loan-Normative	Rs. Crore	6820.91
Weighted average Rate of Interest on actual Loans	%	11.78%
Interest on Normative loan	Rs. Crore	803.25

Provision in Regulations:

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

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

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

- 32.3 *The repayment for each of the year of the tariff period 2016-19 shall be deemed to be equal to the depreciation allowed for the corresponding year/period. In case of de- capitalization of assets, the repayment shall be adjusted by taking into account cumulative repayment on a pro rata basis and the adjustment should not exceed cumulative depreciation recovered upto the date of de-capitalisation of such asset.*
- 32.4 *Notwithstanding any moratorium period availed by the generating company, the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the depreciation allowed for the year or part of the year.*
- 32.5 *The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio after providing appropriate accounting adjustment for interest capitalized:*
- Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered:*
- Provided further that if the generating station does not have actual loan, then the weighted average rate of interest of the generating company as a whole shall be considered.*
- 32.6 *The interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.*
- 32.7 *The generating company shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company in the ratio of 2:1.*
- 32.8 *The changes to the terms and conditions of the loans shall be reflected from the date of such re-financing.*
- 32.9 *In case of dispute, any of the parties may make an application in accordance with the Madhya Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, as amended from time to time.*
- Provided that the beneficiaries shall not withhold any payment on account of the interest claimed by the generating company during the pendency of any dispute arising out of re-financing of loan.“*

Commission's Analysis:

86. For the purpose of determination of interest on term loan, the closing loan balance as on 31st March' 2017 as admitted in last true-up order for FY 2016-17 dated 25th July' 2019, is considered as the opening loan balance as on 1st April' 2017 in this order. Further, The Commission has considered the loan addition of Rs. 8.42 Crore in respect of additional capitalization during FY 2017-18 admitted in this order. The Commission has also considered the reduction of loan amount of Rs. 0.467 Crore in respect of the assets de-capitalized during the year.
87. On perusal of the form TPS 13 regarding calculation of weighted average rate of interest on actual loans filed with the petition, the Commission has observed the following:
- The weighted average rate of interest claimed in subject petition for FY 2017-18 is higher than the interest rate claimed during FY 2015-16 and FY 2016-17.
 - Rate of interest on ECB is claimed as 11.20% whereas it has been 4.00% in past years.
 - The rate of interest on loan on annual basis of the following lending agencies is higher in FY 2017-18 as compared to past years:

Table 22: Lending Agency-wise rate of interest

Sr. No.	Lending Agency	FY 2015-16	FY 2016-17	FY 2017-18
1	Syndicate Bank	12.75%	12.00%	12.70%
2	Corporation Bank	13.08%	10.40%	12.15%
3	Bank of Baroda	13.44%	13.40%	13.75%
4	State Bank of Patiala	12.75%	12.15%	12.75%
5	IDBI Bank Ltd.	13.25%	12.25%	12.75%
6	ECB ICICI JPY / ECB	4.00%	4.00%	11.20%
Wt. Average Rate of Interest		11.64%	10.96%	11.78%

88. In view of the above, vide letter dated 11th March' 2019, the petitioner was asked to file the detailed explanation for above higher rate of interest claimed during FY 2017-18 with supporting documents in this regard. The petitioner was also asked to file the hard and soft copy in excel for detailed computation for arriving at the lending agency-wise weighted average rate of interest claimed in the subject petition.
89. By affidavit dated 18th April' 2019, the petitioner submitted the following:
- "It is submitted that Interest Rate for each of the Advances made by individual Lenders is the sum of Base Rate notified by that particular Lender and Spread Rate of that particular Lender. Both the components of the Interest*

Rates vary from time to time. It is further submitted that some of the Lenders have linked their Base Rate with the Base Rate of the Lead Bankers (ICICI Bank). However, Interest Rates for FY 2017-18 have been substantiated by attaching Statements/ Confirmation of Interest Rates from Lenders which are attached herewith as Annexure-9.1.

As far as Interest Rate for ECB ICICI JPY/ECB Sub Limit is concerned, the ICICI Bank on the request of the Petitioner had modified the terms of the ECB facility to include a sub-limit of a Rupee Term Loan from ICICI Bank for repayment of the ECB facility. Accordingly, the Petitioner made full repayment of balance amount of JPY 10.71 Billions in August 2017. Interest Rate for such sub-limit of a Rupee Term Loan is "1-MCLR"-1 Year + Spread (3%). In August 2017, MCLR-1Y of ICICI was 8.2%; hence, Rate for Interest for ECB JPY/ECB Sub Limit is taken as 11.2%. Letter regarding RTL facility as a sub limit to ECB facility is attached as Annexure-9.2. Historical data of MCLR is attached as Annexure-9.3. It may be mentioned that by replacing ECB facility by way of RTL, the Petitioner has saved Hedging Cost and also insulated itself from Exchange Fluctuations."

90. On perusal of the aforesaid details filed by the petitioner, it was observed that on the request of the petitioner, the ICICI Bank had modified the terms of the ECB facility into a sub-limit of a Rupee Term Loan from ICICI Bank for repayment of the ECB facility and the petitioner made full repayment of balance amount of JPY 10.71 Billions in August' 2017. The petitioner submitted that the interest Rate for such sub-limit of a Rupee Term Loan is "1-MCLR"-1 Year + Spread (3%). Therefore, in August 2017, the MCLR (Marginal Cost of Lending Rate) of ICICI was 8.2%; hence, Rate for Interest for ECB JPY/ECB Sub Limit has been taken as 11.2% by the petitioner.
91. In view of the above, it was further observed that the ICICI Bank had modified the terms of the ECB facility into a sub-limit of a Rupee Term Loan from ICICI Bank in August' 2017, whereas the petitioner while determining the weighted average for FY 2017-18 has applied the interest rate of sub-limit of a Rupee Term Loan for whole year. Therefore, the petitioner was asked to file the details of actual payment made towards ECB Loan and ECB sublimit loan during the year, a copy of agreement with ICICI Bank for conversion of part Rupee term loan into External Commercial Borrowing (ECB), a copy of letter regarding RTL facility as a sub limit alongwith historical data of MCLR. The petitioner was also asked to file ECB to RTL conversion in respect of cost benefit analysis in this regard.

92. In continuation to its additional submission dated 18th April' 2019 and in response to the above, by affidavit dated 25th September' 2019, the petitioner has submitted the following:
- I. *“That the Petitioner, in the following paragraphs, seeks to delve into the background of converting the “External Commercial Borrowing” (ECB) in JPY into Sub Limit “Rupee Term Loan” (RTL).*
 - II. *ICICI Bank Ltd. had sanctioned a term loan of Rs.880 crore for development of the Nigrie STPP to Jaiprakash Power Ventures Ltd. Out of the said amount an amount of Rs 31.10 crore was disbursed in INR. Subsequently, realising that BTG contract in the said project required a significant amount of payments to be made in JPY, balance exposure of ICICI Bank Ltd. of Rs.848.90 crore was converted into financial assistance of 15.30 billion JPY during 2011 through ICICI Bank subsidiary Bank in Singapore / Hong Kong and this entire amount was utilized to make JPY payments to the BTG supplier, namely, Larsen & Toubro Mitsubishi Heavy Industries Ltd and Larsen & Toubro Ltd. Credit Arrangement Letter No. 01/IBGSIN/33058 dated March 30th, 2011 is attached as Annexure-1.*
 - III. *Company had started making repayment as per agreed schedule from 7th November, 2014 onwards and 4.59 billion JPY was repaid upto 2nd May, 2017. However, in the interim, the Hon'ble Supreme Court of India cancelled the allocation of Coal blocks in September, 2014 (including the Amelia (N) & Dongrital-II Coal blocks, based on the coal for which, JNSTPP was established).*
 - (i) *Amelia (N) Coal Block had already commenced mining of coal since April, 2014 & was supplying coal to Nigrie STPP when the Order of Hon'ble Supreme Court came. JPVL thereafter had to secure Amelia (N) Coal Block against stiff competition at a negative bid price of Rs.712 PMT.*
 - (ii) *Despite having won the Amelia (N) Coal Block, the viability of Nigrie STPP remained challenging due to:-*
 - *No clarity on 2nd Coal Block/ Linkages. (Required to operate Nigrie STPP at full capacity)*
 - *The guidelines under which coal block was auctioned, has capped merchant sale to the extent of 15% only. Nigrie STPP has PPA for 37.5% & there are no new PPAs currently in the offing.*
 - *Under recovery of variable cost due to bid condition/ negative bidding.*
 - *Low merchant /un-remunerative power tariff.*
 - IV. *Due to above reasons JNSTPP could not service its debt in time and as per banking regulation of Singapore / Hong Kong Balance Sheet of ICICI Bank's said subsidiary was getting severally impacted. Therefore, ICICI Bank Ltd in*

India insisted on conversion of the said JPY Loan to INR Loan for which the Company had no option but to agree. Another reason was that the JPY loan could not have been restructured and since the Company was in stress, the loan required restructuring.

- V. Under this arrangement, ICICI Bank Ltd. India settled the dues of 10.71 billion JPY (15.30b – 4.59b JPY) with their Singapore/Hong Kong counterpart through a new RTL (Sub Limit) amounting to Rs.621 Crs carrying interest @11.20% p.a. to be repayable in 14 half yearly equal instalments given to JPVL for the said sweep.
- VI. ECB RTL Conversion Analysis for period November, 2017 to May, 2024 was done by ICICI Bank (ECB Lender) which was sent to the Petitioner vide their mail dated 14th June, 2017 (copy enclosed as Annexure-2). On the basis of details received from ICICI Bank Ltd. following table is furnished.

(Rs. in Crs)

Particulars	JPY	RTL	Differential Amount
Interest Rate	4%	12.1% (1)	
Hedging Cost/unwinding cost	184	41	143
Exchange Rate Variation - Principal	71	---	71
Interest	92	259 (2)	(167)
Total	347	300	47 (3)

- Note: 1. At the time of sanction @ 12.10% p.a. linked to I-MCLR-1 Year + Spread (3%).
 2. Amount calculated @ 11.75% p.a. (weighted average for the period November, 2017 to May, 2024). At present, rate of interest being 11.55% p.a.
 3. From the above table it may be observed that conversion of ECB into RTL would have resulted into a saving of Rs.47 Crs.

- VII. In addition to the above, it may be noted that this conversion of ECB (JPY USD-INR) into Rupee Loan has insulated the Project from the changing scenario of Foreign Exchange variations / fluctuations. More so in light of the fact that only part of the facility was Hedged and that too in a particular range, therefore any adverse exchange rate variation over and above the Hedged range would have been to the account of JPVL.
- VIII. The Petitioner, in the context of the instant Petition shall demonstrate the resultant savings as below:-

a) Weighted Average Rate of Interest applicable for Sub Limit

- As stated above and submitted in Reply dated 18-04-2019, the Interest Rate for such sub-limit of a Rupee Term Loan is "I-MCLR"-1 Year + Spread (3%) which at the time of sanction was @ 12.10% ("I-MCLR"-1Y 9.10% + Spread 3%)
- At the time of fully discharging JPY 10.71 billion, i.e. 31-08-2017, Interest Rate for such sub-limit was @ 11.20% ("I-MCLR"-1Y 8.20% + Spread 3%) which has been used in the instant Petition for Sub Limit.

- “1-MCLR”-1Y again revised to @ 8.30%, thereby effectively raising the Interest Rate for Sub Limit to @ 11.30% for the month of March-18.
- However, from April 2017 to August 2017, Interest Rate for ECB was 4%.
- Hence, the Weighted Average Rate of Interest for Sub Limit can be arrived as under
- ✓ 4% from April 2017 to August 2017 i.e. for five months,
- ✓ 11.20% from September 2017 to February 2018 i.e. for six months,
- ✓ 11.30% for the month of March 2018.

Weighted Average Rate of Interest
= (4%x5+11.20%x6+11.30%)/12 =8.21%

Letter regarding RTL facility as a Sub Limit alongwith historical data of MCLR were attached as Annexure 9.2 & Annexure-9.3 respectively to the Reply dated 18-04-2019 to MPERC Letter dated 11-03-2019. However, they are again attached as Annexure-3 (Colly.).

b) By putting above Weighted Average Rate of Interest for Sub Limit @ 8.21% in TPS-13, overall Weighted Average Rate of Interest is worked out to be 11.46%.

c) **Demonstration of Benefits Accrual due to Such Conversion: (Rs. in Crs)**

Total Expenses on account of conversion of ECB-JPY into Sub Limit-RTL: (Rs. in Crs)

Particulars	FY 2017-18	Remarks
Opening Normative Loan as on 01-04-2017	7,111.72	(MPERC Order dt 25-07-2019 in P.No.05/2019)
Addition in Loan	8.00	Only Generating Station
Normative Repayment during the year	546.78	Table-2 above
Normative Closing Loan as on 31-03-2018	6,572.94	
Average Loan	6,842.33	
Overall Weighted Average Rate [Para 5(b)]	11.46%	When Weighted Average Rate of Sub Limit-RTL is put @ 8.21% in TPS-13-Para 5 (b)
Interest during the year	784.37	
Charges for unwinding of Hedging Contract	10.24	
Total Expenses on account of conversion of ECB-JPY into Sub Limit-RTL	794.61	

Total Expenses if Current ECB Facility in JPY Continued: (Rs. in Crs)

Particulars	FY 2017-18	Remarks
Opening Normative Loan as on 01.04.2017	7,111.72	(MPERC Order dt 25-07-2019 in P.No.05/2019)
Addition in Loan	8.00	Only Generating Station
Normative Repayment during the year	546.78	Table-2 above
Normative Closing Loan as on 31-03-2018	6,572.94	
Average Loan	6,842.33	
Overall Weighted Average Rate	11.03%	When Weighted Average Rate of ECB is put @ 4% in TPS-13
Interest during the year	754.76	
Loss on Foreign Exchange Rate Variation on Actual Repayment of ECB	15.60	Based on loss incurred for FY 2016-17

Loss on Foreign Exchange Rate Variation on Actual Interest Paid on ECB	2.42	Based on loss incurred for FY 2016-17
Hedging Cost	28.63	Based on Hedging Cost incurred for FY 2016-17
Total Expenses if Current ECB Facility in JPY Continued	801.42	

Observing Table-3 & Table-4, it is clear that by converting ECB Facility in JPY into Sub Limit-RTL results into saving.

93. In view of the above details and documents filed by the petitioner, it is observed that the petitioner has now revised the weighted average rate of interest on ECB from 11.20% to 8.21% by considering the rate of interest 4% from April' 2017 to August' 2017, 11.20% from September' 2017 to February' 2018 and 11.30% for the month of March' 2018. Based on the above, the petitioner has filed the revised weighted average rate of interest @ 11.46% for FY 2017-18. The petitioner has also informed that the conversion from ECB into RTL would have resulted into a saving of Rs. 47 Crore in respect of hedging cost and cost towards Exchange Rate Variation.
94. In view of the above, the interest on loan is worked out in this order as under:
- Gross normative opening loan of Rs. 7111.72 Crore is considered as per true-up Order dated 25th July' 2019 for FY 2016-17.
 - Deduction/ Adjustment of loan amount of Rs. 0.467 Crore is considered towards de-capitalization of assets during the year.
 - Addition of normative loan amount of Rs. 8.42 Crore (70% of additional capital expenditure approved above) is considered.
 - Annual repayment of loan equal to annual depreciation is considered as per Regulations, 2015.
 - Weighted average rate of interest @ 11.46% based on the actual loan portfolio filed by the petitioner is considered.
95. Based on the above, the interest on loan is worked out in this order as given below:

Table 23: Interest on Loan

Sr. No.	Particular	Unit	True-up FY 2017-18
1	Opening Loan	Rs. Cr.	7111.72
2	Loan Adjustment	Rs. Cr.	0.467
3	Loan addition during the year	Rs. Cr.	8.42
4	Repayment during the year considered	Rs. Cr.	546.69
5	Closing Loan	Rs. Cr.	6572.98
6	Average Loan	Rs. Cr.	6842.35
7	Weighted average rate of interest	%	11.46
8	Interest amount	Rs. Cr.	784.13

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

96. The petitioner claimed the depreciation in form TPS 11 of the petition is as given below:

Table 24: Depreciation claimed in the Petition

Sr.No.	Particular	Units.	FY 2017-18
1	Opening Gross Fixed Assets	Rs Crore	10917.02
2	Addition during the year in power station	Rs Crore	12.03
3	Addition during the year in Coal Mine	Rs Crore	149.50
4	Deletion / write-off of Asset	Rs Crore	0.60
5	Closing Gross Fixed Assets	Rs Crore	11077.95
6	Average Gross Fixed Assets	Rs Crore	10997.49
7	Weighted Average Rate of Depreciation	%	5.083%
8	Annual Depreciation	Rs Crore	558.96

Provision in Regulations:

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

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

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

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

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

Provided that in case of hydro generating station, the salvage value shall be as provided in the agreement signed by the developers with the State Government for development of the Plant: Provided further that the capital cost of the assets of the hydro generating station for the purpose of

computation of depreciated value shall correspond to the percentage of sale of electricity under long-term power purchase agreement at regulated tariff:

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

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

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

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

Commission’s Analysis:

98. For the purpose of determining the depreciation, the closing Gross Fixed Assets as on 31st March’ 2017, admitted in the tariff order dated 25th July’ 2019 for FY 2016-17 has been considered as the opening Gross Fixed Assets as on 1st April’ 2017 in this order. Further, the write off/ deletion of fixed assets of Rs. 0.60 Crore and additional capitalization of Rs. 12.03 Crore during the FY 2017-18 has also been considered in this order to worked out the closing Gross Fixed Assets of Rs. 10771.13 Crore.
99. The petitioner has filed the Asset-cum-Depreciation register with the petition based on MPERC Tariff Regulations, 2015. It is observed that the weighted average rate of depreciation for power station worked out in the aforesaid Asset-cum-Depreciation register is 5.078%. Thus, the Commission has worked out the depreciation during FY 2017-18 based on the weighted average rate of depreciation of 5.078% as per the asset-cum depreciation register filed with the petition.
100. The Commission has worked out the depreciation on average Gross Fixed Assets duly taking into account the opening Gross Fixed Assets, write off during the year, additions during the year, closing Gross Fixed Assets as considered in this order and weighted average rate of depreciation as per Regulations, 2015 worked out in Asset-cum-Depreciation register. The amount of cumulative depreciation towards assets de-capitalized during the year has been adjusted from the total cumulative depreciation. Moreover, the cumulative depreciation towards assets de-capitalized during FY 2016-17 which was not adjusted in last true-up order for FY 2016-17 is now adjusted in this order.
101. Based on the above, the depreciation for FY 2017-18 is worked out in this order as given below:

Table 25: Annual Depreciation determined in this order

Sr. No.	Particular	Unit	True-up FY 2017-18
1	Opening Gross Block	Rs. Cr.	10759.70
2	Gross Block Adjustment	Rs. Cr.	0.60
3	Asset addition during the year	Rs. Cr.	12.03
4	Closing Gross Block	Rs. Cr.	10771.13
5	Average GFA	Rs. Cr.	10765.42
6	Weighted average rate of depreciation	%	5.078

7	Depreciation amount	Rs. Cr.	546.69
8	Adjustment of Cumulative Depreciation for the assets de-capitalized during FY 2016-17	Rs. Cr.	0.27
9	Adjustment of Cumulative Depreciation for the assets de-capitalized during FY 2017-18	Rs. Cr.	0.11
10	Cumulative depreciation as on 31.03.2018	Rs. Cr.	1791.83

e. Operation and Maintenance Expenses:

Petitioner's Submission:

102. The petitioner filed the Operation and Maintenance expenses for generating Units in the subject petition is as given below:

Table 26: O&M Expenses claimed for generating Unit (Rs. in Crore)

Phase – 1	Particulars	FY 2017-18
Unit I & II	O & M Expense	228.36

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

Table 27: Statement of O & M expenses of Transmission Line & Bay

Sr. No.	Particulars		FY 2017-18
1	O&M Expenses of 400kV Transmission Line	161x2=322 ckt km	1.07
2	O&M Expenses of 400kV Bay	2 Nos of 400kV Bay	0.20
	Total O & M Expenses		1.27

Provision in Regulations:

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

Table 28: Normative O&M Expenses

Units (MW)	Rs.Lakh/ MW/ Year
45	34.09
200/210/250	28.70
300/330/350	23.96
500	19.22
600 and above	17.30

Commission's Analysis:

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

Table 29: Operation & Maintenance Expenses admitted

Phase – 1	Capacity	Normative O & M Expenses	Annual O&M Expenses as per norms
	MW	Rs. Lack/MW	Rs. In Crore
Unit I & II	2 X 660	17.30	228.36

106. No separate norms are provided in MPERC (Terms and Conditions for Determination of generation Tariff) Regulations'2015 for operation & maintenance expenses on dedicated Transmission lines & Bay as claimed in the subject petition. Further, the cost of dedicated transmission lines have been considered in the project capital cost of the petitioner's power plant while determining the tariff. In the subject petition, the petitioner has claimed Rs.1.27 Crore for O&M expenses in FY 2017-18 for transmission line and bay while mentioning that the same has been rejected vide MYT order dated 29.11.2018 of petition No.07/2017.
107. In view of above observations, vide Commission's letter dated 11th March' 2019, the petitioner was asked to clarify its contention for claiming such cost which has been disallowed by the Commission and which is sub judice in Appeals filed by the petitioner before the Hon'ble APTEL. The petitioner was also required to justify its claim in this regard in light of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulation, 2015.
108. By affidavit dated 26th March' 2019, the petitioner submitted its response on the O&M expenses for dedicated transmission Line claimed in the petition as follows:

"It is 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 and as such has not attained finality and the Petitioner is bona-fide in claiming the O&M related to the Transmission lines."

109. Vide MYT order dated 29th November' 2018, the Commission disallowed the aforesaid O&M expenses of dedicated transmission line. In Para 75 and para 76 of Commission's aforesaid order, the following has been mentioned:

75 *"With regard to above claim of the petitioner seeking separate O&M expenses for dedicated transmission line/ system over and above the O&M norms provided in MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, the Commission has noted the following:*

- (i) *There were no norms of separate O&M expenses for dedicated*

transmission lines in MPERC Tariff Regulations 2009 and 2012. The petitioner had never filed any objection/ comments regarding norms or separate O&M norms for dedicated transmission lines. The petitioner had also not challenged the aforesaid Regulations in any Forum.

- (ii) In the Petitions for determination of provisional generation tariff for its Unit No. 1 and 2, the petitioner had not claimed any separate O&M expenses for the dedicated transmission lines of its project. The tariff for both units was provisionally determined by the Commission in accordance with the O&M norms provided in MPERC Tariff Regulations 2012 wherein no O&M expenses was considered separately for dedicated transmission lines.
- (iii) The Commission on 21.12.2015 issued the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 for the next control period of FY 2016-17 to FY 2018-19 and the same was notified in official Gazette on 01.01.2016. The norms of O&M expenses for each year of the control period in respect of generating unit/power plant as a whole are provided in aforesaid Regulations and O&M expenses for dedicated transmission line were not provided separately in the said Regulations. It is pertinent to note that the petitioner had neither challenged these MPERC Tariff Regulations, 2015 also before any forum. Hence, the provisions for O&M norms under MPERC Tariff Regulations, 2015 have attained finality.
- (iv) The Commission has already considered the expenditure incurred on the construction of dedicated transmission line/system as part of the capital cost of Petitioner's power plant and allowed corresponding Return on Equity, interest charges and depreciation in the Annual Fixed Charges determined in final tariff Order. The claim of petitioner seeking separate O&M expenses over and above O&M norms provided in Tariff Regulations, 2015 is against the provisions of the Tariff Regulations, 2015. The petitioner has claimed the O&M expenses for dedicated transmission line in terms of MPERC Transmission Tariff Regulations whereas the subject petition is for determination of generation tariff of petitioner's power project in accordance with MPERC Generation Tariff Regulations in the capacity of petitioner as the generating company.
- (v) It is further observed that the dedicated transmission line is neither a transmission line in terms of sub-section (72) of Section 2 of the Electricity Act' 2003 nor it is a distribution system connecting the point of a connection to the installation of consumer in terms of sub-section (19) of Section 2 of the Electricity Act, 2003. The O&M expenses of a

transmission line are part of the Annual Fixed Cost (AFC) determined by the Commission under section 62 of the Electricity Act, 2003 for a transmission licensee whereas, the subject petition cannot be considered for determination of AFC for the transmission line under section 62 of the Electricity Act, 2003. The cost of dedicated transmission line has thus been considered in the capital cost of the generating station and the tariff of the said generating station has been determined in terms of the Tariff Regulations which do not provide for any O&M expenses of dedicated transmission line separately.

- (vi) *On perusal of the O&M expenses recorded in Annual Audited Accounts for FY 2016-17, it is observed that the actual O&M expenses of the Petitioner's power plant are less than the O&M expenses allowed in this Order based on O&M norms provided in the Regulations'2015. The petitioner has actually incurred total O&M expenses of Rs 76.82 Crore in FY 2016-17 whereas, the O&M expenses of Rs214.76 Crore are allowed in this Order as per norms provided in Regulations'2015.*
- (vii) *In view of all aforesaid and consistently following the approach of this Commission on this issue in all earlier Orders, the claim of petitioner seeking separate O&M expenses of dedicated transmission line over and above the norms/provisions in MPERC Tariff Regulations,2015 is not considered by the Commission in this Order."*

76 *On this issue of disallowance separate O&M expenses for dedicated transmission line/system, the same petitioner has filed several Appeals before the Hon'ble Tribunal for Electricity in respect of its Nigrie and Bina power plant. All Appeals are pending adjudication before the APTEL.*

110. The petitioner has challenged the aforesaid order on several issues mentioned in Para 7 of this order including this issue of disallowance of O&M expenses of dedicated transmission line through an Appeal No. 96 of 2019 before Hon'ble Appellate Tribunal for Electricity. This issue regarding disallowance of O&M expenses of dedicated transmission line is *sub-judice* before the Hon'ble Appellate Tribunal for Electricity in various Appeals including Appeal No. 96 of 2019 filed by the petitioner. The Commission has already filed its reply written submissions before the Hon'ble Appellate Tribunal for Electricity against the contention of petitioner in all Appeals on this particular issue hence, the same is not repeated in this order.

111. In view of the above background and facts, the claim of petitioner for O&M expenses of dedicated transmission line and bay is not considered in this order.

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

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

Table 30: Interest on Working Capital Claimed

Sl. No.	Particulars	Basis	FY 2017-18
1	Cost of Coal/Lignite	Cost of coal towards stock for 30 days & Cost of coal for 30 days for generation corresponding to the NAPAF.	232.12
2	Cost of Main Secondary Fuel Oil	Cost of Secondary Fuel for two months	1.69
5	O & M expenses	One months' of O&M Expenses	19.03
5A	O & M expenses (Transmission Lines & Bay)	One months' of O&M Expenses	0.11
6	Maintenance Spares	20% of Annual Expenses	45.67
6A	Maintenance Spares (Transmission Lines & Bay)	20% of Annual Expenses	0.25
7	Receivables	Two Months' Receivable	583.25
8	Total Working Capital		882.12
9	Rate of Interest		12.60%
10	Interest on Working Capital		111.15

Provision in Regulations:

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

"34.1 The working capital shall cover:

- (1) *Coal-based thermal generating stations*
 - (a) *Cost of coal towards stock, if applicable, for 15 days for pit-head generating stations and 30 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal stock storage capacity whichever is lower;*
 - (b) *Cost of coal for 30 days for generation corresponding to the normative annual plant availability factor;*
 - (c) *Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main fuel oil;*
 - (d) *Maintenance spares @ 20% of operation and maintenance expenses specified in Regulation 35;*
 - (e) *Receivables equivalent to two months of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor; and*
 - (f) *Operation and maintenance expenses for one month.*

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

34.3 Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.4.2016 or as on 1st April of the year during the tariff period 2016-17 to 2018-19 in which the generating station or a unit thereof, is declared under commercial operation, whichever is later.

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

Commission’s Analysis:

114. The Commission has worked out interest on working capital as per the provisions under the Regulations, 2015 are given below:

(i) Cost of coal for 60 days for FY 2017-18 is considered same as considered in MYT order dated 29th November’ 2018.

(ii) Cost of main secondary fuel oil for two months’ equivalent to normative plant availability factor for FY 2017-18 is considered same as considered in order dated 29th November’ 2018 as stated below is considered:

Particulars	FY 2017-18 (Rs. in Crore)
Cost of Coal for Two Months	84.08
Cost of Secondary Fuel Oil for Two Months	1.69

(iii) Maintenance spares as considered in order dated 29th November’ 2018 as given below is considered:

Particulars	FY 2017-18 (Rs. in Crore)
Maintenance Spares	45.67

(iv) O&M expenses for one month for the purpose of working capital as considered in order dated 29th November’ 2018 has been considered:

Particulars	FY 2017-18 (Rs. in Crore)
O & M Expenses for One Month	19.03

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

Particulars	FY 2017-18 (Rs. in Crore)
Variable Charges- 2 Months (As considered on Order dated 29.11.2018)	87.19
Annual Fixed Charges- 2 Months (Worked Out in this Order)	331.48
Total	418.67

115. The State Bank of India Base rate applicable/ prevailing as on 1stApril 2017 was 9.10%. Therefore, the applicable interest on working capital for FY 2017-18 is 9.10% + 3.50% = 12.60%.

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

Table 31: Interest on Working Capital worked out in this order

Sr. No.	Particular	Unit	True-up FY 2017-18
1	Cost of coal for 60 days	Rs Cr.	84.08
2	Cost of fuel oil for two months	Rs. Cr.	1.69
3	O&M Charges for one month	Rs. Cr.	19.03
4	Maint. Spares 20% of the O&M charges	Rs. Cr.	45.67
5	Receivables for two months	Rs. Cr.	418.67
6	Total working capital	Rs. Cr.	569.15
7	Applicable rate of interest	%	12.60
8	Interest on working capital	Rs. Cr.	71.71

Lease/ Hire Purchase Charges

117. In the subject true up petition, the petitioner claimed Rs. 0.50 Crore as yearly lease rent paid for FY 2017-18.

Commission's Analysis:

118. The petitioner claimed Rs. 0.50 Crore against lease rent payable for land during the year. Vide Commission's letter dated 11thMarch' 2019, the petitioner was asked to provide file supporting document in support of the lease rent paid during the year in this regard. The petitioner was also asked to reconcile the same with the amount recorded in its Annual Audited Accounts.

119. By affidavit dated 18thApril' 2019, the petitioner filed a statement of land lease rent payment along with supporting documents relating to lease rent payments of Rs. 0.50 Crore. The petitioner further submitted the reconciliation between claim of lease rent made in the petition and amount recorded in Annual Audited Accounts (Note-29) in the same statement.

120. On perusal of the aforesaid statement, it is observed that the petitioner paid an amount of Rs. 49,74,986/- towards lease rent during FY 2017-18. The lease rent

amount has also been recorded in Note-29 of the Annual Audited Accounts. The petitioner also filed documents in support of all the payments towards lease rent.

121. In view of the above, the Commission has considered the lease rent of Rs. 0.50 Crore as claimed by the petitioner for FY 2017-18.

h. Non-Tariff Income:

122. In the subject petition, the petitioner filed non-tariff income of Rs. 15.15 Crore.

Provision in Regulations:

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

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

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

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

Commission's Analysis:

124. The above provision under the Regulations, 2015 provides that the non-tariff income shall also be trued up based on the Annual Audited Accounts. On perusal of the Annual Audited Accounts and other details filed by the petitioner it was observed that in Note-24, the other income is shown as Rs.31.15 Crore. It was further observed that the income from sale of fly ash is Rs. 11.51 Crore indicated in note 23 of the Annual Audited Accounts. Therefore, the total other-income as per Annual Audited Accounts is Rs. 42.66 Crore.

125. In view of the above, vide letter dated 11th March' 2019, the petitioner was asked to explain the reasons for aforesaid discrepancy in non-tariff income filed in the subject petition vis-à-vis recorded in Annual Audited Accounts. The petitioner was also asked to file detailed break-up of non-tariff income including income from

sale of fly ash as per Annual Audited Accounts.

126. By affidavit dated 18th April' 2019, the petitioner submitted that the non-tariff income as submitted with the petition is Rs. 15.15 Crore. The petitioner filed the statement for reconciliation between Non-tariff income filed in the petition vis-à-vis recorded in Annual Audited Accounts as given below:

Table 32: Break-up of Non-tariff income

Sl. No.	Particulars	Amount in Rs.	Remarks
1	Sale of Fly Ash	11,51,10, 143	As per Note 23 of Audited Accounts
2	Sale of Scrap	1,69,86,089	
3	Rent Received	27,40,770	
4	Interest Earned from Bank Deposits	54,49,459	
5	Insurance Claim Received	3,96,580	
6	Income from Restaurant	11,44,571	
7	Miscellaneous Receipt	1,01,47,816	
8	Handling Charges Received	2,570	
9	Asset P&L Sale of Asset Clg. A/c	(4,40,505)	
A	Non-Tariff Income	15,15,37,494	As submitted in Petition
B	Add:-Excess Provision Written Back	57,906	
C	Add:-IND AS Adjustments relating to Deferred Liabilities	25,56,84,285	
D	Add:-Insurance Claim Received on Amelia Asset	1,92,86,800	
	Other Income	42,65,66,484	Refer Note 24 of Audited Accounts & Sale of Fly Ash (Note 23)

127. In view of the above, the Commission observed that the total other income including income from sale of fly ash is Rs. 42.66 Crore which also includes the following items those are not the part of non-tariff income:

- Excess provision written back; - Rs. 57,907
- IND AS Adjustment relating to deferred liability; - Rs. 25,56,84,285
- Insurance claim received on Amelia Asset; - Rs. 1,92,86,800

128. Therefore, the amount of Rs. 15.15 Crores filed by the petitioner is considered the non-tariff income in this order as given below:

Table 33: Non-Tariff Income considered in this order

Sl. No.	Particulars	Amount in Rs.
1	Sale of Fly Ash	11,51,10, 143
2	Sale of Scrap	1,69,86,089
3	Rent Received	27,40,770
4	Interest Earned from Bank Deposits	54,49,459

5	Insurance Claim Received	3,96,580
6	Income from Restaurant	11,44,571
7	Miscellaneous Receipt	1,01,47,816
8	Handling Charges Received	2,570
9	Asset P&L Sale of Asset Clg. A/c	(4,40,505)
10	Non-Tariff Income	15,15,37,494

Other Charges:

129. In the subject true-up petition, the petitioner also prayed for recovery of the petition filing fees paid to the Commission and publication expenses from the beneficiaries.
130. Regulation 52 (i) of the Regulations, 2015 provides the following:
“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”.
131. In view of the above, the petitioner is allowed to recover the fee paid to MPERC and publication expenses as per Regulation 52 (i) of MPERC (Terms and Condition for Determination of Generation Tariff) Regulations, 2015.

Foreign Exchange Rate Variation (FERV)**Petitioners Submission**

132. In the subject true-up petition, the petitioner claimed FERV of Rs. 3.06 Crore on actual interest paid on FCCB as on 31st March' 2015. In para 8 of the petition, the petitioner submitted the following:
“Regarding the claim of FERV, the petitioner draws the kind attention of this Commission towards Para 214 to Para 217 of the Tariff Order dated 24-05-2017 in Petition No.72/2015. Vide Para No. 217 the Commission, on the basis of the Annexure-4 of Reply dated February 8th, 2017 to the MPERC Letter dated December 31st, 2016 had graciously allowed the Petitioner Rs 38.19 Crores on account of Foreign Exchange Rate Variance (FERV) on the actual repayment of USD 2,31,47,540.53. The Petitioner hereby states that this payment was made along with USD 18,52,459.47 towards interest as well, i.e. total payment was USD 2,50,00,000.00 (INR 156.55 Crores). Out of this Hon'ble Commission allowed Rs 38.19 towards FERV on Principal Repayment but FERV of Rs 3.06 Crores on actual payment of Interest Component of USD 18,52,459.47 was not allowed. The Petitioner hereby requests the Commission to allow the said FERV of Rs 3.06 on actual payment of Interest Component of USD 18,52,459.47. For ready reference, the Annexure-4 of Reply dated February 8th, 2017 to the MPERC Letter dated December 31st, 2016 is also attached as ANNEXURE – 1.”

Provisions under Regulations

133. Regarding Foreign Exchange Rate variation of the project, Regulation 50 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides that:

50. Foreign Exchange Rate Variation:

50.1 *The generating company may hedge foreign exchange exposure in respect of the interest on foreign currency loan and repayment of foreign loan acquired for the generating station in part or in full in the discretion of the generating company.*

50.2 *As and when the petitioner enters into any hedging based on its approved hedging policy, the petitioner should communicate to the beneficiaries concerned about its hedging decision within thirty days of entering into such hedging transaction(s).*

50.3 *Every generating company shall recover the cost of hedging of foreign exchange rate variation corresponding to the normative foreign debt, in the relevant year on year-to-year basis as expense in the period in which it arises and extra rupee liability corresponding to such foreign exchange rate variation shall not be allowed against the hedged foreign debt.*

50.4 *To the extent the generating company is not able to hedge the foreign exchange exposure, the extra rupee liability towards interest payment and loan repayment corresponding to the normative foreign currency loan in the relevant year shall be permissible provided it is not attributable to the generating company or its suppliers or contractors.*

50.5 *Every generating company shall recover the cost of hedging and foreign exchange rate variation on year-to-year basis as income or expense in the period in which it arises.*

134. Regulation 51 of MPERC (terms & Conditions for determination of Generation Tariff) Regulations, 2015 further provides that

51. Recovery of cost of hedging or Foreign Exchange Rate Variation:

Recovery of cost of hedging or foreign exchange rate variation shall be made directly by the generating company from the beneficiaries without making any application before the Commission: Provided that in case of any objections by the beneficiaries to the amounts claimed on account of cost of hedging or foreign exchange rate variation, the generating company may make an appropriate application before the Commission for its decision.

135. The Respondent No. 1 has offered the following comments on this issue.

“In Para 8 itself at Sl. No. 12 of the Table 8, the Petitioner has shown a claim of Rs. 3.06 Crores towards Foreign Exchange Rate Variation (FERV) on actual interest paid on FCCB on 31.03.2015 not allowed for FY 2014-15. The Hon’ble Commission had passed Order Dated 24.05.2017 in P.No. 72/2015 after considering all the relevant facts including actual FERV permissible under extant Tariff Regulations. Therefore, the claim of the Petitioner in respect of disallowed FERV is strongly opposed and it is prayed that the same may kindly be rejected.”

Commission’s Analysis

136. With regard to Foreign Exchange Rate Variation (FERV), it is observed that the petitioner filed an amount of Rs.3.06 Crore towards FERV on interest part of FCCB as on 31.03.2015.

137. With regard to above claim towards FERV, the following status of petitioner’s filing right from its first petition for determination of final tariff upto several true-up petitions is given below:

- i. The Commission issued final tariff order of the Nigrie thermal power project on 24th May’ 2017 in petition No. 72 of 2015. In the aforesaid final tariff order, the Commission had determined the tariff for FY 2014-15 based on the Annual Audited Accounts and FERV of Rs. 38.19 Crore for FY 2014-15 on actual basis as filed by the petitioner. But FERV of Rs. 3.06 Crore now claimed in subject petition was neither filed in its petition No. 72 of 2015 nor in any subsequent additional submissions of the petitioner in that petition. Therefore, the FERV claimed in final tariff petition was completely allowed in Commission’s order dated 24th May’ 2017.
- ii. Subsequently, the petitioner filed true-up petition No. 41 of 2017 for FY 2015-16 based on the Annual Audited Accounts. The petitioner had not filed its FERV claim of Rs 3.06 Crore in the petition placed in the public domain for inviting comments/suggestions. Vide order dated 20th July’ 2018, the Commission issued order on the aforesaid true-up petition.
- iii. The petitioner had also filed MYT petition No. 07 of 2018 for the control period FY 2016-17 to FY 2018-19 based on the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015. No such claim was filed in this petition also. The Commission had issued the MYT order on the aforesaid petition on 29th November’ 2018.
- iv. The petitioner filed true-up petition No. 05 of 2019 for FY 2016-17. The petitioner had not claimed any amount towards FERV on interest of FCCB in

the petition. The Commission vide order dated 25th July' 2019 issued the order on the aforesaid petition No. 05 of 2019.

138. In view of the above, it is observed that in the final tariff order dated 24th May' 2017, the Commission had allowed FERV for FY 2014-15 as filed by the petitioner in its additional submission. Further, the petitioner had never claimed FERV of Rs. 3.06 crore in the true-up/ MYT petitions filed after issue of aforesaid final tariff order. The Commission has also observed that all aforesaid orders issued by the Commission have been challenged by the petitioner before Hon'ble Appellate Tribunal for Electricity and these orders are *sub-judice* before Hon'ble Tribunal as on date. The petitioner has never challenged this issue of FERV of Rs. 3.06 Crore in any of its Appeal.
139. The final tariff order dated 24th May' 2019 was issued by the Commission after considering all the relevant facts including actual FERV permissible under applicable MPERC Tariff Regulations. Therefore, the claim of the petitioner in the subject petition with respect to FERV is not considered in this order.

Summary of Annual Capacity (fixed) charges:

140. The details of the Annual Capacity (fixed) Charges for FY 2017-18 as determined in the MYT order dated 29th November' 2018 vis-a-vis allowed in this true-up order at normative Plant Availability Factor are summarized as given below:

Table 34: Annual Capacity Charges at normative availability: (Rs. in Crore)

Sr. No.	Particular	Unit	Allowed in MYT Order dated 29.11.2018 for FY 2017-18	Determined in this True-up order for FY 2017-18	True-up Amount for FY 2017-18
1	Return on equity	Rs Cr.	364.25	372.66	8.41
2	Interest charges on loan	Rs. Cr.	741.15	784.13	42.99
3	Depreciation	Rs. Cr.	536.69	546.69	10.00
4	O & M expenses	Rs. Cr.	228.36	228.36	0.00
5	Interest on working capital	Rs. Cr.	70.72	71.71	0.99
6	Lease Rent	Rs. Cr.	0.44	0.50	0.06
7	Annual capacity (fixed) charges	Rs. Cr.	1941.61	2004.06	62.45
8	Less: Non-Tariff Income	Rs. Cr.	3.64	15.15	11.51
9	Net AFC Recoverable	Rs. Cr.	1937.97	1988.91	50.94
10	AFC for 30% Contracted Capacity	Rs. Cr.	581.39	596.67	15.28

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

142. The above Annual Capacity Charges are determined corresponding to the

contracted capacity under PPA. The recovery of Annual Capacity charges shall be made by the petitioner in accordance with Clause 36.2 of the Tariff Regulations, 2015 on pro rata basis with respect to actual Annual Plant Availability Factor.

143. Respondent No. 1 (MPPMCL) in its response on the subject petition has contended that Regulation 8.7 to 8.10 of Tariff Regulations, 2015 mandate truing up of tariff of generating station based on the performance of controllable parameters and uncontrollable parameters. Mechanism of sharing of loss or gain is also laid down in Regulations. The Respondent No. 1 further submitted that the petitioner is required to file the monthly details of actual performance parameters (Controllable and Un-Controllable) achieved vis-à-vis normative parameters under Tariff Regulations, 2015. The petitioner is also required to file the details of financial gain if any, on account of controllable parameters and shared with the beneficiaries in light of the Regulation 8.9 of Regulations, 2015.

144. Regarding the truing-up of tariff based on the controllable operating parameters, Regulation 8.7 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 provides as under:

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

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

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

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

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

$$\text{Net Gain} = (\text{ECRN} - \text{ECRA}) \times \text{Scheduled Generation}$$

Where,

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

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

Provided that in case of hydro generating station, if the scheduled generation is more than saleable design energy, then the saleable design energy shall be considered in place of scheduled generation.

8.10 The financial gains and losses by a generating company on account of uncontrollable parameters shall be passed on to beneficiaries of the generating company.....”

145. In view of the above, vide letter dated 11th March' 2019, the petitioner was asked to file the monthly details of all the above performance parameters actually achieved vis-à-vis normative parameters under MPERC Tariff Regulations, 2015. The petitioner was also asked to file the details of financial gain, if any, on account of aforesaid controllable parameters and shared with the beneficiaries in light of the Regulation 8.9 of the Regulations, 2015.
146. By affidavit dated 18th April' 2019, the petitioner submitted a statement (Annexure-11) for month-wise details of ECR on actual operating parameters vis-à-vis on normative parameters along with the details of monthly financial gain/loss on account of aforesaid parameters in line with the Regulation 8.7 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015.
147. On perusal of the aforesaid statement/ details filed by the petitioner, the Commission has observed that the total energy charges of Rs. 161.62 Crore on normative parameters are worked out by the petitioner whereas, the energy charges of Rs. 158.93 Crore is worked out on actual parameters. Therefore, the petitioner has earned financial gain of Rs. 2.69 Crore on account of actual operating parameters achieved by it during FY 2017-18.
148. The Regulation 8.9 of the Tariff Regulations, 2015 provides that the financial gains by a generating company on account of controllable parameters shall be shared between generating company and the beneficiaries in the ratio of 2:1 on monthly basis with annual reconciliation. Therefore, the petitioner is directed to share the financial gain earned by the petitioner on account of better operating parameters to the beneficiary in the ratio of 2:1 in accordance to Regulation 8.3 of the Regulations, 2015.

Implementation of the order:

149. The petitioner must take steps to implement the order after giving seven (7) days' public notice in accordance with Clause 1.30 of MPERC (Details to be furnished and fee payable by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004 and its amendments and recalculate its bills for the energy supplied to Distribution Companies of the State/ M.P. Power Management Company Ltd. since 1stApril' 2017 to 31stMarch' 2018.
150. The petitioner is also directed to provide information to the Commission in support of having complied with this Order. The deficit/ surplus amount as a result of this order shall be passed on to MP Power Management Company Ltd/ three Distribution Companies of the state in terms of applicable Regulation in six equal monthly instalments during FY 2019-20 and onwards.
151. With the above directions, this Petition No. 07 of 2019 is disposed of.

(Mukul Dhariwal)
Member

(Dr. Dev Raj Birdi)
Chairman

Date :22nd October' 2019
Place : Bhopal

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

MPPMCL Comments:

1. That, the Petitioner has filed the present petition for True-up of Tariff of 2017-18, under section 62 and section 86(1)(a) of the Electricity Act, 2003 read with the MPERC (Terms and conditions for Determination of Generation Tariff) Regulations, 2015 [RG-26(III) of 2015](*Tariff Regulation, 2015 for short*), determined by Hon'ble Commission vide Multi Year Tariff Order Dated 29.11.2018 of its Coal Based 2x 660 MW Super Critical Thermal Power Station at Nigrie, Distt. Singrauli, Madhya Pradesh, due to additional capital expenditure incurred by the petitioner during Financial Year 2017-18.
2. That, this Hon'ble Commission vide Multi Year Tariff order dated 29.11.2008 passed in Petition No. 07 of 2018 determined the Multi Year Generation Tariff of the project for the control period FY 2016-17 to FY 2018-19 based on the opening capital cost of Rs. 10,585.56 Crores as on 31.3.2016. Hon'ble Commission in Para 38 of the Tariff Order dated 29.11.2018 decided that the additional capitalization and decapitalization filed in the MYT petitions shall be dealt while undertaking true-up exercise for FY 2016-17 and FY 2017-18.
3. That, the Petitioner, Jaiprakash Power Ventures Ltd., has now filed the present petition praying for true-up of the Tariff for the FY 2017-18 claiming Additional Capital Expenditure of Rs. 160.93 Crores said to be incurred during FY 2017-18.

JPVL Rejoinder:

Contents of Paragraph 1 to 3 of the Reply needs no response as the same relates to matter of record.

MPPMCL Comments:

4. That, the averments made by the Petitioner in the present Petition are denied and disputed unless specifically admitted or are matter of record. The Answering Respondent opposes and denies all claims which are unreasonable and those which are not permissible under "Tariff Regulations 2015".
5. The answering Respondent submits that all the True-up claims submitted by the Petitioner in the present petition are not in

accordance with the Tariff Regulations, 2015 and hence it is respectfully prayed to the Hon'ble Commission to reject all such claims.

IPVL Rejoinder:

That the contents of the Paragraphs 4 and 5 of the Reply filed by the Respondent No. 1 are untenable, vexatious and are categorically denied. Each and every averment contained in the instant Paragraph under Reply are hereby denied. It is submitted that the contents of the Paragraphs under Reply are solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice.

MPPMCL Comments:

6. The Answering Respondent submits following Preliminary Objections to the Petition for kind consideration of this Hon'ble Commission :

6(i) In Sub Para 4.1 (y) of the Petition, the Petitioner has stated that several Appeals are pending adjudication before Hon'ble Appellate Tribunal of Electricity for adjudication. Petitioner has also asserted that it reserves right to amend the present Petition on the basis of the judgment passed by Hon'ble APTEL in those Appeals.

7(v) In Sub Para 4.1 (y), the Petitioner has stated that several Appeal are pending adjudication before Hon'ble Appellate Tribunal of Electricity for adjudication. Petitioner has also asserted that it reserves right to amend the present Petition on the basis of the judgment passed by Hon'ble APTEL in those Appeals.

7(vi) It is therefore most humbly submitted that as the claims made by the Petitioner in the present True up Petition are very much uncertain and entirely dependent on the outcome of the Appeals pending before Hon'ble APTEL. Therefore it is most humbly prayed that the present Petition be kept pending till the Appeals are finally decided by the Hon'ble APTEL and there is certainty about the claims of the Petitioner. Otherwise the true up exercise by this Hon'ble Commission will be rendered redundant.

IPVL Rejoinder:

That the contents of the Paragraphs 6(i), 7(v) and 7(vi) of the Reply filed by the Respondent No.1 are untenable, vexatious, and repetitive in nature and are categorically denied. Each and every averment contained in the Paragraphs under Reply are hereby denied. It is submitted that the Respondent No.1 had averred in the Paragraphs under Reply that since the Petitioner has filed multiple Appeals against the orders of the Hon'ble Commission, the present True up Petition should be kept pending till the disposal of the

pending Appeals. It is respectfully submitted that each True up Petition raises a different cause of action and mere filing of an Appeal before the Hon'ble Appellate Tribunal against a separate and distinct order of the Hon'ble Commission cannot in no way bar/ curtail the jurisdiction to determine the true-up petition. Further, under the extant statutory framework there is no provision to withhold true-up of any year due to pendency of the appeal against an earlier tariff order.

It is submitted that, each issue raised by the Petitioner in the subsequent True up Petition shall be considered different from the previous True Up Petitions and ought to be dealt separately. The True-Up Petition for FY 2017-2018 has been filed as per Tariff Regulations and the regulations do not allow keeping the Petition pending on the grounds of pending appeals against other orders.

The impact of the orders passed by the Hon'ble APTEL in the pending Appeals in connection to various cases will have to suitably adjusted in the Tariff, in the future years. In view of the above, the averment made by the Respondent No.1 in the aforesaid paragraphs may kindly be dismissed for being wrong.

MPPMCL Comments:

- 6(ii) Without prejudice to above, in the present Petition, the Petitioner, has claimed Additional Capital Expenditure of Rs.149.50 Crore towards expenditure on Amelia coal Mine and Cost of Ownership of Amelia Coal Mine during FY 2017-18, which is not admissible under the provisions of Tariff Regulations 2015. The claim of Capital expenditure on Coal mines has already been disallowed by this Hon'ble Commission vide order dated 24.05.2017 passed in Petition No. 72/ 2015 for determination of final tariff for FY 14-15 to FY 15-16. The answering respondent reiterate the submission made vide its reply dated 24.02.2016 filed in Petition No. 72/2015.**
- 6(iii) That, despite of disallowance of Capital Expenditure on Amelia Coal Mines vide order dated 24.05.2017 passed in Petition No. 72/2015, the Petitioner had again claimed the said expenditure in Petition No.41/2017 filed for true up of tariff for FY 2015-16. The answering respondent in its reply dated 9.02.2018 filed in the aforesaid petition strongly opposed the claim and requested this Hon'ble commission to disallow the entire claim towards Coal Mines.**
- 6(iv) This Hon'ble Commission vide order dated 20.07.2018 passed in Petition No. 41/2017, once again disallowed the cost claimed towards Amelia Coal Mine.**

- 6(v) That, the Petitioner, had again claimed the Capital Expenditure towards Amelia Coal Mines in Petition No.07/2018 filed for determination of Multi Year Tariff for the period FY 2016-2019. The Answering Respondent in the reply dated 06.08.2018 filed in the aforesaid Petition strongly opposed the claim and requested this Hon'ble commission to disallow the entire claim towards Coal Mines. This Hon'ble Commission vide order dated 29.11.2018 disallowed the cost claimed towards Amelia Coal Mines.
- 6(vi) Therefore it is most humbly prayed that the claim of Additional Capital Cost towards expenditure on Amelia Coal Mine may not be allowed as the same has been repeatedly rejected by this Hon'ble Commission.
- 7(viii) In Sub Paras 4.1 (aa) and (ab), the Petitioner has given details of Additional Capital Cost (Table 2) said to have been incurred as per actual Audited Accounts and also the Total Capital Cost (Table 3) during FY 2016-17 as submitted by the Petitioner in True-up Petition No. 05 of 2019. It is apparent that the Additional Capital Cost and Total Capital Cost claimed in P. No. 05 of 2019 also include alleged Additional Capital Expenditure and Total Capital Expenditure incurred in Amelia Coal Mine. As this Hon'ble Commission has consistently rejected the claim of the Petitioner in respect of Amelia Coal Mine, because Tariff Regulations 2015 do not permit such capital expenditure. Therefore it is most humbly prayed that this Hon'ble Commission may graciously be pleased to ignore/ reject the Additional Capital Cost claimed as incurred in Amelia Coal Mine and therefore the Total Capital Cost inclusive of Additional Capital Cost said to have been incurred on Amelia Coal Mine.
- 7(ix) Further, the Answering Respondent reiterates its Reply dated 9.2.2018 submitted in Petition No. 41/2017 and Reply dated 6.08.2018 submitted in petition no. 07 of 2018 and denies and opposes the claim of the Additional Capital Cost including claim towards Amelia Coal Mine during FY2017-18, as the claim is not maintainable under provisions of Tariff Regulations 2015 and this Hon'ble Commission vide order dated 20.07.2018&28.11.2018 has already disallowed the same.
- 7(x) The observations of the Hon'ble MPERC in its order Dated 20.07.2018 passed in P. NO. 41 of 2017, as regards the claim of the Petitioner as regards capital expenditure incurred on Amelia Coal Mine, are extracted below:

“54. With regard to above claim of the petitioner, the Commission has observed that the claim of petitioner for additional capitalization on account of Tangible and Intangible assets of Amelia Mine and also the “Additional Premium” is not in accordance with MPERC (Terms and conditions for Determination of generation Tariff), Regulations 2012. Moreover, the issues in aforesaid claim are sub-judice before the Hon’ble Appellate Tribunal for Electricity in the following Appeals filed by the petitioner;

- (a) Appeal No. 95 of 2016 against the order dated 20th January’ 2016 passed by the respondent state Commission in SMP 49 of 2015 regarding “review and determination of energy charges”.**
- (b) Appeal No.244 of 2017 against Commission’s Order dated 24.05.2017 for determination of final generation tariff for 2X660 MW Unit No. 1&2 of Petitioner’s power plant in the subject petition.**

In view of the above, the claim of Rs 695.98 Crore towards additional capitalisation on account of assets of Amelia Mine and the “Additional Premium” is not considered by the Commission in this order.”

[Emphasis Added]

7(xi) In Para 5.1, in Table 4, the petitioner has indicated Additional Capital Expenditure of Rs. 160.93 Crs and Rs. 149.50 Crs as additions during FY 2017-18 on Generating Station and Amelia Mines respectively. The answering respondent denies and opposes all Additional Capital Expenditure claimed including that towards Amelia Coal Mine during FY 2017-18 because the claims are not maintainable under the provisions of Tariff Regulations 2015.

JPVL Rejoinder:

That the contents of the Paragraphs 6(ii), (iii), (iv), (v), (vi), 7(viii), (ix), (x) & (xi) of the Reply filed by the Respondent No.1 are untenable, vexatious, repetitive in nature and are categorically denied. Each and every averment contained in the Paragraphs under Reply are hereby denied. Moreover, as specifically averred by the Respondent No.1 regarding disallowance of Capital Expenditure on Coal Mines in Petition No. 72/2015, it is respectfully submitted that Capital Cost determined by the Hon’ble Commission in Petition No.72/2015 was only up to 31-03-2015 and Provisional Additional Capitalization (including Amelia Capital cost) during FY 2015-16 was not considered at all at that stage. The Petitioner started including Amelia Capital Cost in Additional Capitalization from FY

2015-16 onwards when the ownership of Amelia Mines was vested with the Petitioner. Hence, the averment of the Respondent that the Hon'ble Commission had disallowed the Amelia Capital Cost in Petition No.72/2015 is misconstrued. It is further submitted that the expenditure incurred towards procurement of assets inter alia land and infrastructure for Amelia (North) Coal Mine (hereinafter referred to as "**Amelia Mines**") alongwith the cost of obtaining statutory permits/ approvals with respect to the same is in nature of capital expense. Such capital expense had been incurred for procuring assets which are necessary for providing coal to generating station of the project and ought to be allowed by the Ld. Hon'ble commission.

Further, it is respectfully submitted that MPPMCL, has failed to appreciate that the Petitioner has incurred expenditure by way of Additional premium on account of acquiring or bringing into existence an asset of an enduring benefit (coal mine) for the generation business. Therefore, the same ought to be approved by the Hon'ble Commission towards capitalization in Amelia Mine. It is stated that MPPMCL had stated that the claim regarding capital expenditure been disallowed by this Hon'ble Commission vide Petition No. 41 of 2017 and therefore, the Petitioner cannot raise a claim in this respect. It is respectfully submitted that the claim regarding capital expenditure in the Amelia Mines is well within the terms of the Tariff Regulations, 2015. Further, it is noteworthy that the issues regarding expenditure on Amelia Mines on account of Additional Premium on coal supplied is pending adjudication vide Appeal No. 95 of 2016 and Appeal No. 244 of 2017 before the Hon'ble Appellate Tribunal of Electricity ("**Hon'ble Tribunal**"). Further, the Petitioner has also preferred an Appeal against the True Up Order wherein the issues regarding additional capitalization of the Amelia Mines is being taken up. It is submitted that the factual basis for the Petitioner's claims have already been detailed in Petition and the same is not repeated herein for the sake of brevity.

The Petitioner humbly submits that the additional net capitalization in Generating Station and in Amelia Mines fall within the norms specified under Regulation 20.1 of the Tariff Regulations. The said Regulation read as under:

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

- (i) Un-discharged liabilities recognized to be payable at a future date;*
- (ii) Works deferred for execution;*
- (iii) Procurement of initial capital spares within the original scope of work, in accordance with the provisions of Regulation 19;*

- (iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law; and
- (v) Change in law or compliance of any existing law.

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

*It is respectfully submitted that the legal basis for the Petitioner's claim is founded on a well settled principle of law that each tariff order is independent and gives rise to separate cause of action. It was held by the Hon'ble Tribunal in **Appeal No.133 of 2007** that:*

*"The Commission has raised a preliminary issue. The Commission says that it has taken this view in its earlier decisions No. of corrections Page 12 of 16 Appeal No. 133 of 2007 SH dated 26th June, 2003, 09th June, 2004 and 07th July, 2005. It is contended that since the appellant has not challenged this view in the earlier years it cannot challenge the view now. On behalf of the appellant it is contended that **each year's tariff fixation exercise is an independent proceeding and therefore this question can be agitated in the present appeal.**"*

15) It is not disputed by the counsel appearing before us that each assessment year of a tariff order gives rise to a fresh cause of action and can be challenged separately. It is also accepted at the bar that the principles of res judicata will not apply to the facts of this case."

In view of the above the averments of the Respondent in its reply may kindly be rejected and the petition may be allowed.

MPPMCL Comments:

6(vii) That, the admitted Project Capital cost as on 31.03.2016 is Rs. 10,585.56 Crore which is approx. Rs. 8.01 Crore/ MW and very high in comparison to CERC notified Bench Mark Hard Capital cost of Rs. 5 Crore Therefore, no additional capital cost may kindly be allowed and the Hon'ble Commission ought to keep the capital cost less than Rs. 5 Crore per MW as per the CERC norms.

IPVL Rejoinder:

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

*It is respectfully submitted that the Petitioner has already submitted in detail the reason for incurring additional capital expenditure under the various heads in the instant Petition and the Hon'ble Commission may refer to same. However, MPPMCL has declared that the capital cost upto 31.03.2015 is higher than the notified benchmark hard capital cost notified by the Hon'ble Central Electricity Regulatory Commission ("**Hon'ble Central Commission**") and on this basis, no additional capitalization may be permitted by this Hon'ble Commission.*

It is respectfully submitted that the Hon'ble Commission had admitted the capital cost of the Project as on 31.03.2015 vide order dated 24.05.2017 passed in Petition No. 72 of 2015 only after having carried out prudence check according to the applicable provisions of the Tariff Regulations. It may be noted that the Respondent had not contested such capital cost approved by the Hon'ble Commission. It may further be acknowledged that the Hon'ble Commission determined Capital cost of the Project up to 31.03.2016 vide True Up order dated 20-07-2018 in Petition No. 41/2017 and is noteworthy that the Respondent No 1 did not raise the issues of benchmark cost during True Up Proceedings. In these circumstances the Respondent No. 1 cannot be allowed to agitate the issue in the present proceedings.

In view of above, it is respectfully submitted that Capital Cost of the Project is well within the benchmark norms specified by the Hon'ble Central Commission, even after factoring in the additional capitalization in the Project. In these circumstances, the Hon'ble Commission ought to allow the additional capital expenditure as claimed by the Petitioner herein.

MPPMCL Comments:

6(viii) It is humbly submitted that Regulation 8.7 to 8.10 of Tariff Regulations, 2015 mandate truing up of tariff of generating station based on the performance of controllable parameters and uncontrollable parameters. Mechanism of sharing of loss or gain is also laid down. The relevant Regulations are extracted below :

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

Controllable Parameters:

- (iv) Station Heat Rate;***
- (v) Secondary Fuel Oil Consumption; and***
- (vi) Auxiliary Energy Consumption;***

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

- (iv) Force Majeure;**
- (v) Change in Law; and**
- (vi) Primary Fuel Cost.**

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

$$\text{Net Gain} = (\text{ECRN} - \text{ECRA}) \times \text{Scheduled Generation}$$

Where,

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

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

Provided that in case of hydro generating station, if the scheduled generation is more than saleable design energy, then the saleable design energy shall be considered in place of scheduled generation.

8.10 The financial gains and losses by a generating company on account of uncontrollable parameters shall be passed on to beneficiaries of the generating company.

.....”

- (ix) In view of above provisions of Regulations 8.7 to 8.10 of Tariff Regulations 2015, the Petitioner is required to file the monthly details of actual performance parameters (Controllable and Un-Controllable) achieved vis-à-vis normative parameters under Tariff Regulations, 2015. The Petitioner is also required to file the details of financial gain if any, on account of controllable parameters and shared with the beneficiaries in light of the Regulation 8.9 of Regulations, 2015.**

IPVL Rejoinder:

Contents of the instant Paragraphs filed by the Respondent No. 1 are, untenable, vexatious and are categorically denied. Each and every averment contained in the paragraphs under Reply are hereby denied. It is submitted that the contents of the instant Paragraphs under Reply are solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice. It is submitted that month wise details of all the Controllable Parameters are in line with Regulation 8.7 of the Tariff Regulations along with the details of financial gain on account of Controllable Parameter has already been submitted with Hon'ble Commission in reply to MPERC Letter dated March 11th, 2019.

MPPMCL Comments:

6(x) As per Regulation 8.8 (iii) of Tariff Regulations 2015, the Hon'ble Commission is required to carry out True up of Tariff of Generating Station on the performance of "Primary Fuel Cost". It is therefore respectfully prayed that this Hon'ble Commission may graciously be pleased to direct Petitioner to submit requisite records for the purpose of true up on the Primary Fuel Cost.

IPVL Rejoinder:

The contents of the Paragraph 6(x) of the Reply filed by the Respondent No. 1 are, untenable, vexatious and are categorically denied. It is submitted that the contents of the instant Paragraph under Reply are solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice. It is submitted that the Petitioner never shied away from giving any additional information including "Primary Fuel Cost" as and when sought by Hon'ble Commission. It is submitted that the Petition has been filed in terms of the Tariff Regulations and all the requisite information has been provided to the Hon'ble Commission.

MPPMCL Comments:

6(xi) In Form TPS -15 (at Page 95 of Petition), submitted along with the present Petition, the Petitioner has indicated "Transportation Charges by Rail/ Ship/ Road Transport" as "Nil", whereas, the Petitioner has claimed Rs. 110 Crore as Railway Freight (at Page 101 of the Petition). The Petitioner may kindly be directed to explain this anomaly.

IPVL Rejoinder:

The contents of the Paragraph 6(xi) of the Reply filed by the Respondent No. 1 are, untenable, vexatious and are categorically denied. It is the contention of the Respondent No.1 that the Petitioner has shown the transportation charges by Rail/ Ship/ road as 'NIL'

in TPS -15 whereas the Petitioner has claimed an amount of Rs. 110 Crores towards Transportation Charges in the monthly bills submitted. With regard to the above the Petitioner would like to submit that the cost of transportation charges has been taken into consideration in TPS-15 under the head 'Amount Charged by the Coal/ Lignite Company'. However, it is not shown separately under the head 'Transportation Charges by rail/ ship/ road transport'.

MPPMCL Comments:

- 7(i) Sub Paras 1.1 to 1.3 are matters of record and do not require comments.**
- 7(ii) Sub Paras 2.1 to 2.6 are matters of record and do not require comments.**
- 7(iii) In Sub Paras 3.1 to 3.4 the Petitioner has extracted the provisions of the Tariff Regulations 2015 and PPA Dated 05.01.2011, hence do not require comments.**
- 7(iv) Sub Paras 4.1 (a) to (x) are matters of record. However all averments made by the Petitioner in addition to the records or not relevant to the present Petition are denied.**

JPVL Rejoinder:

The contents of the Paragraph 7(i) to (iv) of the Reply are formal in nature and hence needs no Reply.

MPPMCL Comments:

- 7 (vii) In Sub Paras 4.1 (z), the Petitioner has purportedly indicated Capital Cost as on 31.03.2016 (Table 1) as determined by the Hon'ble MPERC in P. No. 41 of 2017 by its order dated 20.07.2018, hence does not require comments.**

JPVL Rejoinder:

The contents of the Paragraph 7(vii) of the Reply are formal in nature and hence needs no Reply.

MPPMCL Comments:

- 7(xii) In Para 5.2, the Petitioner has indicated that it has sold/ discarded assets amounting to Rs. 0.60 Crore in Generation Station. It has also mentioned that fact of decapitalizing assets amounting to Rs. 12.32 Crore in Amelia Coal Mine, which have not been deleted. This statement is not relevant for the purpose of the present True-up as the Petitioner has also indicated that Hon'ble Commission had rejected claims in respect of Amelia Coal Mine in its order dated 20.07.2017 passed in P. No. 41 of 2017.**

IPVL Rejoinder:

That the contents of the Paragraph 7 (xii) of the Reply filed by the Respondent No. 1 are untenable, vexatious and are categorically denied. Each and every averment contained in the instant Paragraph under Reply are hereby denied. It is submitted that the contents of the Paragraph under Reply are solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice. It is submitted that Petitioner herein in Paragraph 5.2 of the True up Petition has stated the relevant facts before the Hon'ble Commission and it is the prerogative of the Hon'ble commission to regard or disregard a particular statement of fact and not of the Respondent No. 1 herein.

MPPMCL Comments:

- 7(xiii) In Sub Para 6.1 (a), the petitioner has claimed Additional Capital Expenditure of Rs. 0.36Cr. in respect of Boiler 2 on account of consultancy charges. The work was said to have been executed in FY 2014-15, however bill is said to have been paid in FY 2017-18. This claim needs due verification as there is a long gap in raising of the bill and its payment.**
- 7(xiv) In Sub Para 6.1 (b), the petitioner has claimed Additional Capital Expenditure of Rs. 2.68Cr. towards BOP equipment. In Sub Paras 6.1 (b) (i) to 6.1 (b) (xiii) the Petitioner has purportedly given details of Additional Capital Expenditure on individual items of BOP. It may kindly be seen that most of the works were said to have been executed in FY 2014-15, however the bills are said to have been paid in FY 2017-18.**

IPVL Rejoinder:

That the contents of the Paragraph 7(xiii) to (xiv) of the Reply filed by the Respondent No. 1 are untenable, vexatious and are categorically denied. Each and every averment contained in the instant Paragraph under Reply are hereby denied. It is respectfully submitted that the additional capital expenditure incurred by the Petitioner on account of BTG and BOP equipment is within the Original Scope of Work and covered by Regulation 20.1 of the Tariff Regulation. It may be noted that, most of the works were executed during FY 2014-15 and only minor works were carried out during FY 2017-18. However, the bills for all such work were paid during FY 2017-18. In these circumstances, the said expenditures were capitalized during FY 2017-18 which is within the prescribed cut-off date.

It is humbly submitted that as mentioned above, the main work were completed in FY 2014-15, however, furnishing works and final negotiations/ reconciliations took time because of which actual capitalization spills over to next accounting periods.

Therefore, the expenditure claimed by the Petitioner on the foregoing accounts ought to be allowed by the Hon'ble Commission.

MPPMCL Comments:

7(xv) It is most humbly submitted that Additional Capital Expenditures on following items do not seem to be in the original scope of work :

- a. In Sub Para 6.1 (b)(i), amounts of Rs. 0.09 Cr. and Rs. 0.04 Cr. are said to have been incurred towards procurement of Kirloskar make Turbine Pump for installation in Control Monitoring Basin (CMB) and KSB make Pump Set (KS072) for installation at modified RO Permeate Tank for back wash of RO membrane. These items do not appear to be in the Original Scope of Work.**
- b. In Sub Para 6.1 (b)(vii), it is stated that an expenditure of Rs. 0.10 Cr. was incurred for procurement of Portable Centrifuge Machine, which does not appear to be in the Original Scope of Work.**
- c. In Sub Para 6.1 (b)(viii), it is stated that an expenditure of Rs. 0.88 Cr. was incurred for procurement of various sizes of Dozers, JCB, Loader, Water Tankers, Service Van & other construction equipment. These items do not appear to be in the Original Scope of Work.**
- d. In Sub Para 6.1 (b)(ix), it is stated that an expenditure of Rs. 0.04 Cr. was incurred for procurement of Drill Machine, Trimeter, Brush Cutter, Petrol Chain Saw Machine and KSB Make Submersible Pump, which do not appear to be in the Original Scope of Work.**
- e. In Sub Para 6.1 (b)(x), it is stated that an expenditure of Rs. 0.09 Cr. was incurred for procurement of Office Equipment etc, which do not appear to be in the Original Scope of Work.**
- f. In Sub Para 6.1 (b)(xi), it is stated that an expenditure of Rs. 0.41 Cr. was incurred for procurement of Complete Set of SF6 Circuit Breaker, which does not appear to be in the Original Scope of Work.**
- g. In Sub Para 6.1 (b)(xii), it is stated that an expenditure of Rs. 0.47 Cr. was incurred for procurement of ATN Self Propelled Boom Lift, which does not appear to be in the Original Scope of Work.**
- h. In Sub Para 6.1 (c)(i), it is stated that an expenditure of Rs. 5.77 Crore was incurred for increasing height of Ash Pond II for storage of**

wet Fly Ash, which does not appear to be in the Original Scope of Work.

- i. In Sub Para 6.1 (c)(iii), it is stated that an expenditure of Rs. 0.20 Crore was incurred for construction of drainage system, which does not appear to be in the Original Scope of Work.
- j. In Sub Para 6.1 (c)(iv), it is stated that an expenditure of Rs. 2.97 Crore was incurred for construction of roads and culverts, which does not appear to be in the Original Scope of Work.

JPVL Rejoinder:

That the contents of the instant paragraph filed by the Respondent No. 1 are, untenable, vexatious and are categorically denied. Each and every averment contained in the instant Paragraph under Reply are hereby denied. It is submitted that the contents of the instant paragraph under Reply are solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice.

It is respectfully submitted that the Petitioner incurred an additional capital cost of Rs. 2.68 crores attributed to the BOP equipment and every detail summarized in the Tariff petition under the head of BOP equipment is within the scope of original work. The Petitioner humbly submits that the net additional capitalization under the aforesaid head falls within the norms specified under the Regulation 20.1 of the Tariff Regulation. The Petitioner humbly submits before the Hon'ble Commission in light of the Tariff Regulation 20.1 that the said additional capitalization under the abovementioned head is well within the original scope of the work for which Rs.12,400 Crores were authorized by the Board of Directors vide Resolution dated 30th May 2015 approving the Final Project Cost.

MPPMCL Comments:

- 7(xvi) Regulation 20.3 of Tariff Regulations 2015 specifies admissible Capital Expenditure for an existing generating station incurred or projected to be incurred on the following counts after the cut-off date subject to prudence check by Hon'ble Commission. The relevant Regulation is extracted below for ready reference :

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

-
- (a) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law;**
 - (b) Change in law or compliance of any existing law;**
 - (c) Any expenses to be incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies of statutory authorities responsible for national security/internal security;**
 - (d) Deferred works relating to ash pond or ash handling system in the original scope of work;**
 - (e) Any liability for works executed prior to the cut-off date, after prudence check of the details of such un-discharged liability, total estimated cost of package, reasons for such with holding of payment and release of such payments etc.;**
 - (f) Any liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments;**
 - (g) Any additional capital expenditure which has become necessary for efficient operation of generating station other than coal based stations, the claim shall be substantiated with the technical justification duly supported by the documentary evidence like test results carried out by an independent agency in case of deterioration of assets, report of an independent agency in case of damage caused by natural calamities, obsolescence of technology, up-gradation of capacity for the technical reason such as increase in fault level;**
 - (h) In case of hydro generating stations, any expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company) and due to geological reasons after adjusting the proceeds from any insurance scheme, and expenditure incurred due to any additional work which has become necessary for successful and efficient plant operation;**
 - (i) Any capital expenditure found justified after prudence check necessitated on account of modifications required or done in fuel receiving system arising due to non-materialization of coal supply corresponding to full coal linkage in respect of thermal generating**

station as result of circumstances not within the control of the generating station:

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

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

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

.....”

- 7(xvii) Therefore the claims made by the Petitioner which are not covered Regulation 20.3 may not be allowed. Besides, all the other claims need due verification as there is a long gap in raising of the bill and its alleged payment.

JPVL Rejoinder:

That the contents of the Paragraphs 7 (xvi) to (xvii) filed by the Respondent No. 1 are, untenable, vexatious and are categorically denied. Each and every averment contained in the instant Paragraph under Reply are hereby denied. It is submitted that the contents of the instant paragraph under Reply are solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice. It is submitted that the averment of the Respondent No. 1 that the claims of the Petitioner fall within the Regulation 20.3 of the Tariff Regulation is grossly mistaken. It is hereby clarified by the Petitioner that the claims of Additional Capitalization have been made under Regulation 20.1 of the Tariff Regulation since the Additional Capitalization for FY 2017-18 have been made before the cut-off date. The said Regulation is reproduced as follow:

“20. Additional Capitalisation and De-capitalisation:

- 20.1 *The capital expenditure in respect of the new project or an existing project incurred or projected to be incurred, on the following counts within the original scope of work, after the date of commercial operation and **up to***

the cut-off date may be admitted by the Commission, subject to prudence check:

.....

The Petitioner would humbly like to apprise the Hon'ble Commission that the definition of cut off date as laid out by Tariff Regulation states that "Cut-off date" means 31st March of the year closing after two years of the year of commercial operation of the Project, and in case the Project is declared under commercial operation in last quarter of a year, the Cut-off date shall be 31st March of the year closing after three years of the year of commercial operation. In view of the same, the Petitioner would like to submit that Unit II of Jaypee Nigrie Super Thermal Project achieved COD on 21st February 2015 which fell in the last quarter of the FY 2014-15. Therefore, the cut-off date for the project falls on 31st March 2018.

*It is submitted that the Respondent No. 1 have therefore wrongly quoted Regulation 20.3 of the Tariff Regulation in Paragraph (xvi) which provides for additional capitalization **after** the cut off date whereas claims of the Petitioner lie under Regulation 20.1 of the Tariff Regulation which provides for additional capitalization **upto** the cut-off date.*

MPPMCL Comments:

- 7(xviii) In Para 6.2 the Petitioner has given the details of de-capitalisation/ deletion of Capital Cost in Generating Station to the tune of Rs. 0.60 Crore, which is said to have been duly reduced from the capital cost and due depreciation adjustment is also said to have been made.**

IPVL Rejoinder:

Regarding decapitalization mentioned in the Para 5.2 of the Petition No. 07/2019, it is reiterated that the suitable depreciation adjustments have been made.

MPPMCL Comments:

- 7(xix) In Para 6.3 the Petitioner has claimed Rs. 3.83 Crs. as addition on account of Tangible Assets, Rs. 145.67 Crs. as addition on account of ownership of mining rights. It most humbly submitted that no expenditure on Amelia mines is admissible under Capital Cost of the Power Station as per provisions of "Tariff Regulations 2015". The answering respondent has already opposed the same in its reply dated 24.02.2016 filed in Petition No. 72/2015 and also in reply dated 9.02.2018 filed in Petition No.41/2017 and also in reply dated 06.08.2018 filed in Petition No. 07/2018.**
- 7(xx) The claim of Capital Expenditure/ Additional Capital Expenditure on Coal mines has already been disallowed by this Hon'ble Commission vide order**

dated 24.05.2017 passed in Petition No. 72 /2015 in the matter of determination of final tariff for FY 2014-15 to FY 2015-16 and also vide order dated 20.07.2018 passed in petition no. 41 of 2017 and also vide order dated 29.11.2018 passed in petition no. 07/2018. The answering respondent reiterate the submission made vide its reply dated 24.02.2016 filed in Petition No. 72/2015 and reply dated 9.02.2018 filed in petition no. 41 /2017 and reply dated 06.08.2018 filed in Petition No. 07/2018. The petitioner, despite of disallowance of Capital Expenditure on Coal Mines by this Hon'ble Commission in aforesaid petitions, again claimed the same in present petition.

- 7(xxii) Multiple appeals on the issue of disallowance of expenditure incurred on Amelia Coal Mines are pending before Hon'ble APTEL. Despite the above facts, the petitioner has again claimed the same. The case law cited by the Petitioner has no application to the facts of the present case. The claim is totally unjust, unreasonable and not admissible under Tariff Regulations 2015 and hence kindly be disallowed.
- 7(xxiii) In Para Para7.1, in Table 5, the Petitioner has summarized total capital cost, considering all additions claimed as Capital Cost and after making adjustments as regards de-capitalisation/ deletions during FY 2017-18
- 7(xxiii) In view of the aforesaid submissions made by the answering respondent, most of the additional capital cost claimed by the petitioner for FY 2017-18 are not admissible under the provisions of "Tariff Regulations 2015" and therefore it is respectfully prayed that Hon'ble Commission may graciously be pleased to disallow any claim of Additional Capital Cost which is not as per the provisions of Tariff Regulations 2015 and allow the Annual Capacity Charges for FY 2017-18 accordingly.
- 7(xxiv) In Para 7.1 itself, in Table 6, the Petitioner has shown Capital Cost incurred up to 31.03.2018 on Amelia Coal Mine. It is most humbly prayed that this Hon'ble Commission may graciously be pleased to reject this claim owing to the grounds urged in forgoing paras. The submissions are not being reproduced for the sake of brevity.
- 7(xxv) In Para 7.1 itself, in Table 7, the Petitioner has shown Total Capital Cost incurred up to 31.03.2018 both on Generating Plant and Amelia Coal Mine. It is most humbly prayed that this Hon'ble Commission may graciously be pleased to reject this claim owing to the grounds urged in forgoing paras. The submissions are not being reproduced for the sake of brevity.

IPVL Rejoinder:

That the contents of the instant paragraph filed by the Respondent No. 1 are, untenable, vexatious and are categorically denied. Each and every averment contained in the instant Paragraph under Reply are hereby denied. It is submitted that the contents of the Paragraph under Reply are solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice.

It is submitted that the Paragraphs under Reply are repetitive in nature and reiterates the denial of Additional Capital claims of the Petitioner pertaining to Amelia Coal Mines and Generating Station. The same have been duly replied by the Petitioner in the above Paragraphs of the Instant Rejoinder and hence same is not repeated herein for the sake of brevity.

MPPMCL Comments:

7(xxvi) Para 7.2 appears to be statement of fact, hence does not require comments.

IPVL Rejoinder:

That the contents of the instant Paragraph under Reply do not merit specific Reply/ comments.

MPPMCL Comments:

7(xxvii) In Para 8, in Table 8, the Petitioner has indicated its claim of Annual Capacity Charges. It is most humbly prayed that this Hon'ble Commission may graciously be pleased to reject this claim owing to the grounds urged in forgoing paras the submissions are not being reproduced for the sake of brevity.

IPVL Rejoinder:

That the contents of the instant paragraph filed by the Respondent No. 1 is, untenable, vexatious and is categorically denied. Each and every averment contained in the instant Paragraph under Reply is hereby denied. It is submitted that the contents of the Paragraph under Reply are solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice.

MPPMCL Comments:

7(xxviii) Also, in Para 8 itself at Sl. No. 12 of the Table 8, the Petitioner has shown a claim of Rs. 3.06 Crores towards Foreign Exchange Rate Variation (FERV) on actual interest paid on FCCB on 31.03.2015 not allowed for FY 2014-15. The Hon'ble Commission had passed Order Dated 24.05.2017 in P. No. 72/2015 after considering all the relevant facts including actual FERV permissible under extant Tariff Regulations. Therefore the claim of the

Petitioner in respect of disallowed FERV is strongly opposed and it is prayed that the same may kindly be rejected.

JPVL Rejoinder:

That the contents of the instant paragraph filed by the Respondent No. 1 is, untenable, vexatious and is categorically denied. Each and every averment contained in the instant Paragraph under Reply is hereby denied. It is submitted that the contents of the Paragraph under Reply are solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice.

The Petitioner very respectfully takes the liberty to draw the kind attention of the Hon'ble Commission towards Paragraphs No. 214 -217 of the Tariff Order dated 24-05-2017 in Petition No. 72/2015. Vide Paragraph No.217 the Hon'ble Commission had graciously allowed the Petitioner Rs.38.19 crore on account of FERV on the actual repayment of USD 231,47,540.53. The petitioner hereby submits that this payment was made along with USD 18,52,459.97 towards interest as well, hence total payment made by the Petitioner was 2,50,00,000 USD (INR 156.55 crores). Out of this Hon'ble Commission allowed Rs 38.19 crore towards FERV on principal repayment but FERV of Rs. 3.06 crores on actual Interest Component of USD 18,52,459.97 was not allowed. For Reference Annexure 1 of the True - up petition filed by the Petitioner may please be referred.

It is humbly submitted that each tariff year gives rise to separate cause of action to the Petitioner and each claim is required to be determined in light of the extant regulatory and statutory framework.

MPPMCL Comments:

7(xxix) Paras 9, 10 and 11 do not merit comments.

JPVL Rejoinder:

That the contents of the instant Paragraph under Reply do not merit specific Reply/ comments.

MPPMCL Comments:

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

JPVL Rejoinder:

That the contents of the instant paragraph filed by the Respondent No. 1 are, untenable, vexatious and are categorically denied. Each and every averment contained in the instant Paragraph under Reply are hereby denied. It is submitted that the contents of the Paragraph under Reply are solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice.

MPPMCL Comments:

It is most humbly prayed that the Commission may graciously be please to –

1. **Keep pending the present Petition for True-up of Generation Tariff for FY 2017-18 till the various appeals (A.No. 95/2016, A.No. 244/2015, A.No. 293/2018 and Appeal against Order Dated 29.11.2018 in P. No. 07/2018) filed/ proposed to be filed by the Petitioner in Hon'ble Appellate Tribunal for Electricity (APTEL), New Delhi are finally decided and there is clarity on the issues raised by the Petitioner/ Appellant;**
2. **Alternatively, direct the Petitioner to file Petition for True-up of Generation Tariff complying provisions of Regulation 8.7 to 8.10 of Tariff Regulations, 2015 to enable comprehensive True up by this Hon'ble Commission;**
3. **Reject the claim of Capital Expenditure/ Additional Capital Expenditure claimed for Amelia Coal Mine;**
4. **Apply appropriate prudence check to Additional Capital Expenditure (ACE) claimed for Generating Plant during FY 2017-18.**
5. **Carry out the true up of Primary fuel cost as per provisions of regulation 8.8(iii) of Regulations 2015 .**
6. **Pass such further and other Orders as this Hon'ble Commission may deem fit in the facts and circumstance of the case and in the interest of justice.**

JPVL Rejoinder:

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

It is respectfully submitted that the instant petition is *bonafide* in nature and under the settled position of law, the Hon'ble Commission ought to allow the revenue requirements of the Petitioner under various heads.

In view of the aforesaid, it is respectfully submitted that the Reply filed by MPPMCL is without any merits and seeks to misdirect the proceedings before this Hon'ble Commission. It is, therefore, most respectfully prayed that the present Petition filed by the Petitioner may kindly be allowed by the Hon'ble Commission.