

# MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

5<sup>th</sup> Floor, "Metro Plaza", Bittan Market, Bhopal - 462016



Petition No. 21 of 2020

**PRESENT:**

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

**Mukul Dhariwal, Member**

**Shashi Bhushan Pathak, Member**

**IN THE MATTER OF:**

**True-up of Generation Tariff for Unit No. 1 of 2 x 600 MW sub-critical coal based Thermal Power Project at District Anuppur (M.P.) determined by MP Electricity Regulatory Commission for FY 2018-19 vide Order dated 1<sup>st</sup> December' 2017.**

**M/s M. B. Power (Madhya Pradesh) Limited**

**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 8<sup>th</sup> February' 2021)**

1. M/s M.B. Power (Madhya Pradesh) Limited, (hereinafter called "the petitioner"), has filed the petition on 10<sup>th</sup> February' 2020 for True-up of Generation Tariff for FY 2018-19 for Unit No.1 (600 MW) in respect of its 2x600 MW coal based Thermal Power Project at Anuppur, determined by the Madhya Pradesh Electricity Regulatory Commission (hereinafter called the "Commission or MPERC") vide Tariff Order dated 1<sup>st</sup> December' 2017 in Petition No. 68 of 2016.
2. The subject true up petition has been filed under Sections 62 and 86 (1)(a) of the Electricity Act, 2003 and in terms of provision under Regulation 8.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 (herein after called "the Regulations, 2015").
3. The petitioner's thermal power station under subject petition comprises of two generating units. Date of Commercial Operation (COD) of Unit No. 1 and 2 are as given below:

**Table 1: COD of Thermal Generating Units**

<b>Sr. No.</b>	<b>Unit</b>	<b>Installed Capacity (MW)</b>	<b>Date of Commercial Operation (COD)</b>
1.	Unit No. 1	600 MW	20 <sup>th</sup> May' 2015
2	Unit No. 2	600 MW	7 <sup>th</sup> April' 2016

**Background**

4. On achieving CoD of Unit No. 1 of the project, the petitioner filed the petition (Petition No. 68 of 2016) for determination of final tariff of Unit No. 1 based on the Annual Audited Accounts for FY 2015-16. Vide order dated 1<sup>st</sup> December' 2017 in aforesaid petition, the Commission determined final generation tariff for Unit No.1 of the Project for the period from COD of Unit No. 1 (i.e. 20.05.2015) till 31.03.2016 in terms of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012. In the aforesaid order, the Commission also determined Multi Year tariff of Unit No. 1 for the control period FY 2016-17 to FY 2018-19 in accordance with the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 subject to true-up on annual basis based on the Annual Audited Accounts for the respective year .

5. Subsequently, vide order dated 6<sup>th</sup> September' 2018 in Petition No. 11 of 2018, the Commission had issued true-up order of Unit No. 1 for FY 2016-17 based on the Annual Audited Accounts for FY 2016-17. Further, vide order dated 12<sup>th</sup> June' 2019, in petition No. 51 of 2018, the Commission issued true-up order of Unit No. 1 for FY 2017-18 based on the Annual Audited Accounts for FY 2017-18. The aforesaid true-up orders were also based on the provisions under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.
6. The subject petition is filed for true-up of generation tariff of Unit No. 1 for FY 2018-19, determined vide Commission's order dated 1<sup>st</sup> December' 2017 in petition No. 68 of 2016. In aforesaid tariff order dated 01.12.2017, following Annual Capacity (fixed) Charges for FY 2018-19 were determined for Unit No. 1 of the Project:

**Table 2: Annual Capacity (Fixed) Charges determined for FY 2018-19 in Commission's order dated 01<sup>st</sup> December' 2017 for Unit No.1:**

(Rs in Crore)		
Sr. No.	Particular	Amount
1	Return on Equity	182.22
2	Interest & Finance Charges on loan	316.01
3	Depreciation	202.63
4	Operation & Maintenance Expenses	110.28
5	Interest on Working Capital	56.94
<b>6</b>	<b>Annual Capacity (fixed) Charges</b>	<b>868.07</b>
7	Less:- Non-Tariff Income	(3.52)
8	Net Annual Capacity (Fixed) Charges	864.55
<b>9</b>	<b>Annual Capacity (Fixed) Charges for Contracted Capacity i.e. (30%) of Installed Capacity</b>	<b>259.36</b>

7. In Para 314 of the aforesaid order, it was mentioned that the tariff from 01<sup>st</sup> April' 2016 to 31<sup>st</sup> March' 2019 is determined on provisional basis subject to true-up based on Annual Audited Accounts for respective year. In the subject petition, the petitioner has sought true-up of Annual Capacity (fixed) Charges for FY 2018-19 in respect of the additional capital expenditure actually incurred during FY 2018-19 in accordance with Regulation 8.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 which provides as under:

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

8. In the subject petition, the petitioner filed the additional capitalization of Rs. 32.81 Crore during FY 2018-19 for Unit No. 1. Based on the aforesaid additional capitalization the petitioner has claimed the following Annual Capacity (fixed) Charges for Unit No. 1 in the subject petition:

**Table 3: Annual Capacity (Fixed) Charges claimed for Unit No. 1 in FY 2018-19**

		(Rs in Crore)
Sr. No.	Particular	Amount
1	Return on Equity	193.16
2	Interest & Finance Charges on loan	320.13
3	Depreciation	216.66
4	Operation & Maintenance Expenses	110.28
5	Interest on Working Capital	57.73
6	<b>Annual Capacity (Fixed) Charges</b>	<b>897.96</b>
7	Less: Non-Tariff Income	3.95
8	Net Annual Capacity Charges	894.01
9	<b>Annual Capacity (Fixed) Charges for Contracted Capacity i.e., (30%) of Installed Capacity</b>	<b>268.20</b>

9. With the above submission, the petitioner prayed the following:
- a. *Determine the Trued-up of tariff for Unit No. 1 of the Project as required under the Non-Concessional PPA dated 05.01.2011 for the period from 01.04.2018 till 31.03.2019;*
  - b. *Allow the recovery of the application filing fees from the beneficiary as per Paragraph 38 of the instant Petition;*
  - c. *Allow the recovery of the publication expenses from the beneficiary as and when incurred;*
  - d. *Allow the recovery of other charges including but not limited to RLDC/ NLDC charges, Electricity Duty, Cess, Water Charges, other Statutory Charges, Taxes,*

*Duties & Cess, re-imburement of any fee and/or expenses etc. on pass through basis from the beneficiary for the period from 01.04.2018 to 31.03.2019;*

*e. Allow carrying cost/ interest on the under-recovered amount in accordance with Regulation 8.15 of Tariff Regulations, 2015.*

10. The subject petition has been examined by the Commission in accordance with the principles, methodology and the norms specified in the MPERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2015, Annual Audited Accounts of the petitioner for FY 2018-19, Asset-cum-Depreciation Register for FY 2018-19 and other supplementary submissions filed by the petitioner in response to the additional information/ details sought by the Commission alongwith all other documents placed on record by the petitioner. The Commission has also examined the subject true up petition in light of the comments/ suggestions offered by the Respondent No.1 and other stakeholder and the response of petitioner on the same.

### **Procedural History**

11. Motion hearing in the subject true-up petition was held 14<sup>th</sup> May' 2020 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 05<sup>th</sup> June' 2020.
12. Vide Commission's letter dated 30<sup>th</sup> May' 2020, the information gaps and requirement of additional details/ documents were communicated to the petitioner seeking its comprehensive reply to the same with all the supporting documents by 25<sup>th</sup> June' 2020.
13. Vide letter dated 16<sup>th</sup> June' 2020, the petitioner sought time extension till 16<sup>th</sup> July' 2020 for filing the reply along with the additional details/documents as sought by the Commission. The Commission allowed the time extension.
14. By affidavit dated 14<sup>th</sup> July' 2020, the petitioner filed its reply to the issues communicated to it by the Commission.
15. By affidavits dated 20<sup>th</sup> October' 2020 and 16<sup>th</sup> November' 2020, the petitioner submitted additional submissions in continuation to the above reply filed with the Commission.

16. By affidavit dated 14<sup>th</sup> July' 2020, Respondent No. 1 (M.P. Power Management Co. Ltd) filed its comments/response on the subject petition.
17. By affidavit dated 7<sup>th</sup> August' 2020, the petitioner filed rejoinder on the response/comments filed by the Respondent No. 1. The petitioner's reply on each comment offered by the Respondent No. 1 along with the observations are annexed as **Annexure- I** with this order.
18. The public notice inviting comments/suggestions from the stakeholders was published on 27<sup>th</sup> June' 2020 in the following newspapers:
  - (i) The Hitavada (English), Bhopal
  - (ii) Nav Bharat (Hindi), MP
  - (iii) Raj Express (Hindi), Indore
19. The comments/objections from only one stakeholder were received in this matter on 22<sup>nd</sup> July' 2020. By affidavit dated 18<sup>th</sup> August' 2020, the petitioner filed its response on the aforesaid comments. The petitioner's reply on each comments / objection offered by the stakeholder along with the observations are annexed as **Annexure-II** with this order.
20. The public hearing in the subject petition was held on 15<sup>th</sup> September' 2020 through video conferencing wherein the representatives of petitioner and Respondent No. 1 appeared.

## **Capital Cost**

### **Petitioner's Submission:**

21. Regarding the capital cost of the Unit No. 1 claimed in the subject petition, the petitioner submitted that the Commission in true-up order dated 12<sup>th</sup> June' 2019 for FY 2017-18 has considered Rs. 4431.19 Crore as closing capital cost as on 31<sup>st</sup> March' 2018 for Unit No. 1. The same has been considered by the petitioner as opening capital cost as on 01<sup>st</sup> April' 2018 in the subject true-up petition.
22. In para 14 of the subject petition, it is mentioned by the petitioner that while preparing

the Annual Audited Accounts for FY 2018-19, the petitioner has adopted “Indian Accounting Standards” (Ind. AS) notified under the Companies (Indian Accounting Standards) Rules, 2015. In this regard, the petitioner has also filed the reconciliation of the details alongwith detailed reasons for difference in the fixed assets as on 31.03.2019 on account of transition from Indian GAAP to Ind AS.

### **Provisions in Regulations:**

23. With regard to capital cost of the existing power project, Regulation 15.3 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.*

*“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:**

24. In the subject petition, the petitioner has considered the opening capital cost of Rs. 4431.19 Crore as on 1<sup>st</sup> April’ 2018 for Unit No. 1. It is as per the closing capital cost as on 31.03.2018 which was considered in the Commission’s last true-up order dated 12<sup>th</sup> June’ 2019 in Petition No. 51 of 2018 for Unit No. 1 for FY 2017-18.
25. The petitioner filed the subject petition based on the Indian Generally Accepted Accounting Principles (IGAAP) whereas, the Annual Audited Accounts prepared by the petitioner is based on the Indian Accounting Standards (Ind. AS) in compliance with the Companies Act, 2013. On detailed examination of the petition, it was observed that

the petitioner filed a statement for reconciliation of Gross Fixed Assets as on 31.03.2019 based on transition from Ind. GAAP to Ind. AS certified by the Auditor. Vide letter dated 30<sup>th</sup> May' 2020, the petitioner was asked to file a detailed note explaining the difference in each item of the capital cost along with the consequential impact of such changes on the tariff if any, considered by the Commission.

26. By affidavit dated 14<sup>th</sup> July' 2020, the petitioner submitted that the transition of accounting standards from Indian Generally Accepted Accounting Principles in India ("IGAAP") to Indian Accounting Standards ("Ind. AS") on account of provisions of the Companies Act, 2013 has resulted in reflection of a gap of (-) Rs 113.24 Crore in the value of Gross Fixed Assets ("GFA") as on 31.03.2019. The petitioner further submitted that an Auditor certified statement showing reconciliation of Annual Audited Accounts for FY 2018-19 as per Ind. AS vis-a-vis IGAAP has been filed with the subject Petition. The petitioner also submitted an Auditor's certified statement showing reconciliation of the Fixed Assets as per Ind. AS and IGAAP explaining reasons for difference of (-) Rs 113.24 Crore. The petitioner has filed the following details regarding GFA as per IGAAP and as per Ind. AS alongwith the reasons for variance:

**Rs. Crore**

S. No	Particulars	<i>Fixed Assets as per IGAAP as on 31.03.2019</i>	<i>Fixed Assets as per IND AS as on 31.03.2019</i>	Variance	<i>Reasons for variance</i>
1	Freehold Land	156.27	107.82	-48.45	<p><i>Under IND AS, provisions for future R&amp;R payments are discounted at effective interest rate of long-term debt through the expected life of the liability to bring to the fair value on the date of recognition. Further, the provision of inclusion of annual diversion payments to GoMP for change of land use (from agriculture to industrial)-discounted at effective interest rate of long-term debt throughout the expected life of the financial liability.</i></p> <p><i>The above practices are in variation with the treatment under IGAAP where the liabilities were</i></p>



S. No	Particulars	Fixed Assets as per IGAAP as on 31.03.2019	Fixed Assets as per IND AS as on 31.03.2019	Variance	Reasons for variance
					recognized on gross basis.
2	Leasehold Land	21.58	0.00	-21.58	As per IGAAP, the lease amount of Rs 21.58 Crore was treated as Fixed asset and was to be amortized over the life of the Project. However, being considered as an Operating Lease in IND AS, the same amount has been classified as Prepaid Expenses (under Current Assets) instead of classifying it as Fixed Assets.
3	Plant & Machinery	6426.15	6391.26	-34.88	Due to difference in treatment of finance cost to borrowings under IGAAP and IND AS. Under IGAAP the cost incurred in raising funds are amortized equally over the period for which the funds are acquired or within five years, whichever is less. However, under IND AS such cost are amortized equally over the period for which the funds are acquired. As a result, the value as per IGAAP is on lower side.
4	Buildings & Civil Works	1352.92	1344.59	-8.32	
5	Capital Spares	138.64	138.64	-	No Variance
6	Furnitures & Fixtures	6.13	6.13	-	
7	Vehicles	2.51	2.51	-	
8	Office Equipments	3.32	3.32	-	
9	EDP Equipments (including software)	7.78	7.78	-	
<b>Total Fixed Assets</b>		<b>8115.29</b>	<b>8002.05</b>	<b>-113.24</b>	

27. The petitioner further stated that the capital cost based on historical cost is generally considered and allowed by Regulatory Commissions including this Commission for determination of tariff and not on fair value basis (as in the case of Ind. AS) as introduced by the Companies Act, 2013. The petitioner claimed true-up of tariff in the subject Petition considering capital cost based on IGAAP after due reconciliation in this regard indicating the changes in presentation of capital cost in books of accounts due to transition from IGAAP to Ind. AS. The petitioner submitted that there will be no consequential impact on tariff being claimed in the petition on historical cost in continuation as per provisions of the MPERC Tariff Regulations.
28. On perusal of the CA Certificate dated 24<sup>th</sup> January' 2020 certifying the cash expenditure of the project filed by the petitioner, it was observed that the total cash expenditure of Rs. 8242.62 Crore has been incurred as on 31.03.2019 for Unit No. 1 and 2 whereas, the Gross Fixed Assets of Rs. 8002.05 Crore are shown in (Note-4 and 6) Annual Audited Account for FY 2018-19. Therefore, vide letter dated 30<sup>th</sup> May' 2020, the petitioner was asked to explain how the cash expenditure is more than the figures recorded and capitalized in Annual Audited Accounts alongwith the reasons for aforesaid difference in the above figures.
29. By affidavit dated 14<sup>th</sup> July' 2020, the petitioner submitted that the value of GFA of Rs. 8002.05 Crore as on 31.03.2019 is as per Ind. AS accounting standards and the corresponding value of GFA as per IGAAP accounting standards is Rs. 8115.29 Crore. The petitioner further submitted that the cash expenditure of Rs. 8242.62 Crore as shown in the Auditor's Certificate dated 24.01.2020 is inclusive of cash expenditure of Rs 197.12 Crore towards Short-term FERV (allowable over and above capitalized gross block) and Rs.34.93 Crore towards Un-amortized cost of borrowings (allowable over and above capitalized gross block). As such, the cash expenditure for the Project till 31.03.2019 excluding this Short-term FERV (Rs 197.12 Crore) and Un-amortized cost of borrowings (Rs 34.93 Crore) is Rs 8010.57 Crore (i.e. Rs 8242.62 Crore - Rs 197.12 Crore - Rs 34.93 Crore). Therefore, against Project GFA of Rs 8115.29 Crore (as per IGAAP as on 31.03.2019), the corresponding cash expenditure for the Project is Rs 8010.57 Crore. The difference of Rs 104.72 Crore between Project GFA (Rs 8115.29 Crore) and cash expenditure for the Project (Rs 8010.57 Crore) as on 31.03.2019 is towards the balance liabilities/provisions kept as on 31.03.2019 towards the following:

S. No	Head	Amount (Rs Crore)	Basis of Computation
1	Liability/Provision of R&R expenses/ Diversion rent	68.67	GFA (IGAAP) against Freehold land as on 31.03.2019: Rs 156.27 Crore (Ref: Note 4 of Annual Audited Accounts for FY 2018-19) minus (-) cash expenditure against Freehold land as on 31.03.2019: Rs 87.60 Crore (Rs 156.27 Crore - Rs 87.60 Crore)
2	Liabilities against contractual works for Ash dyke and other miscellaneous works	36.05	Liabilities to be discharged on account of retention payments to the Contractors for ongoing deferred works of ash dyke and other balance works
<b>TOTAL LIABILITIES</b>		<b>104.72</b>	

30. On perusal of the GFA as on 31<sup>st</sup> March' 2019 filed in the subject petition & in petition No 22 of 2020 for true up of Unit-2, it was observed that the GFA of Unit-1 & 2 claimed by the petitioner was not reconciled with the total GFA recorded in Annual Audited Accounts for FY 2018-19 as shown below:

Particular	Unit No. 1	Unit No. 2	Total
<i>Claimed by the Petitioner (A)</i>	4464.00	3618.78	8082.78
<i>As per Annual Audited Accounts for FY 2018-19 (B)</i>			8002.05
<b><i>Difference (A-B)</i></b>			<b>80.73</b>

Vide letter dated 30<sup>th</sup> May' 2020, the petitioner was asked to reconcile the GFA claimed in the petition with the figures recorded in Annual Audited Accounts.

31. By affidavit dated 14<sup>th</sup> July' 2020, the petitioner submitted the following:  
*"The purpose of ensuring statutory compliance, the Annual Audited Accounts for FY 2018-19 for the Project have been prepared on the basis of IND AS accounting standards which record the Project (Unit-1 + Unit-2) GFA of Rs 8002.05 Crore as on 31.03.2019. The corresponding Project (Unit-1 + Unit-2) GFA on the basis of IGAAP standards is Rs 8115.29 Crore as on 31.03.2019. The reconciliation of this Project GFA as on 31.03.2019 with the total cash expenditure on the Project till 31.03.2019 has already been explained in detail in Reply to Query No. 2 above. (Para 26 of this order)*

Further, the aggregate Project Cost (Unit-1 +Unit-2) claimed by the Petitioner under the present Petition and Petition No. 22 of 2020 is on the basis of the regulatory practices. In terms of its Order dated 12.06.2019 in the Petition No. 51 of 2018 (filed by the Petitioner before the Commission for true-up of tariff of Unit-1 for FY 2017-18) and Order dated 01.07.2019 in the Petition No. 57 of 2018 (filed by the Petitioner before the Commission for true-up of tariff of Unit-2 for FY 2017-18) respectively, the Commission has approved the unit-wise closing capital cost of the Project as on 31.03.2018 as Rs 4431.19 Crore for Unit-1 and Rs 3552.44 Crore for Unit-2. Further, as evident from the Auditor Certificate dated 24.01.2020 for cash expenditure for the Project till 31.03.2019 (placed at Annexure-3 to the present Petition), the unit-wise Additional Capital Expenditure incurred (in cash) during FY 2018-19 is Rs 32.81 Crore for Unit-1 and Rs 66.35 Crore for Unit-2, thereby aggregating the Project (Unit-1 + Unit-2) capital cost of 8082.78 Crore as on 31.03.2019 and the same has accordingly been claimed by the Petitioner under the present Petition and Petition No. 22 of 2020, which is tabulated as under:"

**(All Figures in Rs. Crore)**

<b>Particulars</b>	<b>Unit-1</b>	<b>Unit-2</b>	<b>Project</b>
Capital Cost as on 31.03.2018 approved by the Commission	4431.19 <sup>#</sup>	3552.44 <sup>\$</sup>	7983.63
Additional Capital Expenditure during FY 2018-19	32.81 <sup>*</sup>	66.35 <sup>**</sup>	99.16
Capital Cost as on 31.03.2019	4464.00 <sup>*</sup>	3618.79 <sup>**</sup>	<b>8082.78</b>

# As per the Commission's Order dated 12.06.2019 in Petition No. 51 of 2018;

\$ As per the Commission's Order dated 01.07.2019 in Petition No. 57 of 2018;

\* As claimed by the Petitioner under present Petition;

\*\* As claimed by the Petitioner under Petition No.22 of 2020 for Unit No. 2.

32. In view of the above and considering the GFA admitted in the last true-up order, the Commission has considered the Opening Gross Fixed Asset for Unit No. 1 of Rs. 4431.19 Crore as on 01<sup>st</sup> April' 2018 as admitted in last true up order for FY 2017-18 (Issued on dated 12<sup>th</sup> June' 2019 in Petition No. 51 of 2018 as per IGAAP Accounting Standards).

**Additional Capitalization****Petitioner's Submission:**

33. In the subject true-up petition, the petitioner has filed the additional capitalization of Rs. 32.81 Crore during FY 2018-19 for Unit No. 1 of the project. The break-up of additional capitalization claimed by the petitioner is as given below:

**Table 4: Additional Capitalization Claimed by the petitioner for FY 2018-19**

<b>Sr. No</b>	<b>Particulars</b>	<b>Amount (Rs Crore)</b>
1	Freehold land	2.80
2	Leasehold Land	-
3	Building & Civil Works	30.01
	<b>Total</b>	<b>32.81</b>

**Provisions under Regulations:**

34. With regard to additional capitalization incurred in existing generating stations/units, after COD and up to Cut-off date, Regulation 20.1 of MPERC (Terms & 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:*

- 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."*

**Commission's Analysis:**

35. The petitioner has filed the Additional Capitalization of Rs. 32.81 Crore towards Unit No. 1 during FY 2018-19 and claimed the same as actual Additional Capital Expenditure for Unit No.1 for FY 2018-19. It is observed that against the total un-discharged liabilities of Rs 252.23 Crore as on 01<sup>st</sup> April' 2016, the petitioner had discharged an amount of Rs. 67.51 Crore during FY 2016-17 corresponding to unit No. 1 and same had been admitted by the Commission in true-up order dated 6<sup>th</sup> September' 2018 for FY 2016-17. Out of the balance un-discharge liabilities of Rs. 184.72 Crore, the petitioner had discharged amount of Rs. 138.59 Crore during FY 2017-18. The petitioner submitted that the undischarged liabilities corresponding to Unit-1 of the Project as on 31.03.2018 was Rs 46.09 Crore.
36. By affidavit dated 14<sup>th</sup> July' 2020, the Respondent No. 1 (MPPMCL) filed its response on the subject petition and contended that the additional capitalization claimed by the petitioner during FY 2018-19 needs to be appropriately examined in accordance with Tariff Regulations, 2015. The Respondent No. 1 submitted following on the issue of additional capitalization:
- (i) *The petitioner has stated to have un-discharged liability of Rs 46.09 Crore corresponding to Unit-1 as on 31.03.2018 has been retained. The said un-discharged liability has not been validated, therefore the same may kindly be ignored and not allowed.*
  - (ii) *The petitioner has contended that additional capital expenditure of Rs 32.81 Crore incurred during FY 2018-19 are funded entirely through internal accruals and the debt to equity ratio for FY 2018-19 is claimed at 71.72 : 28.28 (i.e., Debt= Rs 3201.40 Crore & Equity= Rs 1262.59 Crore). It is submitted that Unit 1 of the Project was declared under commercial operation on 20.05.2015 i.e., prior to 01.04.2016, therefore in accordance with Regulation 25.3 the debt : equity allowed by the Commission in Petition No 68 of 2016 i.e., (72.25:27.75) may only be allowed.*
  - (iii) *It is submitted that Unit-1 has now been on COD for about 5 years (since 20-05-2015) and Unit-2 has been on Commercial Operation for almost 4 Years (since 07.04.2016). It is therefore prayed that the Petitioner may kindly be directed to file the details of LD and insurance claims, if any, recovered/to be recovered from*

various contractors/vendors in different packages against delay in execution of the contracts.

(iv) Allow the claims of other charges only in accordance with the provisions of the Tariff Regulations, 2015.

37. On examination of the subject petition, vide Commission's letter dated 30<sup>th</sup> May' 2020, the petitioner was asked to file a comprehensive reply to the certain issues related to additional capitalization.

38. By affidavit dated 14<sup>th</sup> July' 2020, the petitioner filed its response on the issues related to additional capitalization raised by the Commission. Issue-wise response filed by the petitioner are as given below:

**Issue**

i. **Whether the addition of assets is on account of the reasons (i) to (v) in Regulation 20.1 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015. The petitioner was asked to file the information in the format enclosed with the letter.**

**Petitioner Response:**

“Details of the additional capitalization for Unit-1 during FY 2018-19 as per Regulation 20.1 of the MPERC Tariff Regulations, 2015 are already placed at Annexure-4 to the present Petition and reproduced as follows:-

(Rs Crore)

S. No	Particulars	Add. Cap. during FY 18-19	Detailed reasons for asset addition	Provision of Regulations under Add. Cap filed	Reference supporting doc. Enclosed in the present Petition
1	Freehold Land including R&R expenses	2.80	Discharge of liability towards recurring R&R expenses capitalized for the Project during FY 2018-19; apportioned	Regulation 20.1 (i) of MPERC Tariff Regulations 2015	Annexure-2 of the present Petition: Ref: Note-1, Page No.90; GFA-Freehold land as on 31.03.2019 = Rs 156.27 Crore  Annexure-3 of the present Petition: S.No. 1.1 as follows:  a) Cash Expenditure on Freehold land incl. R&R till 31.03.2019 for the Project: Rs 87.60 Crore;

S. No	Particulars	Addl. Cap. during FY 18-19	Detailed reasons for asset addition	Provision of Regulations under Add. Cap filed	Reference supporting doc. Enclosed in the present Petition
			between Unit-1 and Unit-2 on 50:50 basis		b) Liability discharged on Freehold land incl. R&R for the Project during FY2018-19: Rs 5.59 Crore, apportioned between Unit-1 and Unit-2 on 50:50 basis i.e. Rs 2.80 Crore each for Unit-1 and Unit-2
2	Building & Civil Works	30.01	Deferred works of Ash dyke and other related civil works capitalized for the Project during FY 2018-19; apportioned between Unit-1 and Unit-2 on 50:50 basis	Regulation 20.1 (ii) of MPERC Tariff Regulations 2015	Annexure-3 of the present Petition: S. No. 3 and Table on Page No.6 of the Petition No. 22 of 2020 as follows:  Cash Expenditure on Building & Civil Works (Ash Dyke & related civil works) for the Project during FY 2018-19: Rs 66.93 Crore  Less: Discharge of Liabilities for Building and Civil works for Unit-2 during FY 2018-19: Rs 6.91 Crore  Balance Cash Expenditure of <u>Rs 60.02 Crore</u> (Rs 66.93 Crore - Rs 6.91 Crore) on Building & Civil Works (Ash Dyke & related civil works) for the Project during FY 2018-19 apportioned between Unit-1 and Unit-2 on 50:50 basis i.e. Rs 30.01 Crore each for Unit-1 and Unit-2

**Issue**

- ii. Whether the assets capitalized during the year have been under original scope of work. The petitioner was also asked to file detailed break-up of original scope of work for the project along with Supporting documents in this regard.

**Petitioner Response:**



As detailed in the table above in Reply to Query No.8 (i), it is submitted that assets capitalized during FY 2018-19 are within the original scope of the work of the Project. This is further substantiated by the following submissions:

**A. Capitalization with regard to Freehold Land including R&R expenses**

The acquisition cost of Freehold land for the Project, which includes the cost of the land along with the provision for annual diversion payments to GoMP for change of land use (agriculture to industrial) & R&R expenses (as per Madhya Pradesh Rehabilitation and Resettlement Policy-2002 and National Rehabilitation and Resettlement Policy-2007 for Project Affected People), has already been capitalized till FY 2015-16 (the year of Unit-1 COD i.e. 20.05.2015) on accrual basis. The provision for related R&R expenses includes the special economic grant scheme, old age pension schemes, physically handicapped grant scheme, widow pension scheme, education & health facilities & related provisions, scholarship schemes etc. which need to be paid/released in cash in form of discharging of liabilities/provision on annual basis to the Project Affected People co-terminus with the life of the Project.

Accordingly, the Petitioner has incurred a cash expenditure of Rs 5.59 Crore towards discharge of liabilities on Freehold land incl. R&R for the Project during FY 2018-19 and this expenditure of Rs 5.59 Crore has been apportioned between Unit-1 and Unit-2 of the Project on 50:50 basis i.e. Rs 2.80 Crore each for Unit-1 and Unit-2 of the Project and the same is duly reflected in the Auditor's Certificate of Cash expenditure dated 24.01.2020 (placed at Annexure-3 to the present petition)

**B. Capitalization with regard to Deferred works of Ash Dyke/Ash Pond/Ash Handling System and other related civil works**

It is submitted that the Petitioner, from time to time in its various Petitions, has always kept the Commission informed about the various works which are necessary and required to be completed for seamless and sustainable operation of Petitioner's Project including certain deferred works relating to ash pond/ash dyke/ash handling system and related civil works. References of the submissions made by the Petitioner in this regard from time to time in its various Petitions/ submissions filed before the Hon'ble Commission are as follows: -

S. No	Petition No.	Page No.	Para No.
1	14 of 2016	9-10	17.1.2 & 17.2.1
2	68 of 2016 (Amended Petition)	19	57
3	10 of 2018	22	63-64
4	51 of 2018	26-27	Footnote of TPS Form-5B
5	57 of 2018	25-26	Footnote of TPS Form-5B

*It is further submitted that the Petitioner has kept the Commission well apprised vide its earlier submissions qua the forced outage of the Unit-2 of the Project from May 2016 to May 2017 due to an accident that occurred in Unit-2 of the Project. It was only after the dedicated focus and strenuous efforts of the Petitioner, that Unit-2 of the Project got restored and revived back to operation almost after one year of such forced outage. Due to complete focus of the Petitioner to Unit-2 restoration works, the works related to ash pond/ash dyke/ash handling system and related civil works got delayed/ deferred.*

*These deferred works related to ash pond/ash dyke/ash handling system and related civil works for the Project have been partially completed and capitalized during FY 2018-19. As detailed out in the table at Para 19 above, against these works, Petitioner has incurred a cash expenditure of Rs 60.02 Crore during FY 2018-19 which has been apportioned between Unit-1 and Unit-2 of the Project on 50:50 basis i.e. Rs 30.01 Crore each for each Unit-1 and Unit-2 of the Project. Further, the remaining works related to these deferred works have spilled beyond the current cut-off date of 31.03.2019.*

*Anticipating the spilling of these deferred works beyond the cut-off date of 31.03.2019, the Petitioner, on 28.03.2019, filed Petition No.18 of 2019 before the Hon'ble Commission seeking extension of cut-off date. The Commission by Order dated 27.04.2019 disposed-off Petition No. 18 of 2019 observing that cut-off Date may be extended after due prudence check of such spilled over works. Further, liberty was granted to the Petitioner to approach the Commission with actual additional capitalization of all works beyond the cut-off date as per the Annual Audited Accounts along with all details and documents while filing the True-up Petition for respective financial year.*

*It is humbly submitted that the additional capitalization by the Petitioner during FY 2018-19 with regard to Freehold Land including R&R expenses and Deferred works of Ash Dyke/ Ash Pond/ Ash Handling System and other related civil works are well*

under the original scope of work of the Project and a detailed break-up of the original scope of work of the Project is attached herewith and marked as "ANNEXURE-A. Further, it is a settled position in terms of law and accounting standards that an asset shall be capitalized on the balance sheet of the Company only when it is put to use.

**Issue:**

- iii. **The petitioner was asked to reconcile the assets addition of Rs. 32.81 Crore claimed in the petition with the figures recorded in the Assets cum Depreciation Register. The petitioner was also asked to reconcile the figure of total additional capitalization (project- towards Units No. 1&2) as indicated in the Annual Audited Accounts.**

***Petitioner Response:***

*"It is submitted that the reconciliation of unit-wise cash expenditure/ capitalization during FY 2018-19 with the Annual Audited Accounts for FY 2018-19 is attached herewith and marked as "ANNEXURE-B."*

**Issue:**

- iv. **Why the above works claimed under additional capitalization have not been carried out/ completed up to COD of the project. The petitioner was asked to file the reasons for delay in capitalization of all such assets under additional capitalization.**

***Petitioner Response:***

*"It is humbly submitted that the reasons for delay in capitalization of the assets beyond COD have already been mentioned under Replies to Query No. 8(i) and 8(ii) above and the same may kindly be referred."*

**Issue:**

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

**Petitioner Response:**

*“A list of the orders placed to different vendors for additional capitalization claimed in the present Petition is attached herewith and marked as “ANNEXURE-D”. It is further submitted that no penalty has been imposed on any contractor/vendor for any delay in completion of works till date.”*

**Issue**

- vi. **The petitioner was asked to file the status of Liquidated Damages if any, recovered/ to be recovered from the different vendors as on 31<sup>st</sup> March' 2019.**

**Petitioner Response:**

*“It is submitted that no liquidated damages for delay in completion of works have been recovered by the Petitioner from its contractors/vendors as on 31.03.2019.”*

- vii. **Actual funding of aforesaid additional capitalization along with supporting documents was asked to file. Copy of the bills/invoices of all such assets under additional capitalization were sought.**

**Petitioner’s Response:**

*It is submitted that the source of actual funding for the aforesaid additional capitalization has been dealt in Reply to Query No. 9 (Para 40 below) and the same may kindly be referred. Copy of bills/invoices for some of the major vendors for ash dyke works, capital spares is attached herewith and marked as “ANNEXURE-E.*

- viii. **The Petitioner was asked to file the cut-off date of the Unit in light of the Regulation 4.1 (1) of MPERC (Terms and Conditions for determination of generation Tariff) Regulations 2015.**

**Petitioner’s Response:**

*In light of the Regulation 4.1(l) of MPERC Tariff Regulations 2015, the cut-off date for the Petitioner’s Project is worked out to 31.03.2019.*

39. On perusal of the aforesaid additional submission filed by the petitioner, the Commission observed the following:
- (i) The additional capitalization towards freehold land including R&R expenses claimed by the petitioner pertains to payment towards un-discharged liabilities.

Further, the additional capitalization towards Building and Civil works pertains to deferred works of Ash Dyke and other related civil works capitalized during FY 2018-19.

- (ii) The aforesaid additional capitalization claimed during FY 2018-19 is covered under Regulation 20.1 (i) and 20.1 (ii) of the MPERC Generation Tariff Regulations, 2015.
- (iii) The petitioner submitted that the assets under additional capitalisation are under original scope of works of the project indicated in form TPS 5B. The petitioner has also filed the break-up of assets under additional capitalization in form TPS 5B filed with its additional submission.
- (iv) The petitioner also filed copies of Bills/Invoices for some of the major vendors for Ash Dyke works.
- (v) Regarding the recovery of liquidated damages/ penalties, the petitioner submitted that no liquidated damages for delay in completion of works have been recovered from contractors/vendors as on 31.03.2019..

40. The Commission has examined the additional capitalization for FY 2018-19 claimed in the subject petition in light of the Annual Audited Accounts, Asset-cum-Depreciation Register of the project, estimated project cost of the project approved by its Board of Directors, Provisions under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 and response of the petitioner on the comments offered by the Respondent No. 1 and other stakeholders.

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

41. On perusal of the Annual Audited Accounts for FY 2018-19 filed by the petitioner, it was observed that the Annual Audited Accounts were combined for Unit No. 1 and 2, hence, it was not possible to reconcile the Additional Capitalization of Rs. 32.81 Crore separately for Unit No. 1 filed during FY 2018-19. Therefore, vide letter dated 30<sup>th</sup> May; 2020, the petitioner was asked to submit breakup of the figures claimed in the subject petition for Unit No. 1. The petitioner was also asked to explain the reasons for difference in figures if any, recorded in Annual Audited Accounts and those filed in the subject petition.

42. By affidavit dated 14<sup>th</sup> July' 2020, the petitioner submitted the following reconciliation of additional capitalization claimed in the subject petition for Unit No. 1 with Annual Audited Accounts for FY 2018-19:

<b>Particulars</b>	<b>Reconciliation</b>	<b>Remarks</b>
Additions as per Fixed Assets Schedule	113.76	(Ind AS-IGAAP)-Annex 2 of the Petition
Capital-Work in progress	24.80	Accounts for FY 2018-19-Annx 1 of the Petition
Less: Capital Liabilities	-39.39	(Included in 1&2 above)
<b>Additional Cash Expenditure filed in the petition (1+2+3)</b>	<b>99.16</b>	
<b>Bifurcation of the Additions claimed</b>		
Freehold Land	5.59 (2.80 for Unit-1)	
Plant & Machinery against liability	26.64 (For Unit No. 2)	
Building & Civil Works against liability	6.91	
Building & Civil Works-deferred works-Additional Works	60.02 (30.01 for Unit-1)	
<b>Allocation of Capital Expenditure for Unit-1</b>	<b>32.81</b>	

43. From the above submission, the Commission has observed the following:
- The amount of asset additions as recorded in Note 4 and 6 of the Annual Audited Accounts is Rs 113.76 Crore and the amount of asset under Capital work in progress (CWIP) is Rs 24.80 Crore recorded in schedule 5 of the Annual Audited Accounts. Therefore, the total amount of assets capitalized and assets under CWIP as per Annual Audited Accounts are Rs. 138.56 Crore.
  - The petitioner has submitted that out of the assets of Rs. 138.56 Crore, the actual payment of Rs. 99.16 Crore has been made during the year and balance Rs. 39.39 Crore pertains to capital liabilities. Hence, the asset additions on cash basis was Rs 99.16 Crore for Unit No. 1 and 2 during FY 2018-19.
  - Out of the total asset addition of Rs. 99.16 Crore on cash basis, the assets of Rs 5.59 Crore pertains to freehold land and same has been equally apportioned

between Unit-1 & Unit-2. Further, the assets of Rs 60.02 Crore pertains to deferred works/additional works towards buildings and civil works and same has also been equally apportioned between Unit-1 & Unit-2.

- iv. Therefore, the total assets of Rs. 32.81 Crore towards land and building & civil works have been capitalized by the petitioner for Unit No. 1 and claimed in the subject petition based on the Annual Audited Accounts on cash basis excluding liability.
44. By affidavit dated 14<sup>th</sup> July' 2020, the petitioner filed the Asset-cum-Depreciation Register of the Project as on 31.03.2019 in hard and soft copy in accordance with the provisions under the Tariff Regulations, 2015.
45. On perusal of the Asset-cum-depreciation register filed by the petitioner, It is observed that the amount of opening Gross Fixed Assets as per Annual Audited Accounts (IGAAP) is Rs. 8001.52 Crores whereas, the amount of closing Gross Fixed Assets is Rs. 8115.29 Crores. The difference of Rs 113.77 Crore is the additional capitalization towards Unit No. 1&2 during FY 2018-19. The same figures of opening and closing Gross Fixed Assets are recorded in Asset-cum-Depreciation register for the project for FY 2018-19`.
46. The petitioner has filed Auditor's certificate dated 24<sup>th</sup> January' 2020 with the subject petition certifying the cash expenditure as on 31.03.2019 for its 2x600 MW project as a whole, however, the subject petition is for true-up of Unit No. 1 only for FY 2018-19. Therefore, vide letter dated 30<sup>th</sup> May' 2020, the petitioner was asked to file the CA certificate certifying cash expenditure for Unit No. 1 during FY 2018-19 with detailed break-up of all cost components. By affidavit dated 14<sup>th</sup> July' 2020, the petitioner filed the CA certificate dated 07.07.2020 containing detailed unit-wise break-up of cash expenditure during FY 2018-19.
47. By another affidavit dated 20<sup>th</sup> October' 2020, the petitioner submitted that there were certain typographical errors in the certificate dated 24<sup>th</sup> January' 2020 which were being rectified in the new certificate submitted by the petitioner dated 16<sup>th</sup> October' 2020. The petitioner filed the CA certificate dated 16<sup>th</sup> October' 2020 certifying the total cash expenditure of Rs. 8263.57 Crore (including Capital Works in Progress) and Rs. 8242.55 Crore (without CWIP) as on 31.03.2019 for the project. A summary of year-wise and unit-wise cash expenditure as per the Auditor's certificate are as

given below:

**Table 6: Cash Expenditure as on 31.03.2018 certified by the Auditor: (Rs. Crore)**

Sr No	Particulars	Project	Unit-1	Unit-2	Less cash expenditure against CWIP	Net Cash Expenditure
1	Cost of Land & site Development					
1.1	Freehold Land including R&R	82.01	76.71	5.30		82.01
1.2	Lease Hold Land	21.58	5.82	15.76		21.58
	<b>Sub Total- Land &amp;Site Development</b>	<b>103.59</b>	<b>82.53</b>	<b>21.06</b>		<b>103.59</b>
2	<b>Plant &amp; Machinery</b>	<b>4570.99</b>	<b>2792.48</b>	<b>1778.50</b>	<b>-11.47</b>	<b>4559.52</b>
3	<b>Building &amp; Civil Works</b>	<b>895.11</b>	<b>752.80</b>	<b>142.31</b>	<b>-4.48</b>	<b>890.63</b>
4	Pre-operative Expenses	437.99	269.82	168.17	-0.47	437.52
5	IDC/Finance Charges	1893.29	1092.20	801.10	-1.97	1891.32
6	CD/ED for Offshore/Onshore Supplies capitalized	28.75	27.41	1.34		28.75
7	<b>Sub Total-Total Cash Expenditure</b>	<b>7929.72</b>	<b>5017.24</b>	<b>2912.47</b>	<b>-18.39</b>	<b>7911.33</b>
8	Add: FERV losses charged to Revenue	197.12	46.69	150.43		197.12
9	Add: Unamortized Finance Cost to Borrowings	34.93	27.52	7.41		34.93
10	<b>Net Cash Expenditure</b>	<b>8161.77</b>	<b>5091.45</b>	<b>3070.31</b>	<b>-18.39</b>	<b>8143.38</b>

**Table 7: Cash Expenditure as on 31.03.2019 certified by the Auditor: (Rs. Crore)**

Sr No	Particulars	Project	Unit-1	Unit-2	Less cash expenditure against CWIP	Net Cash Expenditure
1	Cost of Land & site Development					
1.1	Freehold Land including R&R	87.60	79.51	8.10		87.60
1.2	Lease Hold Land	21.58	5.82	15.76		21.58
	<b>Sub Total- Land &amp;Site Development</b>	<b>109.19</b>	<b>85.33</b>	<b>23.86</b>		<b>109.19</b>
2	<b>Plant &amp; Machinery</b>	<b>4596.50</b>	<b>2792.48</b>	<b>1804.02</b>	<b>-10.35</b>	<b>4586.16</b>
3	<b>Building &amp; Civil Works</b>	<b>965.80</b>	<b>786.93</b>	<b>178.87</b>	<b>-8.24</b>	<b>957.56</b>
4	Pre-operative Expenses	437.99	269.82	168.17	-0.47	437.52
5	IDC/Finance Charges	1893.29	1092.20	801.10	-1.97	1891.32
6	CD/ED for Offshore/Onshore Supplies capitalized	28.75	27.41	1.34		28.75
7	<b>Sub Total-Total Cash Expenditure</b>	<b>8031.52</b>	<b>5054.17</b>	<b>2977.36</b>	<b>-21.03</b>	<b>8010.50</b>
8	Add: FERV losses charged to Revenue	197.12	150.43	150.43		197.12
9	Add: Unamortized Finance Cost to Borrowings	34.93	7.41	7.41		34.93



10	<b>Net Cash Expenditure</b>	<b>8263.57</b>	<b>5128.38</b>	<b>3135.20</b>	<b>-21.03</b>	<b>8242.55</b>
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**Table 8: Unit-wise cash expenditure on Asset Additions During FY 2018-19 (Net-off CWIP):**  
(Rs. Crore)

Sr No	Particulars	Project	Unit-1	Unit-2
1	Cost of Land & site Development			
1.1	Freehold Land including R&R	5.59	2.80	2.80
1.2	Lease Hold Land			
	<b>Sub Total- Land &amp; Site Development</b>	<b>5.59</b>	<b>2.80</b>	<b>2.80</b>
2	Plant & Machinery	<b>26.64</b>		<b>26.64</b>
3	Building & Civil Works	<b>66.93</b>	<b>30.01</b>	<b>36.92</b>
4	<b>Sub Total-Total Cash Expenditure</b>	<b>99.16</b>	<b>32.81</b>	<b>66.36</b>
5	<b>Net Cash Expenditure</b>	<b>99.16</b>	<b>32.81</b>	<b>66.36</b>

48. On further perusal of the aforesaid Auditor's certificate, the following has been observed:
- The cash expenditure pertaining to capitalized assets as on 31<sup>st</sup> March' 2019 is Rs. 8263.57 Crores (including capital works in progress) which also includes Rs. 197.12 Crores towards FERV charged to revenue and Rs. 34.93 Crores towards Un-amortized cost to borrowings.
  - Out of the total cash expenditure of Rs. 8263.57 Crores as on 31<sup>st</sup> March' 2019, the amount of Rs. 5128.38 Crores pertains to Unit No. 1 and Rs. 3135.20 Crores pertains to Unit No. 2. The cash expenditure towards CWIP of Rs 21.03 Crore is deducted from cash expenditure as on 31<sup>st</sup> March' 2019. Therefore, the total cash expenditure (net-off capital works in progress) as on 31<sup>st</sup> March' 2019 is Rs 8242.55 Crore.
  - Cash expenditure of Rs. 7983.63 Crores as on 31<sup>st</sup> March' 2018 for both the units was admitted by the Commission. Out of the aforesaid total cash expenditure, amount of Rs. 4431.19 Crores pertains to Unit No. 1 and Rs. 3552.44 Crores pertains to Unit No. 2.
  - Total additional capitalization during FY 2018-19 for unit 1&2 on cash basis is Rs. 99.16 Crore (Net-off CWIP). The assets of Rs. 32.81 Crore pertains to Unit No. 1 and assets of Rs. 66.36 Crore pertains to Unit No. 2.

49. In view of the above, the Commission observed that the additional capitalization of Rs. 32.81 Crore claimed by the petitioner during FY 2018-19 under Unit No. 1 is on cash basis and capitalized in Annual Audited Accounts. The assets under additional capitalization have also recorded in Asset-cum-Depreciation register of the project for FY 2018-19

**B. Capital Cost under Original Scope of Work approved by the Board**

50. Regarding the original scope of works of the project, by affidavit dated 14<sup>th</sup> July' 2020, the petitioner submitted that the assets capitalized during FY 2018-19 are within the original scope of works of the project. By another affidavit dated 16<sup>th</sup> November' 2020, the petitioner has submitted the following:

*In the earlier Petition No. 68 of 2016 filed by MB Power before Commission, MB Power had submitted Board Resolution dated 16.02.2016 (Annexure-8 of the Petition No. 68 of 2016) approving overall Project Cost. The break-up of this approved Project Cost is as under:*

<b>Base Cost</b>	<b>Rs 8702.92 Crore</b>
<i>Add: Customs &amp; Excise Duty</i>	<i>Rs 570 Crore</i>
<i>Total Project Cost</i>	<i>Rs 9272.92 Crore</i>
<i>Less: Working Capital Margin</i>	<i>Rs 270 Crore</i>
<b>Net Board approved Project Cost</b>	<b>Rs 9002.92 Crore</b>

- a) *As evident from above, Board of MB Power had approved an overall Project Cost of Rs. 9002.92 Crore. Out of this overall approved Project Cost of Rs. 9002.92 Crores, MB Power had then estimated the Project Cost as Rs. 8702.23 Crore (including a provision of Rs. 576.03 Crore towards Custom Duty/ Excise Duty) and filed the same under Para 44 of the earlier Petition No. 68 of 2016 before this Commission, thereby keeping a buffer/ additional provision of almost Rs. 300 Crore [i.e. Rs. 9002.92 Crore minus (-) Rs. 8702.23 Crore] for future additional project expenditure (if any). The relevant excerpts of Para 44 of the Petition No. 68 of 2016 filed before this Commission is annexed herewith and marked as Annexure-A/2.*
- b) *This buffer of Rs. 300 Crore was kept as an additional provision by MB Power primarily for execution of certain "Deferred Works related to Ash Dyke and Railway Siding" and other minor works at a later stage (if required) in accordance with the*

provisions of Regulation 20.1 of MPERC Tariff Regulations 2015.

- c) Accordingly, MB Power, from time to time, has kept this Commission informed about this additional provision for Deferred Works (in addition to estimated Project Cost of Rs. 8702.23 Crore). In this regard, kind attention is drawn to Para 57 of Petition No. 68 of 2016 and Para(s) 63-64 of Petition No. 10 of 2018 filed by MB Power before this Commission. The relevant excerpts of Para 57 of Petition No. 68 of 2016 and Para(s) 63-64 of Petition No. 10 of 2018 filed before this Hon'ble Commission are annexed herewith and marked as Annexure-A/3.
- d) Considering this additional provision of Rs. 300 Crore which is well within the Board approved overall Project Cost of Rs. 9002.92 Crore, head-wise break-up/ reconciliation of initially estimated Project Cost of Rs. 8702.23 Crore (without Deferred Works) earlier filed before this Commission under Petition No. 68 of 2016 vis-à-vis the Board approved overall Project Cost of Rs 9002.92 Crore (with Deferred Works) is Cost of Rs 9002.92 Crore (with Deferred Works) is as under:

**Amount in Rs. Crore**

S. No	Particulars	Break-up of Estimated Project Cost without Deferred Works	Break-up of Board Approved Project Cost with Deferred Works	Increase/ Decrease
1	<b>Cost of Land &amp; Site Development</b>	<b>144.00</b>	<b>144.00</b>	-
2	BTG & BoP Facilities	4,267.43	4,299.15	31.72
3	Barrage at River (including Raw Water Pipe line & Pump House)	156.59	156.59	-
4	Railway Siding	141.81	266.81	125
<b>5</b>	<b>Total Plant &amp; Machinery (2+3+4)</b>	<b>4,565.83</b>	<b>4,722.56</b>	<b>156.72</b>
<b>6</b>	<b>Building &amp; Civil Works</b>	<b>895.11</b>	<b>1,045.11</b>	<b>150.00</b>
<b>7</b>	<b>Customs &amp; Excise duty</b>	<b>576.03</b>	<b>570.00</b>	<b>(6.03)</b>
<b>8</b>	<b>Other Soft Cost/Expenses including Pre-operative / Pre-commissioning Expenses, IDC, Finance Charges, FERV Losses, Unamortized Finance cost to borrowings etc.</b>	<b>2,521.25</b>	<b>2,521.25</b>	-

<b>9</b>	<b>Total Capital Expenditure (1+5+6+7+8)</b>	<b>8,702.23</b>	<b>9,002.92</b>	<b>300.69</b>
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- e) *The Commission may henceforth kindly consider the Board approved overall Project Cost of Rs. 9002.92 Crore with the above mentioned detailed break-up as the overall Project Cost for the purpose of True-up of generation tariff for Unit-1 (600 MW) of the Project for FY 2018-2019 under the present Petition.*
- f) *Total cash expenditure under “Building and Civil works” for the Project (both Unit-1 & Unit-2) claimed till 31.03.2019 is Rs. 957.56 Crore, which is well with-in the total provision of Rs. 1045.11 Crore kept towards “Building & Civil Works” of the Project in the Board approved overall Project Cost of Rs. 9002.92 Crore as per the above table.*
- g) *It is further submitted that Additional Capital Expenditure of Rs 66.93 Crore towards “Building and Civil Works” claimed for the Project during FY 2018-19 has been primarily incurred towards the Deferred Works related to Ash Dyke in accordance with the provisions of Regulation 20.1 of the MPERC Tariff Regulations 2015, for which an additional provision had always been kept in the overall Project Cost and was duly informed to this Commission by MB Power in its various submissions from time to time.*

51. On perusal of the above submission filed by the petitioner, the Commission observed the following:

- a. The petitioner has submitted that the project cost of Rs. 8702.23 Crore which was filed by the petitioner in its various tariff petitions was the estimated project cost as on COD of the project against the project cost of Rs. 9002.92 Crore approved by its Board.
- b. Earlier, the petitioner in petition No. 68 of 2016 for determination of final tariff of Unit No. 1 had submitted Board Resolution dated 16.02.2016. In the aforesaid Resolution, the Board of the petitioner Company resolved the following:

*Project cost for setting up 1200 MW (2x600MW) coal based thermal power project (the “project”) of the Company after taking into account of originally estimated cost of Rs. 62,40,00,00,000 (Rupees Six Thousand Two Hundred Forty Crores only) (“Original Project Cost”) and cost over run of Rs. 17,60,00,00,000 (Rupees One Thousand Seven Hundred Sixty Crores only)*

*("Additional Project Cost") be and hereby further extended and the revised project cost of Rs. 87,02,92,00,000 (Rupees Eight Thousand Seven Hundred Two Crores and Ninety-Two Lakhs only) (excluding Rs. 5,70,00,00,000 (Rupees Five hundred and Seventy Crore only) towards Custom and Excise Duty) be and hereby considered and approved by the Board of Directors.*

*Resolved further that revised project cost of Rs. 87,02,92,00,000 (Rupees Eight Thousand Seven Hundred Two Crores and Ninety-Two Lakhs only) over and above the appraised Original Project Cost and Additional Project Cost would be funded through internal accruals/Equity.*

- c. The petitioner submitted that the base cost of the project approved by the Board of the Company is Rs. 8702.92 Crore excluding Customs and Excise Duty of Rs. 570 Crore. However, the original project cost including Customs and Excise Duty and less working capital margin is Rs. 9002.92 Crore.
  - d. The petitioner further submitted that out of the approved project cost of Rs. 9002.92 Crores, MB Power had then estimated the project cost as Rs. 8702.23 Crore (including a provision of Rs. 576.03 Crore towards Custom Duty/Excise Duty) and same had been filed in petition No. 68 of 2016 for determination of final tariff of Unit No. 1 of the project. The balance amount of Rs. 300 Crores was kept by the petitioner as an additional provision for execution of certain deferred works related to Ash Dyke and Railway Siding and other minor works at later stage.
  - e. The petitioner has filed head-wise break-up / reconciliation of initially estimated Project Cost of Rs. 8702.23 Crore (without Deferred Works) earlier filed with the Commission in Petition No. 68 of 2016 vis-à-vis the Board approved overall Project Cost of Rs 9002.92 Crore (with Deferred Works).
52. In view of the details and documents regarding capital cost under original scope of work filed by the petitioner, it is observed that Board of the petitioner had approved an overall Project Cost of Rs. 9002.92 Crore (including Custom Duty /Excise duty). Out of this Project Cost approved by the Board, the petitioner at the time of filing petition for determination of final tariff (Petition No. 68 of 2016) had estimated the Project Cost of Rs. 8702.23 Crore (including a provision of Rs. 576.03 Crore towards Custom Duty/ Excise Duty), thereby keeping a additional provision of Rs. 300 Crore for future additional project expenditure . This balance amount of Rs. 300 Crore was

kept as an additional provision primarily for execution of certain “Deferred Works related to Ash Dyke and Railway Siding” and other minor works at a later stage in accordance with the provisions of Regulation 20.1 of MPERC Regulations 2015.

53. The details of the capital cost approved by BOD of the company as on different dates for Unit No. 1&2 as filed by the petitioner are as given below:

**Table 9: Capital Cost as approved by BOD of the Company (Rs Crore)**

Particulars	Board approval dated 21/10/2009	Board approval dated 30/06/2014	Estimated Project Cost out of the overall approved project cost as on 16/02/2016 (without deferred works)	Approved Project Cost as on 16/02/2016 with deferred works
Cost of Land & Site Development	101.75	149.05	144.00	144.00
BTG & BoP Facilities	3825.00	4124.36	4267.43	4299.15
Barrage at River (including Raw Water Pipeline & Pump House)	78.24	145.48	156.59	156.59
Railway Siding	35.00	124.43	141.81	266.81
<b>Total Plant &amp; Machinery (2+3+4)</b>	<b>3938.24</b>	<b>4394.27</b>	<b>4565.83</b>	<b>4722.56</b>
Building & Civil Works	995.67	1132.88	895.11	1045.11
Customs & Excise duty	-	576.03	576.03	570.00
Other Soft Cost/ Expenses including Pre-operative/Pre-commissioning Expenses, IDC, Finance Charges, FERV Losses, Unamortized Finance cost to borrowings etc.	1105.47	2053.82	2521.25	2521.25
Working Capital Margin	98.99	=	=	=
<b>Total Capital Expenditure (1+5+6+7+8)</b>	<b>6240.12</b>	<b>8306.03</b>	<b>8702.23</b>	<b>9002.92</b>

54. Vide order dated 12<sup>th</sup> June’ 2019 in petition No. 51 of 2018 for true-up of tariff for Unit No. 1 for FY 2017-18, the Commission considered the capital cost of Rs. 4431.18 Crore as on 31.03.2018. Further, the Commission vide order dated 1<sup>st</sup> July’ 2019 in petition No. 57 of 2019 for true-up of tariff for Unit No. 2 admitted the capital cost (as on 31.03.2018) of Rs. 3552.44 Crores. Details of the capital cost as on 31<sup>st</sup> March’ 2018 considered by the Commission for Unit No. 1 and 2 are as given below:

**Table 10: Capital Cost as considered by the Commission as on 31.03.2018: (Rs Crore)**

Particulars	Closing 31.03.2018 (Unit-1)	Closing 31.03.2018 (Unit-2)	Total Closing GFA 31.03.2018
Land & Site Development	43.07	60.52	103.59
BTG & BOP (Including Taxes & Duties)	2,498.27	1764.13	4262.40
Civil Works & Structural Works (Including Taxes)	517.76	372.87	890.63
Barrage (including Land and Taxes)	89.85	65.32	155.18
Railway Siding	69.69	72.24	141.93
<b>Hard Cost</b>	<b>3218.65</b>	<b>2335.08</b>	<b>5553.73</b>
Pre-Operative Expense	173.27	169.94	343.21
Infirm Power	57.11	-	57.11
IDC and FC	914.99	903.53	1818.52
FERV	46.69	101.35	148.04
Unamortized Finance Cost	20.47	14.46	34.93
Carrying Cost	-	28.09	28.09
<b>Soft Cost</b>	<b>1212.53</b>	<b>1,217.36</b>	<b>2429.89</b>
<b>Total Capital cost including IDC, FC,</b>	<b>4431.18</b>	<b>3552.44</b>	<b>7983.63</b>

55. In view of the above, the Commission has observed that the additional capitalization during FY 2018-19 as claimed by the petitioner is within the original scope of work and project cost of Rs. 9002.92 Crore approved by BoD of the petitioner's company.

**C. Cut off date**

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

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

57. The Unit No. 1 of M. B. Thermal Power Project under subject petition achieved COD on 20<sup>th</sup> May' 2015 and Unit No. 2 achieved the COD on 07<sup>th</sup> April' 2016, therefore the cut-off date of the project shall be 31<sup>st</sup> March' 2019 in accordance with Regulations, 2015. Therefore, the additional capitalization claimed by the petitioner is within the cut-off date and shall be examined in accordance with Regulation 20.1 of Tariff

Regulations, 2015.

**D. Analysis of additional capitalisation in light of the Regulations**

58. The petitioner filed the additional capitalization of Rs. 32.81 Crores for Unit No. 1 of the project during FY 2018-19 under two major heads i.e. Land & Site Development and Building and Civil works. The additional capitalization under each of the aforesaid heads has been examined separately as given below:

**Land & Site Development**

59. The petitioner has claimed Rs. 2.80 Crore under additional capitalization towards land including R&R related works in Unit No.1 of the project. By affidavit dated 14<sup>th</sup> July' 2020, the petitioner submitted that the aforesaid assets have been claimed under Regulation 20.1 (i) of MPERC Tariff Regulations, 2015.
60. Regarding the additional capitalization towards land and site development works, the petitioner submitted that the acquisition cost of freehold land for the Project, which includes the cost of the land along with the provision for annual diversion payments to GoMP for change of land use (agriculture to industrial) & R&R expenses (as per Madhya Pradesh Rehabilitation and Resettlement Policy-2002 and National Rehabilitation and Resettlement Policy-2007 for Project Affected People), has already been capitalized till FY 2015-16 (the year of Unit-1 COD i.e. 20.05.2015) on accrual basis.
61. The petitioner further submitted that the provision for related R&R expenses includes the special economic grant scheme, old age pension schemes, physically handicapped grant scheme, widow pension scheme, education & health facilities & related provisions, scholarship schemes etc. which need to be paid/released in cash in form of discharging of liabilities/provision on annual basis to the Project Affected People for the life of the Project.
62. The petitioner submitted that it has incurred a cash expenditure of Rs 5.59 Crore towards discharge of liabilities on Freehold land incl. R&R for the Project during FY 2018-19 and this expenditure of Rs 5.59 Crore has been apportioned between Unit-1 and Unit-2 of the Project on 50:50 basis i.e. Rs 2.80 Crore each for Unit-1 and Unit-2 of the Project and the same is duly reflected in the Auditor's Certificate of Cash



expenditure dated 24.01.2020.

63. On examination of the aforesaid works under additional capitalization filed by the petitioner, it is observed that these works are related to discharge of liability on freehold land including R&R expenses capitalized for the project during FY 2018-19 and have also been recorded in Annual Audited Accounts and Asset-cum-Depreciation register of the project. Further, these works are under the original scope of works and capitalized within the cut-off date of the project. Therefore, the additional capitalization of Rs. 2.80 Crores towards land related works under Unit No. 1 (for payment of undischarged liability) is considered in this order under Regulation 20.1 (i) of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015.

### **Building & Civil Works**

64. The petitioner filed additional capitalization of Rs. 30.01 Crore towards Building & Civil Works towards Unit No. 1 of the project. By affidavit dated 14<sup>th</sup> July' 2020, the petitioner submitted that these deferred works are related to ash pond/ash dyke/ash handling system and related civil works for the Project and these works have been partially completed and capitalized during FY 2018-19. The petitioner further submitted that it has incurred a cash expenditure of Rs 60.02 Crore during FY 2018-19 towards the aforesaid works which have been apportioned between Unit-1 and Unit-2 of the Project on 50:50 basis i.e. Rs 30.01 Crore each for each Unit-1 and Unit-2 of the Project.
65. The petitioner also submitted that the additional capitalization claimed by the petitioner during FY 2018-19 are well under the original scope of work of the Project Further, it is a settled position in law and accounting standards that an asset shall be capitalized in the balance sheet of the Company only when it is put to use.
66. On examination of the details filed by the petitioner, it is observed that works of Rs. 30.01 Crore pertains to deferred works of Ash dyke and other related civil works capitalized and these are within the cut-off date of the project under Unit No. 1 of the project during FY 2018-19 and covered under Regulation 20.1 (ii) of Tariff Regulations, 2015.
67. It is further observed that the aforesaid works/assets are under the original scope of works of the project and recorded in Annual Audited Accounts & Asset-cum-

Depreciation Register of the project. Therefore, the additional capitalization of Rs. 30.01 Crores towards Building & Civil Works is considered under Regulation 20.1(ii) of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 in this order.

68. The break-up of the Opening Gross Fixed Assets, additions during the year and Closing Gross Fixed Asset as considered by the Commission in this order are as given below:

**Table 11: Capital Cost as on 31<sup>st</sup> March' 2019 for Unit No. 1 considered in this order:**  
(Rs Crore)

Particulars	Opening Capital Cost as on 01.04.2018	Add. Cap. considered for FY 2018-19	Closing Capital Cost 31.03.2019
Land & Site Development	43.07	2.80	45.87
BTG & BOP (Incl. Taxes & Duties)	2,498.27		2,498.27
Civil Works & Structural Works (Including Taxes)	517.76	30.01	547.77
Barrage (including Land and Taxes)	89.85		89.85
Railway Siding	69.69		69.69
<b>Hard Cost</b>	<b>3218.65</b>	<b>32.81</b>	<b>3251.46</b>
Pre-Operative Expenses	173.27		173.27
Infirm Power	57.11		57.11
IDC and FC	914.99		914.99
FERV	46.69		46.69
Unamortized Finance Cost	20.47		20.47
<b>Soft Cost</b>	<b>1212.53</b>	<b>0.00</b>	<b>1212.53</b>
<b>Total Capital cost including IDC, FC,</b>	<b>4431.18</b>	<b>32.81</b>	<b>4463.99</b>

## DEBT –EQUITY RATIO

### Petitioner's Submission:

69. Regarding the sources of funding for additional capitalization of Rs. 32.81 Crore claimed in the subject matter, the petitioner submitted that the additional capital expenditure incurred during FY 2018-19 is funded entirely through internal accruals. The debt equity ratio for FY 2018-19 is (71.72:28.28) which is well within the norms as stipulated under Regulation 25 of MPERC Tariff Regulations, 2015.

### Provisions in Regulations:

70. Regulation 25 of the MPERC (Terms and Conditions for Determination of Generation

Tariff) Regulations, 2015 provides as under:

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

**Provided that:**

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

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

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

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

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

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

### Commission's Analysis:

71. Regarding opening balance, the Commission has considered closing figures of GFA, Equity and Loan as considered in true-up order dated 12<sup>th</sup> June' 2019 in Petition No. 51 of 2018 as opening balance in this order as given below:

**Table 12: Opening Capital Cost and Funding for FY 2018-19 (Rs in Crore)**

Sr. No.	Particular	Amount
1	Opening Capital Cost	4431.19
2	Opening Equity	1229.79
3	Opening Loan	2610.20

72. With regard to funding of additional capitalization of Rs. 32.81 Crore during the year, petitioner submitted that the additional capital expenditure incurred during FY 2018-19 are funded entirely through internal accruals. Vide Commission's letter dated 30<sup>th</sup> May' 2020, the petitioner was asked to justify the funding of additional assets through internal accruals/equity in light of the Annual Audited Accounts. The petitioner was also asked to file supporting documents in this regard.

73. By affidavit dated 14<sup>th</sup> July' 2020, the petitioner filled the following:

*"It is submitted that the Petitioner's company has generated Rs 148.85 Crore as net internal accruals during the FY 2018-19 as per the table below which have been partly utilized to fund the capital expenditure as claimed in the instant petition.*

	Amount (Rs. Crore)	Supporting Documents for Reference
Profit/(Loss for the year)	54.83	Annexure-1 of the Present Petition: Audited Annual Accounts for FY 2018-19; Ref Page No.30
Add: Depreciation and Amortization Expense	388.28	Annexure-1 of the Present Petition: Audited Annual Accounts for FY 2018-19; Ref. Page No.30
Less: Repayment of long term borrowings	(294.26)	Annexure-1 of the Present Petition: Audited Annual Accounts for FY 2018-19; Ref. Page No.32

<b>Net Internal Cash</b>	<b>148.85</b>	
<b>Accrual</b>		

74. With regard to funding of additional capitalization of Rs. 32.81 Crore, Regulation 25.1 of the Tariff Regulations, 2015 provides that “if the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan.” In light of the aforesaid Regulation, the Commission has considered the excess equity i.e. above 30% of additional capitalization as normative loan in this order.
75. The detail of additional capitalization considered during the year and its corresponding Debt and Equity admitted by the Commission for FY 2018-19 in this order are as given below:

**Table 13: Additional Capitalization and Funding: (Rs. Crore)**

Sr. No.	Particulars	Asset Addition and Source of Funding Admitted for FY 2018-19		
		Addition	Loan Addition	Equity Addition
1	Additions during the year	32.81	22.97	9.84
2	Debt : Equity Ratio	<b>70:30</b>		

**Annual Capacity (fixed) Charges:**

76. 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) and energy charge (for recovery of primary and secondary fuel cost as specified in Regulation 28). The Annual Capacity (fixed) Charges consist of following components:
- Return on Equity;
  - Interest on Loan Capital;
  - Depreciation;
  - Interest on Working Capital;
  - Operation and Maintenance Expenses;

**(a) Return on Equity****Petitioner's Submission:**

77. While claiming the return on equity for FY 2018-19, the petitioner submitted that it has neither paid any Normal Tax nor MAT.
78. Accordingly, the petitioner claimed the Return on Equity for Unit No.1 for FY 2018-19 considering the base rate of return @15.50% as given below:

**Table 14: Return on Equity claimed by the petitioner for FY 2018-19:**

<b>Particulars</b>	<b>Unit</b>	<b>FY 2018-19</b>
<i>Opening Equity</i>	<i>Rs. Cr.</i>	<i>1229.78</i>
<i>Addition in Equity during the year/ period</i>	<i>Rs. Cr.</i>	<i>32.81</i>
<b>Closing Equity</b>	<b>Rs. Cr.</b>	<b>1262.59</b>
<b>Average Equity</b>	<b>Rs. Cr.</b>	<b>1246.19</b>
<i>Base rate of Return on Equity</i>	<i>%</i>	<i>15.50%</i>
<i>Effective Tax rate</i>	<i>%</i>	<i>0.00%</i>
<i>Rate of return on equity</i>	<i>%</i>	<i>15.50%</i>
<b>Annual Return on Equity</b>	<b>Rs. Cr.</b>	<b>193.16</b>

**Provision in Regulations:**

79. Regarding the Return on Equity, Regulation 30 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015, provides as under:

**30. Return on Equity:**

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

*Provided that:*

- (a) *in case of projects Commissioned on or after 1st April, 2016, an additional return of 0.5 % shall be allowed, if such projects are completed within the timeline specified in Appendix-I:*

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

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

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

31.2 *Rate of return on equity shall be rounded off to three decimal places and shall be computed as per the formula given below: Rate of pre-tax return on equity = Base rate / (1-t), Where “t” is the effective tax rate in accordance with Clause 31.1 of this Regulation and shall be calculated at the beginning of every financial year based on the estimated profit and tax to be paid estimated in line with the provisions of the relevant Finance Act applicable for that financial year to the company on pro-rata basis by excluding the income of non-generation business and the corresponding tax thereon. In case of generating company paying Minimum Alternate Tax (MAT), “t” shall be considered as MAT rate including surcharge and cess. For example:- In case of the generating company paying*

- (i) *Minimum Alternate Tax (MAT) @ 20.96% including surcharge and cess:  
Rate of return on equity = 15.50 / (1-0.2096) = 19.610%*
- (ii) *In case of generating company paying normal corporate tax including surcharge and cess:*

- (a) *Estimated Gross Income from generation business for FY2016-17 is Rs.1000 Crore*
- (b) *Estimated Advance Tax for the year on above is Rs. 240 Crore.*
- (c) *Effective Tax Rate for the year 2016-17 = Rs.240 Crore/ Rs.1000 Crore =24%*
- (d) *Rate of return on equity =  $15.50 / (1-0.24) = 20.395\%$*

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

**Commission’s Analysis:**

- 80. While determining Return on Equity, the closing equity as on 31<sup>st</sup> March’ 2018 in Commission’s last true-up order dated 12<sup>th</sup> June’ 2019 (in petition No. 51 of 2018) is considered as the opening equity as on 1<sup>st</sup> April’ 2018 in this order. The petitioner has also claimed the same opening equity of Rs. 1229.79 Crore. Further, the normative equity addition of Rs. 9.84 Crore towards additional capitalization during FY 2018-19 is also considered in this order which is within the norms prescribed under Regulations, 2015.
- 81. The petitioner has claimed Return on Equity by applying base rate of return @15.50% without considering any tax rate for grossing up the base rate during FY 2018-19. Accordingly, the Return on Equity for FY 2018-19 is worked out in this order as given below:

**Table 15: Return on Equity for Unit No. 1 allowed in this order**

<b>Sr. No.</b>	<b>Particular</b>	<b>Unit</b>	<b>True-up FY 2018-19</b>
1	Opening Equity as on 1 <sup>st</sup> April’ 2018	Rs. Crore	1229.79
2	Equity addition during the year	Rs. Crore	9.84
3	Closing Equity as on 31 <sup>st</sup> March’ 2019	Rs. Crore	1239.63
4	Average Equity	Rs. Crore	<b>1234.71</b>



5	Base rate of Return on Equity	%	15.50
6	<b>Annual Return on equity</b>	<b>Rs. Crore</b>	<b>191.38</b>

**b. Interest on Loan**

**Petitioner's Submission**

82. While claiming the interest on loan capital during FY 2018-19, the petitioner has considered the same opening loan as on 1<sup>st</sup> April' 2018 as considered by the Commission in last true-up tariff order dated 12<sup>th</sup> June' 2019 (in petition No. 51 of 2018) for true-up of Unit No. 1 for FY 2017-18. The petitioner in the subject petition has submitted the following: -

*Regulation 32.5 of Tariff Regulations, 2015 stipulates that the rate of interest shall be weighted average rate of interest calculated on the basis of the actual loan portfolio after providing appropriate adjustment for interest capitalized.*

*Accordingly, the Petitioner submits that the weighted average rate of interest (WAROI) of 12.80% (calculation detailed out under Form-13 of Tariff Forms enclosed with the instant Petition) has been considered for computation of interest on loan for the period FY 2018-19. The interest on loan claimed has been computed as shown below:*

**Table 16: Interest on Loan claimed by the petitioner: (Rs. Crore)**

<b>Particulars</b>	<b>FY 2018-19</b>
Gross Opening Normative Loan	3210.40
Less: Cumulative repayment of Normative Loan	591.20
<b>Opening Normative Loan</b>	<b>2610.19</b>
Add: Increase in Loan during the year / period	-
Less: Normative Repayment during the year / period	216.66
<b>Closing Normative Loan</b>	<b>2393.53</b>
Average Normative Loan	2510.86
Weighted Average Rate of Interest	12.80%
<b>Annual Interest and Finance Charges</b>	<b>320.13</b>

**Provision in Regulations:**

83. 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**

84. In the subject true-up petition, the petitioner has submitted that the source of funding for the additional capitalization is through equity and no loan component incurred. Therefore, the petitioner has not claimed any loan addition during the year.
85. For determining the interest on loan, the Commission has considered the opening loan amount of Rs. 2610.20 Crore as on 01<sup>st</sup> April' 2018 for Unit No. 1 as admitted in Commission's order dated 12<sup>th</sup> June' 2019 in petition No. 51 of 2018. Further, the Commission has considered the loan addition of Rs. 22.97 Crore during FY 2018-19 (70% of the asset addition) in respect of additional capitalization considered during FY 2018-19 in this order. The repayment equivalent to "Depreciation" during the year is considered as per the provision under the Regulations, 2015.
86. While claiming the interest on loan, the petitioner has considered the weighted average rate of interest @12.80% of actual loan portfolio. The Regulation 32.5 of the Regulations, 2015 provides that the rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio.
87. Vide Commission's letter dated 30<sup>th</sup> May' 2020, the petitioner was asked to file the detailed computation of the weighted average rate of interest on the basis of the actual loan portfolio with supporting documents, in terms of Regulation 32.5 of the Regulations, 2015.

88. By affidavit dated 14<sup>th</sup> July' 2020, the petitioner filed the following:

*The required supporting documents in terms of the Bankers' Certificates of loan outstanding and interest payment during the FY 2018-19 are attached herewith and marked as "Annexure-G".*

89. From the above, the Commission has considered the actual weighted average rate of interest @12.80% for FY 2018-19 as filed by the petitioner.

90. Considering the above, the interest on loan for FY 2018-19 is determined in this order as given below:-

- (i) Gross Normative Opening loan of Rs. 2610.20 Crore is considered as per last true-up order dated 12<sup>th</sup> June' 2019 in petition No. 51 of 2018.
- (ii) Net addition of normative loan of Rs 22.97 Crore is considered towards additional capitalization during FY 2018-19.
- (iii) Annual repayment of Loan equal to annual depreciation is considered.
- (iv) Actual interest paid is worked out by the petitioner as per actual interest paid in accordance with the Banker's Certificates.
- (v) Weighted Average Rate of Interest @12.80% filed by the petitioner based on the actual loan portfolio is considered.

**Table 17: Interest on loan for Unit No. 1 allowed in this order**

Sr. No.	Particular	Unit	True-up FY 2018-19
1	Opening Loan Balance as on 1 <sup>st</sup> April' 2018	Rs. Cr.	2610.20
2	Loan addition during the year	Rs. Cr.	22.97
3	Repayment during the year	Rs. Cr.	216.66
4	Closing Loan Balance as on 31 <sup>st</sup> March' 2019	Rs. Cr.	2416.51
5	Average Loan	Rs. Cr.	<b>2513.35</b>
6	Weighted average rate of interest	%	12.80%
<b>7</b>	<b>Annual Interest amount on Loan</b>	<b>Rs. Cr.</b>	<b>321.60</b>

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

91. While determining the depreciation during the year, the petitioner has considered the same Opening Gross Fixed Assets as considered by the Commission as on 31<sup>st</sup> March' 2018 in last true-up order dated 12<sup>th</sup> June' 2019 in petition No. 51 of 2018. The petitioner also considered addition of assets during FY 2018-19 in respect of additional capitalization claimed in the subject petition.
92. The petitioner has considered the weighted average rate of depreciation @ 4.87% as worked out in form TPS 11 filed with the petition considering Fixed Assets Register based on Previous Indian GAAP and the rates of depreciation as per Appendix-II to Tariff Regulations, 2015
93. Based on the above, the annual depreciation as claimed by the petitioner in the subject petition is given below:

**Table 18: Annual Depreciation claimed by the petitioner: (Rs. Crores)**

<b>Particulars</b>	<b>FY 2018-19</b>
<i>Opening Capital Cost</i>	4431.19
<i>Closing Capital Cost</i>	4464.00
<b>Average Capital Cost</b>	<b>4447.59</b>
<b>Weighted Average rate of Depreciation</b>	<b>4.87%</b>
<b>Depreciation (for the period)</b>	<b>216.66</b>

**Provision in Regulations:**

94. 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 of 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 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**

95. For the purpose of determining the depreciation, the closing Gross Fixed Assets of Rs. 4431.19 Crore as on 31<sup>st</sup> March' 2018, as admitted in Commission's last true-up order dated 12<sup>th</sup> June' 2019 for FY 2017-18 (in petition No. 51 of 2018) is considered as the opening Gross Fixed Assets as on 1<sup>st</sup> April' 2018. The closing Gross Fixed Assets as on 31<sup>st</sup> March' 2019, is worked out after considering the additional capitalization of Rs. 32.81 Crore admitted in this order.

96. In response to the queries raised by the Commission, by affidavit dated 14<sup>th</sup> July' 2020, the petitioner filed the Assets-cum-Depreciation Register for the project for FY 2018-19 in hard and soft copies. The weighted average depreciation rate of 4.87% is worked out based on the rates of depreciation prescribed in the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 as given below:

**Rs. Crore**

S. No.	Name of the Assets	Depreciation Rates as per Regulations	GFA as on 01.04.2018	Additions during FY 18-19	GFA as on 01.04.2019	Average GFA	Depreciation for the Year
1	Freehold Land	0%	156.21	0.06	156.27	156.24	-
2	Lease Hold Land	3.34%	21.58	-	21.58	21.58	0.72
3	Plant & Machinery	5.28%	6,535.71	29.08	6,564.79	6,550.25	345.85
4	Buildings (Permanent and other civil/stru.)	3.34%	1,271.18	81.36	1,352.54	1,311.86	43.82
5	Buildings & Temporary Structures	100.00%	0.37	-	0.37	0.37	0.37
	<b>Other Assets</b>						
6	Furniture & Fixtures	6.33%	3.85	2.28	6.13	4.99	0.32
7	Office Equipment's	6.33%	2.87	0.34	3.32	3.14	0.20
8	Computer	15.00%	3.61	0.51	4.12	3.87	0.58
9	Vehicles	6.33%	2.40	0.11	2.51	2.46	0.16
10	Software	15.00%	3.65	-	3.65	3.65	0.55
<b>TOTAL</b>			<b>8,001.53</b>	<b>113.75</b>	<b>8115.27</b>	<b>8058.40</b>	<b>392.56</b>
<b>Weighted Average Rate of Depreciation (%)</b>							<b>4.87%</b>

97. Considering the above, the Commission has worked out the annual depreciation during the year duly taking into account the opening Gross Fixed Assets, additions during the year, closing Fixed Assets as considered in this order and weighted average rate of depreciation in terms of Regulations, 2015 (as worked out by the petitioner in the Asset-cum-Depreciation Register) as given below:



**Table 19: Depreciation for Unit No. 1 allowed in this order**

Sr. No.	Particular	Unit	True-up FY 2018-19
1	Opening Gross Fixed Assets as on 1 <sup>st</sup> April' 2018	Rs. Crore	4431.19
2	Addition during the year	Rs. Crore	32.81
3	Closing Gross Fixed Assets as on 31 <sup>st</sup> March' 2019	Rs. Crore	4464.00
4	Average Gross Block	Rs. Crore	<b>4447.60</b>
5	Weighted average rate of depreciation	%	4.87
<b>6</b>	<b>Annual Depreciation amount</b>	<b>Rs. Crore</b>	<b>216.66</b>
7	Cumulative depreciation	Rs. Crore	807.86

**d. Operation & Maintenance Expenses****Petitioner's Submission**

98. The petitioner has filed the Operation and Maintenance expenses for generating Unit No.1 for FY 2018-19 in accordance to the norms under Regulations as given below:

**Table 20: Operation & Maintenance Expenses claimed (Rs. Crore)**

Particular	FY 2018-19
Annual O&M expenses	110.28

**Provision in Regulations:-**

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

**Table 21: Normative O&M Expenses for FY 2018-19**

Units (MW)	Rs. Lakh/MW/Year
45	36.24
200/210/250	30.51
300/330/350	25.47
500	20.43
600 and above	18.38

**Commission's Analysis**

100. For Thermal Power Station, the Commission has worked out the Annual Operation and Maintenance Expenses as per the norms prescribed under aforesaid Regulations, 2015 for the generating unit of "600 MW and above" as given below:

**Table 22: O& M Expenses for Generating Units**

Particular	Units	FY 2018-19
Generating Unit Capacity	MW	600
Per MW O&M Expenses Norms	Rs in Lakh/MW	18.38
<b>Annual O&amp;M expenses</b>	<b>Rs in Crore</b>	<b>110.28</b>

**e. Interest on Working Capital****Petitioner's Submission**

101. The petitioner submitted the following for claiming the Interest on Working Capital for Unit No.1 for FY 2018-19:-

*"The petitioner submits that it has claimed interest on working capital in accordance with Regulation 34 of Tariff Regulations, 2015 for the period FY 2018-19. Further, the rate of interest on working capital has been taken on normative basis and considered as the bank rate as on 01.04.2016 (Base rate 9.30% + 350 bps) for the period FY 2018-19. The calculation of Interest on Working Capital is as shown below:*

**Table 23: Interest on Working Capital claimed: (Rs. Crore)**

Particulars	FY 2018-19
Cost of Coal towards Stock	67.29
Cost of Coal towards Generation	67.29
Cost of Main Secondary Fuel Oil	0.99
O & M Expenses	9.19
Maintenance Spares	20.76
Receivables	284.19
<b>Total Working Capital</b>	<b>451.01</b>
Rate of Interest	12.80%
<b>Interest on Working Capital</b>	<b>57.73</b>

**Provision in Regulations:**

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

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

### **Commission's Analysis**

103. Regulation 34.2 of the Regulations, 2015 provides that no fuel price escalation shall be provided during the tariff period for calculating the working capital. The basis of working capital as per the provisions under Regulations, 2015 is as given below:

- (i) Two months' Cost of coal as considered in Commission's order dated 01<sup>st</sup> December' 2017 in petition No. 68 of 2016 for FY 2018-19 is considered in this order.
- (ii) Two months' Cost of secondary main fuel oil equivalent to normative plant availability factor as considered in Commission's order dated 01<sup>st</sup> December' 2017 in petition No. 68 of 2016 for FY 2018-19 is considered in this order. The details of coal cost and cost of main fuel oil for working capital are as given below:

Particulars	FY 2018-19 (Rs. Crore)
Cost of Coal for two Months	133.52
Cost of Secondary Fuel Oil for two Months	0.88

- (iii) O&M Expenses of one month for the purpose of working capital as considered in Commission's order dated 01<sup>st</sup> December' 2017 in petition No. 68 of 2016 is considered in this order.
- (iv) Maintenance Spares as considered in Commission's order dated 01<sup>st</sup> December' 2017 in petition No. 68 of 2016 is considered in this order as given below:

Particulars	FY 2018-19 (Rs. Crore)
Annual O & M Expenses	110.28
O&M Expenses for one month	9.19
Maintenance Spares (20% of O&M Expenses)	22.06

- (v) Receivables have been worked out on the basis of two months of Fixed and Energy charges as given below:

Particulars	FY 2018-19 (Rs. Crore)
Variable Charges- 2 Months (As considered in Order dated 1 <sup>st</sup> December' 2017)	134.51
Annual Fixed Charges- 2 Months (Worked out in this Order)	148.45
<b>Total</b>	<b>282.96</b>

104. Regarding the rate of interest on working capital, Regulation 34.3 of the Regulations, 2015 provides that the rate of interest on working capital shall be considered as per the bank rate as on 01.04.2016 or as on 01<sup>st</sup> April of the year during the tariff period FY 2016-17 to FY 2018-19. Further, the bank rate means the base rate of interest as specified by the State Bank of India from time to time plus 350 basis points. The State Bank of India's Base rate applicable/ prevailing as on 01.04.2018 was 8.70% + 3.50% = 12.20%.

105. Based on the above, the interest on working capital for Unit No. 1 for FY 2018-19 is determined as given below:-

**Table 24: Interest on Working Capital for Unit No. 1 allowed in this order**

Sr. No.	Particular	Unit	True-up FY 2018-19
1	Cost of coal for two months considering non pit head power station	Rs Crore	133.52
2	Cost of fuel oil for two months	Rs. Crore	0.88
3	O&M Charges for one month	Rs. Crore	9.19
4	Maintenance Spares 20% of the O&M charges	Rs. Crore	22.06
5	Receivables for two months	Rs. Crore	282.96
6	Total working capital	Rs. Crore	<b>448.61</b>
7	Applicable rate of interest	%	12.20
<b>8</b>	<b>Interest on working capital</b>	<b>Rs. Crore</b>	<b>54.73</b>

**f. Non-Tariff Income**

**Petitioner's Submission**

106. In the subject true-up petition, the petitioner has submitted that it has earned non-tariff income of Rs. 7.90 Crore at the Project level (i.e. for both Unit-1 and Unit-2) during FY 2018-19 in accordance with Regulation 53.1 of Tariff Regulations, 2015. The details of the non-tariff income for FY 2018-19 filed by the petitioner is as follows:

S. No.	Particulars	Amount (Rs. Crore)
1	Interest Income for Bank Deposits	5.08
2	Scrap Sales	2.82
	<b>Total</b>	<b>7.90</b>

107. Further, the petitioner has apportioned the above non-tariff income of Rs.7.90 Crore on 50:50 basis between Unit-1 and Unit-2 of its Project. Accordingly, the non-tariff income considered for Unit-1 for FY 2018-19 is Rs.3.95 Crore.

**Provisions in Regulations:-**

108. 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:**

109. It was observed that the petitioner has filed the total non-tariff income (Unit No. 1&2) of Rs. 7.90 Crore during FY 2018-19 whereas, in Note 26 of Annual Audited Accounts, other income shown as Rs. 55.56 Crore. Vide letter dated 30<sup>th</sup> May' 2020, the petitioner was asked to explain the reasons for aforesaid discrepancy in non-tariff income recorded in Annual Audited Accounts vis-à-vis filed in the subject petition. The petitioner was also asked to file a detailed break-up of all the components under non-tariff income in light of the Annual Audited Accounts

110. By affidavit dated 14<sup>th</sup> July' 2020, the petitioner submitted the following:

*"It is humbly submitted that as per the accounting standards followed under either IGAAP or IND AS, the Annual Audited Accounts are prepared on accrual basis (irrespective of actual realization or expenditure in cash) and hence "Other Income" in the Annual Audited Accounts is also booked on accrual basis.*

*As such, "Other Income" under Note 26 of the Annual Audited Accounts for FY 2018-19 is booked on accrual basis as Rs 55.85 Crore, against which, "Other Income" of only Rs 7.90 Crore has been realized in cash at the Project level, which has been considered as Non-Tariff income as per the Regulation 53 of MPERC Tariff Regulations 2015 for the purpose of true-up of tariff for both Unit-1 and Unit-2 for FY 2018-19.*

The detailed break-up of "Other Income" shown as Rs 55.85 Crore in the Annual Audited Accounts of FY 2018-19 is as under: -

S. No	Head of Other Income	Amount on Accrual basis for FY 2018-19 (Rs. Crore)	Description
1	Bank Deposits	5.08	Interest Income realized on the margin money kept in term deposits with banks for issue of Bank Guarantees for Custom/Excise duty, PPA etc. <b>This has been considered as Non-tariff income in the present Petition.</b>
2	Others	45.79	This is towards the following: a) Carrying cost towards difference between the true-up tariff and MYT Tariff for FY 2017-18 from MPPMCL: Rs 8.38 Crore. b) Late payments surcharges charged on UPPCL towards delay in making payments for the power sold to UP: Rs 35.33 Crore. c) Income tax refund: Rs 1.77 Crore d) Notional (and not realized) income towards valuation of security deposit: Rs 0.31 Crore. <b>This income does not amount to Non-Tariff Income.</b>
3	Gain on fair valuation of investments	1.47	This is accrued in the Annual Audited Accounts for FY 2018-19 on mark-to-market basis as per IND AS-109 and hence this is not a realized income. <b>As such, this does not amount to Non-tariff income.</b>
4	Liabilities written back	0.25	During FY 2018-19, the Petitioner reversed stale cheques amounting to Rs. 24,59,307/-. <b>As such, this does not amount to Non-tariff income.</b>
5	Scrap Sales	2.82	Realized income from sale of scrap. <b>This has been considered as Non-tariff income in the present Petition.</b>
6	Others	0.44	Recoveries from PGCIL towards adjustment of transmission charges. <b>As such, this does not amount to Non-tariff income</b>
<b>Total Other Income on accrual basis</b>		<b>55.85</b>	

As evident from above, total Non-Tariff income on cash basis for the Project during FY 2018-19 as per items under S.No 1 and 5 of this table is Rs. 7.90 Crore (Rs. 5.08 Crore + Rs 2.82 Crore).

Accordingly, the Petitioner has considered the Non-Tariff income amounting to Rs 7.90 Crore during FY 2018-19 at the Project level, which has been duly apportioned between Unit-1 and Unit-2 of the Project on 50:50 basis (i.e. Non-Tariff income of Rs 3.95 Crore each for Unit-1 and Unit-2 of the Project) for the purpose of true-up under the present petition and Petition No. 21 of 2020 filed before the Commission:

111. On perusal of the petitioner's aforesaid submission, it is observed that the petitioner filed the detailed break-up of all the components of other income in terms of other income recorded in Annual Audited Accounts for FY 2018-19. The petitioner also filed justification for the components those are not considered under non-tariff income. The income from bank deposits and income from sale of scrap etc. are considered under non-tariff income in accordance to the provision under Regulations. The petitioner along with additional submission also filed the Auditor's Certificate certifying the detailed break-up of other income as per Annual Audited Accounts. Therefore, the total non-tariff income of Rs 3.95 for Unit No. 1 as filed by the petitioner is considered by the Commission in this order. The break-up of non-tariff income considered is as given below:

<b>S. No.</b>	<b>Head of Non-tariff/Other Income</b>	<b>Total for Unit No. 1&amp;2</b>	<b>Unit No. 1</b>
1	Interest income from Bank Deposit	5.08	2.54
3	Income from Scrap Sales	2.82	1.41
<b>Total – Non-tariff Income</b>		<b>7.90</b>	<b>3.95</b>

**Other Charges:**

112. In the subject true-up petition, the petitioner claimed following other charges:
- (i) Recovery of the application filing fees from the beneficiary as per Paragraph 38 of the subject Petition;
  - (ii) Recovery of the publication expenses from the beneficiary as and when incurred;



- (iii) Recovery of other charges including but not limited to RLDC/ NLDC charges, Electricity Duty, Cess, Water Charges, other statutory charges, taxes & cess, re-imburement of any fee and/or expenses etc. on pass through basis from the beneficiary for the period from 01.04.2018 to 31.03.2019.

113. Regarding the other charges, In Para 312 and 313 of the order dated 1<sup>st</sup> December' 2017, the following was mentioned by the Commission:

- *“The petitioner is allowed to recover the fees paid to MPERC and publication expenses as per Regulation 52 of (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 on submission of documentary evidence.*
- *The petitioner is allowed to recover Electricity Duty, cess and water charges from the beneficiary on pro rata basis, if payable to the State Government for generation of electricity from its generating Unit No.1 in term of the provision under aforesaid Regulation 52 of MPERC Tariff Regulations,2015 on submission of documentary evidence.”*

114. With regard to Application fee, publication expenses and other statutory charges, Regulation 52 of MPERC (Terms and Conditions for determination of Generation Tariff provides as under:

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

1. *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 :*
2. *The Commission may, for the reasons to be recorded in writing and after hearing the affected parties, allow reimbursement of any fee or expenses, as may be considered necessary.*
3. *SLDC Charges and Transmission Charges as determined by the Commission shall be considered as expenses, if payable by the generating stations.*
4. *RLDC/NLDC charges as determined by the Central Commission shall also be considered as expenses, if payable by the generating station.*
5. *Electricity duty, cess and water charges if payable by the Generating Company for generation of electricity from the power stations to the State Government, shall be allowed by the Commission separately and shall be trued-up on actuals.*

115. From the above, the petitioner is allowed to recover the fee paid to MPERC and publication expenses as per Regulation 52 (1) of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 on submission of documentary evidence.
116. The petitioner is also allowed to recover RLDC/ NLDC charges in term of the provision under aforesaid Regulation 52 (4) of MPERC Tariff Regulations, 2015 on submission of documentary evidence.
117. The petitioner is allowed to recover Electricity Duty, cess and water charges from the beneficiary on pro rata basis, if payable to the State Government for generation of electricity from its generating Unit No.1 in term of the provision under aforesaid Regulation 52 (5) of MPERC Tariff Regulations,2015 on submission of documentary evidence.

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

118. The details of the Annual Capacity (fixed) Charges for FY 2018-19 allowed in this true-up order vis-a-vis those determined in the tariff Order dated 1<sup>st</sup> December, 2017 at normative Plant Availability Factor are summarized as below:

**Table 26: Annual Capacity (fixed) Charges at normative availability (Rs. Crore)**

Sr. No.	Cost Component	Allowed in Order dated 1.12.2017 for FY 2018-19	Allowed in this True-up order for FY 2018-19	True-up Amount
1	Return on equity	182.22	191.38	9.16
2	Interest charges on loan	316.01	321.60	5.59
3	Depreciation	202.63	216.66	14.03
4	O & M expenses	110.28	110.28	0.00
5	Interest on working capital	56.94	54.73	-2.21
<b>6</b>	<b>Annual capacity (fixed) charges</b>	<b>868.08</b>	<b>894.65</b>	<b>26.57</b>
7	Less: Non-Tariff Income	3.52	3.95	0.43
8	Net AFC	<b>864.55</b>	<b>890.70</b>	<b>26.15</b>
<b>9</b>	<b>AFC corresponding to 30% of installed capacity of the Unit</b>	<b>259.36</b>	<b>267.21</b>	<b>7.86</b>

119. The Annual Capacity (fixed) Charges as determined above for FY 2018-19 are at Normative Availability and these charges are based on Annual Audited Accounts of the petitioner's Thermal Power Project.
120. The above Annual Capacity (Fixed) Charges are determined corresponding to the contracted capacity under long term PPA. The recovery of Annual Capacity (Fixed) Charges shall be made by the petitioner in accordance with Clause 36.2 of the Tariff Regulations, 2015 on pro rata basis with respect to actual Annual PAF.
121. Regarding the Energy Charges, in para 34 of the subject petition, the petitioner mentioned the following:  
*“Considering the norms of operations in terms of SHR, Aux etc. as stated above, the Petitioner has estimated the Energy Charges of Rs.1.917 per kWh for Unit-1 of the Project for the period FY 2018-19. The same has been calculated based on the actual fuel price and calorific values for the three months (Jan’ 2016, Feb’ 2016 and Mar’ 2016) preceding 01.04.2016 as stipulated under Regulation 34.2 of Tariff Regulations, 2015 and as considered by the Hon’ble Commission in its order dated 01.12.2017.*
122. Respondent No. 1 (MPPMCL) in its response on the subject petition, has submitted that the Regulation 8.7 of MPERC Tariff Regulations, 2015 provides the generating company shall carry out the truing up of tariff of generating station based on the performance of the controllable parameters like Station Heat Rate, Secondary fuel oil consumption and Auxiliary energy consumption. MPPMCL further submitted that the petitioner is required to file the monthly details of aforesaid performance parameters actually achieved vis-à-vis normative parameters under the Regulations, 2015. The petitioner is also required to file the details of financial gain if any, on account of controllable parameters and shared with the beneficiaries in light of the Regulation 8.9 of the Regulations, 2015.
123. Regarding the performance-based truing-up of energy charges on account of controllable parameters, Regulations 8.7, 8.8 and 8.9 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 provide as under;
- 8.7 *“The generating company shall carry out truing up of tariff of generating station based on the performance of following Controllable parameters:*
-

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

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

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

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

*Net Gain = (ECRN– ECRA) x Scheduled Generation*

*Where,*

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

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

124. In view of the above Regulations, it was observed by the Commission that the generating company shall carry out the truing-up of tariff of generating station based on the controllable performance parameters like Station Heat Rate, Secondary fuel oil consumption and Auxiliary Energy consumption. Vide letter dated 30<sup>th</sup> May' 2020, the petitioner was asked to file the monthly details of aforesaid performance parameters actually achieved vis-à-vis normative parameters under the Regulations, 2015. The petitioner was also asked to file the details of financial gain if any, on account of controllable parameters and shared with the beneficiaries in light of the Regulations 8.9 of the Regulations, 2015.

125. In response to above, by affidavit dated 14<sup>th</sup> July' 2020, the petitioner submitted the following:

*“ The Petitioner submits that the month wise details of Actual Secondary Heat Rate (“GSHR”), Actual Auxiliary Energy consumption (“AUX”) and Actual Secondary Fuel Oil Consumption (“SFoC”) achieved by the Unit-1 of the Project during FY 2018-19 vis-à-vis their respective normative values under the applicable MPERC Tariff Regulations 2015 are as under:*

<b>Actual GSHR vis-à-vis Normative GSHR as per MPERC Tariff Regulations 2015</b>			
<b>Month (FY 2018-19)</b>	<b>Actual SHR achieved by Unit-1 (in kCal/kWh)</b>	<b>Normative SHR as per Regulations 2015 (in kCal/kWh)</b>	<b>Financial Gain (if any)</b>
Apr-18	2454.37	2361.5	NIL
May-18	2456.61	2361.5	NIL
Jun-18	2465.54	2361.5	NIL
Jul-18	2445.18	2361.5	NIL
Aug-18	2425.71	2361.5	NIL
Sep-18	2471.31	2361.5	NIL
Oct-18	2445.56	2361.5	NIL
Nov-18	2454.26	2361.5	NIL
Dec-18	2459.19	2361.5	NIL
Jan-19	2451.35	2361.5	NIL
Feb-19	2457.07	2361.5	NIL
Mar-19	2479.05	2361.5	NIL

<b>Unit-1: Actual AUX vis-à-vis Normative AUX as per MPERC Tariff Regulations 2015</b>			
<b>Month (FY 2018-19)</b>	<b>Actual AUX achieved by Unit-1 of the Project (in %)</b>	<b>Normative AUX as per MPERC Tariff Regulations 2015 (in %)</b>	<b>Financial Gain (if any)</b>
Apr-18	6.64%	5.75%	NIL
May-18	6.34%	5.75%	NIL
Jun-18	7.04%	5.75%	NIL
Jul-18	6.83%	5.75%	NIL
Aug-18	7.02%	5.75%	NIL
Sep-18	6.91%	5.75%	NIL
Oct-18	6.81%	5.75%	NIL
Nov-18	6.42%	5.75%	NIL
Dec-18	5.90%	5.75%	NIL
Jan-19	6.24%	5.75%	NIL
Feb-19	6.74%	5.75%	NIL
Mar-19	6.47%	5.75%	NIL

<b>Unit-1: Actual SFoC vis-à-vis Normative SFoC as per MPERC Tariff Regulations 2015</b>	
Total Secondary Fuel Oil consumed by Unit-1 during FY 2018-19 (KL)	2277
Total Actual Generation by Unit-1 during FY 2018-19 (MUs)	3397.89
Per Unit Actual Consumption of Secondary Fuel Oil by Unit-1 during FY 2018-19 (ml/kWh)	0.67
Normative Consumption of Secondary Fuel Oil as per MPERC Tariff Regulations 2015 (ml/kWh)	0.50
Financial Gain (if any)	NIL

126. On perusal of the details filed by the petitioner, it is observed that actual parameters achieved by the petitioner during FY 2018-19 are inferior than the normative parameters under the Regulations therefore, the petitioner incurred loss on account of the inferior performance and poor actual operating parameters achieved by it during FY 2018-19.
127. However, 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. The aforesaid Regulations do not provide for sharing of loss incurred by the generating company. Therefore, the loss incurred by the petitioner on account of inferior operating parameters shall not be passed on to the beneficiary.

**Implementation of the Order:**

128. The petitioner must take steps to implement the order after giving seven days public notice in accordance with clause 1.30 of MPERC (Details to be furnished and fee payable by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004 and its amendments and recalculate its bills for the energy supplied to Distribution Companies of the State/ M.P. Power Management Company Ltd. since 1<sup>st</sup> April' 2018 to 31<sup>st</sup> March' 2019.
129. The petitioner is also directed to provide information to the Commission in support of having complied with this Order. The true up amount as a result of this order shall be recovered from MP Power Management Company Ltd. / three Distribution Companies of the state in terms of applicable Regulation in six equal monthly instalments during FY 2020-21 and onwards.

130. With the above directions, the subject Petition No. 21 of 2020 is disposed of.

**(Shashi Bhushan Pathak)**  
**(Member)**

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

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

**Date: 8<sup>th</sup> February' 2021**

**Place : Bhopal**

**Annexure-1**

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

**MPPMCL Comment**

1. In Para 15 itself, the Petitioner has stated to have un-discharged liability of Rs. 46.09 Crore corresponding to Unit-1 as on 31.03.2018 has been retained. It is most humbly submitted that said un-discharged liability has not been validated, therefore the same may kindly be ignored and not allowed.

**Petitioner's Response**

*The contents of MPPMCL reply except those which are a matter of record are wrong and denied. It is submitted that in terms of Regulation 20.1, 20.2 and 20.3 of Tariff Regulations 2015, un-discharged liability for capital works after COD and up to the Cut-off-Date and even for capital works after the Cut-off-Date is admissible in tariff subject to prudence check by this Hon'ble Commission. Further, un-discharged liability is a recognised tariff component under the head of Capital Cost/Additional Capital Expenditure under various Tariff Forms issued with Tariff Regulations 2015 such as Form TPS-5, Form TPS-9A, Form TPS-9D and Form HPS-9D.*

*Further, MPPMCL's contention that the undischarged liability of Rs. 46.09 Crore corresponding to Unit-1 as on 01.04.2018, which has been carried forward from 31.03.2018 has not been validated is apparently premised on the erroneous understanding of the subject. It is humbly submitted that the said undischarged liability of Rs. 46.09 Crore corresponding to Unit-1 as on 01.04.2018 has been subjected to due prudence check of the Commission while issuing the true-up tariff for FY 2017-18 for Unit-1 under the Petition No. 51 of 2018. As such, MPPMCL's allegations are completely baseless and devoid of any merits and as such, the same are liable to be rejected.*

**Observation:**

With regard to undischarged liability, in Commission's tariff Order dated 1<sup>st</sup> December' 2017 in petition No. 68 of 2016, it has been recorded that the petitioner filed revised estimated cost of Rs. 5137.58 Crore and the cash expenditure of Rs. 4885.35 Crore was filed for determination of tariff as on 31.03.2016. Thus, Rs. 252.23 Crore was the undischarged liability as on 31<sup>st</sup> March' 2016 towards Unit No. 1.



Further, against the total un-discharged liabilities of Rs 252.23 Crore as on 01<sup>st</sup> April' 2016, the petitioner had discharged an amount of Rs. 67.51 Crore during FY 2016-17 corresponding to unit No. 1 and same was considered by the Commission in true-up order dated 6<sup>th</sup> September' 2018 for FY 2016-17. Out of the balance un-discharge liabilities of Rs. 184.72 Crore, the petitioner had discharged an amount of Rs. 138.59 Crore during FY 2017-18. The Commission had allowed an amount of Rs 127.78 Crore against aforesaid amount in its order dated 12.06.2019 in P-51 of 2018. The petitioner submitted that the undischarged liabilities corresponding to Unit-1 of the Project as on 31.03.2018 was Rs 46.09 Crore.

Regulation 20.1 of the Regulations, 2015 stated as follows:

*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;*

-----

In view of the above, the additional capitalization claimed in the subject petition towards undischarged liability has been examined and considered in accordance with the Commission's earlier final/true-up tariff orders for Unit No. 1 and provisions under the Regulations, 2015.

### **MPPMCL Comment**

2. In Para 17, the Petitioner has contended that Additional Capital Expenditure of Rs. 32.81 Crore incurred during 2018-19 are funded entirely through internal accruals and the debt to equity ratio for FY 2018-19 is claimed at 71.72 : 28.28 (i.e. Debt = Rs. 3,201.40 Crore and Equity = Rs. 1,262.59 Crore).
3. It is most humbly submitted that the above claim of the Petitioner is not in accordance with the 2015 Tariff Regulations. Regulation 25.1 of 2015 Tariff Regulations deal with allowable Debt : Equity Ratio for Capital Cost of the Project.
4. It is most humbly submitted that the Unit 1 of the Project was declared under commercial operation on 20.05.2015 i.e. prior to 01.04.2016, therefore in accordance with Regulation 25.3 the debt: equity allowed by the Commission in Petition No. 68 of 2016 i.e. (72.25) : (27.75) may only be allowed.

5. In Para 18, the Petitioner has given computation of Return on Equity. It is most humbly submitted that the Opening, Closing and Average Equity appears to have been worked out on the basis of incorrect Debt : Equity Ratio. Therefore, it is most humbly prayed that the ROE may be allowed only on the basis of Equity allowable in accordance with the Regulation 25.3 of 2015 Tariff Regulations.
6. In Para 19 and 20, the Petitioner has given basis of rate of interest and computation of Interest on Loan. It is most humbly submitted that the Gross Opening Loan, Opening and Closing Normative Loan and Average Normative Loan appear to have been worked out on the basis of incorrect Debt : Equity Ratio. Therefore, it is most humbly prayed that the Interest on Loan may be allowed only on the basis of Debt (Loan) allowable in accordance with the Regulation 25.3 of 2015 Tariff Regulations.

### **Petitioner's Response**

*The contents of MPPMCL Reply except those which are a matter of record are wrong and denied. It is submitted that the Debt-Equity ratio of 72.25:27.75 was approved for Unit-1 of the Project by this Hon'ble Commission in its tariff Orders dated 01.12.2017, 06.09.2018 and 12.06.2019. As such the opening Debt-Equity Ratio for Unit-1 of the Project as on 01.04.2018 has been retained as 72.25:27.75. Pursuant thereto, MBPL has incurred Additional Capital Expenditure ("ACE") of Rs. 32.81 Crores during FY 2018-2019 (as claimed in the present Petition) towards land related R&R expenses and deferred works of ash dyke & other associated civil works, which has been **funded entirely through internal accruals (Equity)**, due to which the closing Debt-Equity Ratio for Unit-1 of the Project as on 31.03.2019 has been claimed as 71.72:28.28 in terms of Regulation 25.5 read with Regulation 25.1 of Tariff Regulations 2015.*

*In view of the above Regulations the following emerges for consideration:*

- (a) *Regulation 25.5 of Tariff Regulations 2015- Any Additional Capital Expenditure incurred or projected to be incurred on or after 01.4.2016 shall be serviced in tariff in the manner specified in Regulation 25.1.*
- (b) *Regulation 25.1(a) of Tariff Regulations 2015- Debt-Equity ratio shall be considered as 70:30. However, if equity actually deployed is less than 30% of the capital cost, actual equity shall be considered for determination of tariff.*

*In terms of the aforesaid regulatory framework, the ACE of Rs. 32.81 Crores incurred by MBPL after 01.04.2016 must be serviced in tariff as per the manner specified in Regulation 25.1 of Tariff Regulations 2015. Further, since the equity deployed till*

31.03.2019 by MBPL is less than 30% of the capital cost, the actual closing equity i.e., Rs.1262.59 Crore as on 31.03.2019 ought to be considered for ascertaining the Debt-Equity ratio of the Unit-1 of the Project as on 31.03.2019. Thus, in terms of the mandated of Regulation 25.5 read with Regulation 25.1(a) of Tariff Regulations 2015, the Debt-Equity ratio for Unit-1 of the Project as on 31.03.2019 ought to be considered as 71.72:28.28 considering the actual equity deployed by MBPL.

As such, Return on Equity and Interest on Loan has accordingly been computed by MBPL and the same ought to be allowed in accordance with the provisions of Tariff Regulations 2015.

It is further submitted that MPPMCL's reliance on Regulation 25.3 of Tariff Regulations 2015 is baseless and erroneous. Regulation 25.3 of Tariff Regulations 2015 is applicable to only those Generating Stations which have been declared under Commercial Operation (COD) prior to 01.04.2016. It may kindly be noted that this Regulation 25.3 of Tariff Regulations 2015 refers to the COD of the Generating Station as a whole and not COD of the individual units of a Generating Station. Relevant provisions of Regulation 25.3 of Tariff Regulations 2015 are reproduced below: -

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.

It may further be noted that the COD of the MBPL's Generating Station is 07.04.2016 in accordance with Regulation 4.1 (m) of Tariff Regulations 2015, which is reproduced below:

“(m) **'Date of Commercial Operation' or 'COD'** The date of commercial operation of a generating station or unit or block thereof shall be determined as under:

(1) Date of commercial operation in case of a generating unit or block of the thermal generating station shall mean the date declared by the generating company after demonstrating the maximum continuous rating (MCR) or the installed capacity (IC) through a successful trial run after notice to the beneficiaries, if any, and in case of the generating station as a whole, the date of commercial operation of the last generating unit or block of the generating station” [Emphasis Supplied]

As clearly evident from above, the COD of MBPL's Generating Station is 07.04.2016 (i.e. COD of the last unit (Unit-2) of the Project), which is not prior to 01.04.2016. Accordingly, Regulation 25.3 of Tariff Regulations 2015 is not applicable in the present case. Even this Hon'ble Commission while determining tariff of MBPL's Project

approved the normative Station Heat Rate (“SHR”) for the Project as whole and not on unit-wise basis, considering the Project COD as 07.04.2016 i.e., the COD of last unit (Unit-2) of the Project, despite the fact that Unit-1 of MBPL’s Project had achieved COD prior to 01.04.2016. In view of the above it is submitted that MBPL’s claim for Return on Equity with Equity being 28.28% is well within the permissible limit of 30% as per the applicable provisions of Tariff Regulations 2015.

**Observation:**

In the subject true-up petition, the petitioner submitted that the additional capitalization claimed during FY 2018-19 has been fully funded through its internal resources or equity component. Regulation 25.5 of MPERC Tariff Regulations provides as under:

*25.5 Any Additional Capital Expenditure incurred or projected to be incurred on or after 01.4.2016 shall be serviced in tariff in the manner specified in Regulation 25.1.*

Regulation 25.1 (a) provides as under:

*25.1 (a) Debt-Equity ratio shall be considered as 70:30. However, if equity actually deployed is less than 30% of the capital cost, actual equity shall be considered for determination of tariff.*

The petitioner has funded the additional capitalization through 100% internal resources, however, the debt : equity ratio has been considered as 70:30 in accordance to 25 of the Regulations, 2015. The Return on Equity has been determined in accordance to Regulation 30 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015.

**MPPMCL Comment**

7. In Para 21, the Petitioner has given computation of Depreciation. The Petitioner has stated to have computed weighted average rate of depreciation of 4.87 % for FY 2018-19 considering Fixed Asset Register based on “Previous Indian GAAP”. It is most humbly submitted that as admitted by the Petitioner, the accounts of the Project are now being audited on the basis of “Ind AS” and not on the basis of “Previous Indian GAAP” therefore while computing weighted average rate of depreciation the current Accounting Standards may only be applied.

**Petitioner’s Response**

*The contents of MPPMCL Reply except those which are a matter of record are wrong and denied. It is submitted that MBPL has claimed depreciation of 4.87% for FY 2018-2019 considering Fixed Asset Register based on IGAAP accounting standards and the*

*rates of depreciation specified in Appendix-II of Tariff Regulations 2015. It is submitted that depreciation has been claimed based on IGAAP accounting standards instead of IND AS accounting standards for detailed reasons mentioned above at Para Nos. 12 to 17 of this Rejoinder.*

**Observation:**

In Appendix II of MPERC Tariff Regulations, 2015, Depreciation Rate to be considered of various assets are provided. The petitioner has filed the year-wise Asset-cum-Depreciation register for the project. The rate of depreciation on assets considered in the aforesaid Asset-cum-Depreciation register are checked in accordance to the rates of depreciation specified in Appendix-II of MPERC Tariff Regulations, 2015. Accordingly, the annual depreciation has been worked out.

**MPPMCL Comment**

8. In Para 23 (also in Form 13-B at Page No. 113) of the Petition, the Petitioner has submitted its claim for “Interest on Working Capital”, purportedly in accordance with Regulation 34 of the Tariff Regulations 2015. For the purpose, the Petitioner has claimed following amounts, among others, for arriving at the total amount of working capital :

(Rs. Crores)

<b>PARTICULARS</b>	<b>FY 2018-19</b>
Cost of Coal towards stock	67.29
Cost of Coal Towards Generation	67.29
Cost of Main Secondary Fuel Oil	0.99

9. It is humbly submitted that above claim is not in accordance with Regulation 34 of the Tariff Regulations 2015.
10. It is most humbly submitted that the Regulation 31.1 does not provide for fuel price escalation during the tariff period for calculating the working capital. Therefore, this Hon’ble Commission may consider allowing cost of coal and secondary Fuel Oil as under:
- (a) Cost of coal for 2 months as considered vide MYT Order dated 01.12.2017 passed in P.No. 68/2016, and

- (b) Cost of secondary fuel oil for two months equivalent to normative plant availability factor as considered in MYT Order dated 01.12.2017 passed in P.No. 68/2016.

11. Accordingly, for the purpose of calculation of Interest on Working Capital for Unit 1, the cost of Coal and Secondary Fuel Oil may kindly be restricted to:

(Rs. Crores)

Particulars	FY 2017-18
Cost of Coal towards stock	66.67
Cost of Coal Towards Generation	66.67
Cost of Main Secondary Fuel Oil	0.88

### **Petitioner's Response**

*The contents of MPPMCL Reply except those which are a matter of record are wrong and denied. It is submitted that MPPMCL without providing any detail or reasoning has baldly contended that MBPL's claim for Interest on Working Capital ("IWC") is not in accordance with Regulation 34 of Tariff Regulations 2015.*

*It is hereby submitted that for the purpose of calculating IWC, MBPL has claimed the cost of fuel as allowed by this Hon'ble Commission in MYT Order dated 01.12.2017 passed in Petition No. 68 of 2016. However, this cost of fuel has been grossed up by normative transit and handling losses of 0.8% as permissible under Regulation 36.8 of Tariff Regulations 2015 and the same is tabulated as under:*

<b>Fuel Component</b>	<b>Cost allowed by this Hon'ble Commission in its MYT Order dated 01.12.2017 passed in the Petition No. 68 of 2016 (Rs Crore)</b>	<b>Grossing up by normative transit and handling losses of 0.8% as per Regulation 36.8 of Tariff Regulations 2015 (Rs Crore)</b>	<b>Claimed in the present Petition (Rs Crore)</b>
Cost of Coal towards Stock	66.76	67.298 [66.76/(1-0.8%)]	67.29
Cost of Coal towards Generation	66.76	67.298 [66.76/(1-0.8%)]	67.29

### **Observation:**

The fuel cost as considered in Commission's MYT Order dated 01.12.2017 in P. No 68

of 2016 has been considered for the purpose of computation of working capital. Accordingly, interest on working capital has been worked out in accordance with the Regulation 34 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015.

### **MPPMCL Comment**

12. Unit wise segregation of expenditures is not available in the Annual Audited Accounts for FY 2018-19 filed by the Petitioner as Annexure 1 (at Pages 16 to 73 of the Petition), separate Certificates are filed by the Petitioner, obtained from another Chartered Accountant showing unit-wise segregation of the additional capital expenditures is submitted as Annexure 3 (Colly.) (at Pages 74 to 76 of the Petition). It is seen from the said Certificate that the allocation of Cash Expenditure between two Units is highly asymmetrical. Expenditure on common facilities among two Units is almost entirely loaded on Unit 1.

When this issue was raised by this Respondent (recorded at Para 10 & 11 at Page 203 of the Order Dated 01.12.2017 passed in P. No. 68 of 2016) during the determination of Final Tariff for period from COD (20.05.2015) to 31.03.2016 and Multi Year Tariff for FY 2016-17 to 2018-19 for Unit 1, there was no satisfactory reply by the Petitioner. It is therefore most humbly prayed that this Hon'ble Commission may not permit this approach by the Petitioner, *de hors* the Regulation 5.2 of Tariff Regulations 2015 and allocate expenditure on common facilities equally (in the ratio of 50:50) among two Units.

### **Petitioner's Response**

*The contents of MPPMCL Reply except those which are a matter of record are wrong and denied. MPPMCL's contention that the allocation of capital expenditure appears to be highly asymmetrical between the two units of the Project is contrary to position already settled by this Hon'ble Commission's Orders in Petition Nos. 68 of 2016, 10 of 2018, 11 of 2018, 51 of 2018 and 57 of 2018. These Orders have not been reviewed/ challenged by MPPMCL, and as such they have attained finality. By way of its submissions, MPPMCL is attempting to agitate this already settled position of allocation of capital expenditure between both the units of MBPL's Project. It may kindly be noted that scope of the present Petition is limited to Additional Capital Expenditure ("ACE") incurred by MBPL on the Project during FY 2018-19 and its allocation between Unit-1 and Unit-2.*

*With respect to allocation of ACE during FY 2018-19 between Unit-1 and Unit-2, it is*

*submitted that after attributing the unit-wise expenditure, the balance expenditure towards the common facilities has been apportioned between Unit-1 and Unit-2 on 50:50 basis and the details of the same have been duly submitted by MBPL before this Hon'ble Commission by way of its various submissions under Petition Nos. 21 of 2020 and 22 of 2020.*

**Observation:**

13. As sought by the Commission, the petitioner has filed reconciliation of additional capitalization claimed by it for Unit-1 & Unit-2 for FY 2018-19 with its Annual Audited Accounts for FY 2018-19. The petitioner has also filed CA Certificate containing detailed break-up of unit-wise cash expenditure during FY 2018-19.

Regarding the apportionment of common facilities, Regulation 5.2 of the Regulations, 2015 provide that **“where break-up of the capital cost of the project for different stages or units or blocks is not available and in case of on-going projects, the common facilities shall be apportioned on the basis of the installed capacity of the unit”**. Accordingly, the additional capitalization towards common facilities have always been apportioned on the basis of its installed capacity of the unit. In the subject matter, this ratio is 50:50.

**MPPMCL Comment**

14. The Petitioner has filed Annual Audited Accounts for the year ended 31<sup>st</sup> March 2019 as Annexure 1 (starting at Page 16 of the Petition). At Page No. 37, under sub-sub heading “2(i) Property, plant and equipment”, under main heading “Summary of significant accounting policies and other explanatory information”, a note on “Subsequent measurement (depreciation and useful lives)” may kindly be seen. The Auditor has adopted very high rates of depreciation for certain items, as compared to those prescribed by the CERC Regulations, 2014, on the basis of the “Rates as per Management estimates”. The Petitioner may be directed to clarify on this aspect and the depreciation may kindly be allowed strictly in accordance to the applicable Tariff Regulation 2015 only.

**Petitioner’s Response**

*The contents of Para 28 of MPPMCL Reply except those which are a matter of record are wrong and denied. MBPL has computed the weighted average rate of depreciation in line with Regulation 33.5 of Tariff Regulations 2015 considering the Straight Line Method and in accordance with the depreciation rates for various assets of a generating project as specified in Appendix-II of Tariff Regulations 2015, as evident*



from Form No.11 of the Tariff Forms enclosed as Annexure-4 of the present Petition.

**Observation:**

In Appendix II of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015, the Depreciation Rate to be considered of various assets under additional capitalization are provided. The petitioner has filed the year-wise Asset-cum-Depreciation register for the project. The rate of depreciation on assets considered in the aforesaid Asset-cum-Depreciation register are checked in accordance to the rates of depreciation specified in Appendix-II of MPERC Tariff Regulations, 2015. Accordingly, the annual depreciation has been worked out.

**MPPMCL Comment**

15. In Para 39 and 40 the Petitioner has prayed for allowance of Statutory Charges. It is most humbly prayed that only those Statutory Charges which are allowable under Tariff Regulations 2015 may be allowed, the decisions of other State Electricity Commissions may not be treated as precedents.

**Petitioner's Reply**

*The contents of Para 29 of MPPMCL Reply except those which are a matter of record are wrong and denied. It is submitted that Regulation 52(5) of Tariff Regulations 2015 allows recovery of electricity duty, cess and water charges. However, there may be certain other statutory charges, duties and taxes being levied upon MBPL, which may not be recognized under Tariff Regulations 2015. Thus, MBPL has not been able to recover the same.*

*It is submitted that such statutory charges are uncontrollable in nature and are directly linked with generation of electricity from the Project and hence ought to be allowed to be recovered by MBPL by way of pass-through in tariff. Hon'ble Tribunal in judgment dated 15.02.2011 passed in Appeal No. 173 of 2009 titled Tata Power Company Limited vs. Maharashtra Electricity Regulatory Commission & Ors ("Tata Judgment") held that statutory expenses are uncontrollable factor and generators should be allowed pass through of such expenses:*

*"28. It cannot be disputed that it is a statutory expense and hence it has to be construed as uncontrollable. The State Commission in its MYT order had approved the O&M expenses which did not envisage the FBT. As FBT was levied subsequently, it will not be proper to compare the approved O&M expenses with the actual O&M expenses. The correct approach would be to compare the actual O&M expenses*

without FBT with the approved expenditure, compute the gains and loss and then add the FBT paid by the Appellant to allow for the pass through for uncontrollable factors.”

[Emphasis Supplied]

It is submitted that under the cost-plus regime, any increase in input cost of generation is considered as an automatic pass through in tariff subject to prudence check by this Hon'ble Commission. Hon'ble Tribunal in various cases has held that Tariff is reflection of costs and unless there is imprudence in the manner in which cost is incurred the expenditures of the generator under Section 62 PPA should be passed on. Reliance is placed upon the following judgments:

- (a) Appeal No. 170 of 2010 - Madhya Pradesh Power Generation Company Limited vs. MPERC & Ors: -

“There is no difference with Mr. Ramachandran’s submission that while determining the tariff, the Commission has to bear in mind the principles laid down in Section 61 and that the tariff has to be determined on cost plus basis so that a reasonable return on investment ensures to the investors.”

- (b) Appeal No. 273 of 2007 - Damodar Valley Corporation vs. CERC & Ors: -

“Cost of electricity would also include actual cost of supply of electricity plus reasonable profit of the utility, since as per principle enshrined in clause (b) of Section 61, the generation, transmission, distribution and supply of electricity are to be conducted on commercial principles.”

It is submitted that various other Electricity Regulatory Commissions (ERCs) allow recovery of statutory charges, taxes and duties on actuals as pass through in tariff. Relevant Regulations/Tariff Orders passed by other ERCs are as under:

- (a) Regulation 47(1) of Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff according to Multi-year Tariff Principles and Methodology and Procedure for determination of Expected revenue and Tariff and Charges) Regulations, 2012:

“3. The Statutory Taxes and Duties shall be recoverable on reimbursement basis, as per actual.”

- (b) Ld. Uttar Pradesh Electricity Regulatory Commission by Multi Year Tariff Order for FY 2009-10 to 2013-14 passed in respect of state thermal generating company allowed recovery of the following cess, charges, taxes etc:-

*“In addition to the above tariff UPRVUNL is allowed to recover the payment of statutory charges like water cess, cost of water, payment to Pollution Control Board, rates and taxes, FBT and Regulatory Fee paid to the Commission, on production of details of actual payments made and duly supported with the certificate of the Statutory Auditors. The Petitioner has claimed certain additional charges as variable charges towards other fuel related costs, station supplies, lubricants and consumables critical to the generating stations as separate pass through on actuals. The same is allowed for the consideration period of MYT subject to verification of audited accounts at the time when true up would be considered by the Commission.”*

*In view of the above it is submitted that this Hon’ble Commission may be pleased to allow MBPL to recover these statutory charges on actual incurred basis.*

**Observation:**

Regulation 52 of the MPERC Generation Tariff Regulations, 2015 provides as under,

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

- 1. 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 :*
- 2. The Commission may, for the reasons to be recorded in writing and after hearing the affected parties, allow reimbursement of any fee or expenses, as may be considered necessary.*
- 3. SLDC Charges and Transmission Charges as determined by the Commission shall be considered as expenses, if payable by the generating stations.*
- 4. RLDC/NLDC charges as determined by the Central Commission shall also be considered as expenses, if payable by the generating station.*
- 5. Electricity duty, cess and water charges if payable by the Generating Company for generation of electricity from the power stations to the State Government, shall be allowed by the Commission separately and shall be trued-up on actual.”*

Accordingly, the statutory charges have been considered in accordance to Regulation 52 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015.

**MPPMCL Comment**

16. In Sub Para (e) of Para 41 (Prayer), the Petitioner has prayed for allowing carrying cost/ interest on the under recovered amount in accordance with Regulation 8.15 of Tariff Regulations 2015. This is strongly opposed.

Earlier also, in P. No. 11 of 2017 filed for True up of Generation Tariff for FY 2016-17, the Petitioner had prayed for allowance of Carrying Cost of Rs. 14.87 Cr. The claim of the Petitioner was based on the plea that the Commission not considered its claim of Rs. 649 Cr in Final Tariff of Unit 1.

It is submitted that the Hon'ble Commission had disallowed the claim of Rs. 649 Cr in its Order passed for Final Tariff and Multi Year Tariff in P. No. 68 of 2016, as Petitioner had failed to justify the same. Also, the Petitioner has not demonstrated any under recovery of tariff with respect to the approved tariff in terms of Regulation 8.14. Therefore, there is no application of Regulation 8.15 in the present case. Therefore, it is most humbly prayed that this Hon'ble Commission may graciously be pleased to reject the claim of Carrying Cost.

### **Petitioner's Response**

*The contents of Para 30 to 32 of MPPMCL Reply except those which are matter of record are wrong and denied. It is submitted that MPPMCL is attempting to mislead this Hon'ble Commission by linking two separate issues with respect to carrying cost. While the carrying cost of Rs 14.87 Crore claimed by MBPL in earlier Petition No. 11 of 2018 was on account of interest incurred on the loan portion of the expenditure of common facilities pertaining to Unit-2 as the same were not considered by this Hon'ble Commission in its Order dated 01.12.2017 passed in Petition No. 68 of 2016 while determining the final and MYT tariff of Unit-1. However, the carrying cost claimed in the present Petition is with respect to the carrying cost on the difference between MYT (Provisional) Tariff and actual true-up tariff for FY 2018-19, in accordance with Regulation 8.15 of the Tariff Regulation, 2015. The Hon'ble Commission may kindly appreciate that these two issues are, in no way, related to each other by way of such unfounded contentions, MPPMCL is trying to circumvent its regulatory obligations.*

*It is further submitted that MBPL's claim for carrying cost is in consonance with the mandate of Electricity Act, Tariff Policy 2016 and Tariff Regulations, 2015 as recovery of carrying cost/interest is an established principle of regulatory jurisprudence. In this regard, reliance is placed upon the following: -*

(a) This Hon'ble Commission while determining tariff of a generating station is to be guided by the principles enshrined in Section 61 (b), (c) and (d) of the Electricity Act, 2003 which mandates that: -

- (i) Generation of electricity is to be conducted out on commercial principles,
- (ii) Factors which encourage competition, efficiency, economic use of resources
- (iii) Recovery of cost of electricity is to be carried out in a reasonable manner.

(b) Carrying cost is a well-established concept which has been re-emphasized by Ministry of Power ("MoP") under Clause 8.2.2 of the Tariff Policy, 2016: -

"8.2.2 The facility of a regulatory asset has been adopted by some Regulatory Commissions in the past to limit tariff impact in a particular year. This should be done only as a very rare exception in case of natural calamity or force majeure conditions and subject to the following:

a. Under business-as-usual conditions, no creation of Regulatory Assets shall be allowed;

b. Recovery of outstanding Regulatory Assets along with carrying cost of Regulatory Assets should be time bound and within a period not exceeding seven years. The State Commission may specify the trajectory for the same...."

(c) Regulation 8.15 of Tariff Regulations 2015: -

"8. Methodology for Determination of Tariff and Truing up

8.15 The amount under-recovered or over-recovered, along with simple interest at the rate equal to the bank rate as on 1st April of the respective year, shall be recovered or refunded by the generating company within six months from the date of the tariff order issued by the Commission."

(d) Various Judgments passed by Hon'ble Supreme Court and Hon'ble Tribunal holding that Generating companies are entitled to interest/carrying cost on the differential amount due to them as a consequence of re-determination of tariff by the State Commission. It is only compensation for money denied at the appropriate time, therefore whenever the recovery of cost is to be deferred, the financing of the gap in cash flow arranged by the generating Company from lenders and/or promoters and/or accruals, has to be paid for by way of carrying cost. In this regard reliance is placed upon the following judgments: -

(i) **South Eastern Coalfields Ltd. v. State of M.P. (2003) 8 SCC 648: -**

"21. Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect

though subject, of course, to a contrary agreement (see *Chitty on Contracts*, 1999 Edn., Vol. II, Para 38-248 at p. 712). Interest in equity has been held to be payable on the market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many.

22. We may refer to the decision of this Court in *Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj* [(2001) 2 SCC 721] wherein the controversy relating to the power of an arbitrator (under the Arbitration Act, 1940) to award interest for pre-reference period has been settled at rest by the Constitution Bench. The majority speaking through *Doraiswamy Raju, J.*, has opined that the basic proposition of law that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by whatever name it may be called viz. interest, compensation or damages and this proposition is unmistakable and valid; the efficacy and binding nature of such law cannot be either diminished or whittled down.

24. We are, therefore, of the opinion that in the absence of there being a prohibition either in law or in the contract entered into between the two parties, there is no reason why the Coalfields should not be compensated by payment of interest.”

(ii) Hon'ble Tribunal Judgement dated 20.12.2012 passed in Appeal No. 150 of 2011 titled *SLS Power Ltd v. Andhra Pradesh Electricity Regulatory Commission*: -

“35.5 The principle of carrying cost has been well established in various decisions of the Tribunal. The carrying cost is the compensation for time value of money or the monies denied at the appropriate time and paid after a lapse of time. Therefore, the developers are entitled to interest on the differential amount due to them as a consequence of re-determination of tariff by the State Commission on the principles laid down in this judgment. We do not accept the contention of the licensees that they should not be penalized with interest. The carrying cost is not a penal charge if the interest rate is fixed according to commercial principles. It is only compensation for money denied at the appropriate time.”

(iii) Hon'ble Tribunal Judgement in *North Delhi Power Ltd. v. DERC* [2010 ELR (APTEL) 0891]: -

“The carrying cost is allowed based on the financial principle that whenever the recovery of cost is to be deferred, the financing of the gap in cash flow arranged by the distribution company from lenders and/or promoters and/or accruals, has to be paid for by way of carrying cost. This principle has been well recognised in the regulatory

practices as laid down by this Tribunal as well as the Hon'ble Supreme Court. In 2007 APTEL 193, this Tribunal has held that "along with the expenses, carrying cost is also to be given as legitimate expense". Hon'ble Supreme Court in 2007 (3) SCC 33 has also held "the reduction in the rate of depreciation is violative of the legitimate expectation of the distribution company to get lawful and reasonable recovery of expenditure.

In view of the above ratio, it is evident that the carrying cost is a legitimate expense and, therefore, recovery of such carrying cost is legitimate expectation of the distribution company. According to the Learned Senior Counsel appearing for the State Commission, the rate of carrying cost was fixed in line with the judgment of this Tribunal where 9% rate was fixed. We are of the opinion that the said judgment would not apply to the present facts of the case in the light of the following: "That rate of 9% was fixed by the Tribunal in that Appeal as the same was on the basis of the then prevailing lending rate."

(iv) Hon'ble Tribunal Judgment dated 15.02.2011 in TPCL. vs. MERC [2011 ELR (APTEL) 0336] (Para 11 & 12).

In view of the above-mentioned settled position of law it is submitted that MBPL is entitled to interest/carrying cost on the under recovered amount in tariff. It is submitted that failure to do so would be violation of Section 61(b), (c) and (d) of the Electricity Act, 2003, Regulation 8.15 of Tariff Regulations 2015 and various Judgments passed by the Hon'ble Tribunal.

**Observation:**

Regulation 8.14 & 8.15 of MPERC Generation Tariff Regulations, 2015 provides as under:

"8.14 Where after the truing up, the tariff recovered is less than the tariff approved by the Commission under these Regulations, the generating company shall recover from the beneficiaries the under-recovered amount as specified in the Clause 8.15 of this Regulation.

8.15 The amount under-recovered or over-recovered, along with simple interest at the rate equal to the bank rate as on 1st April of the respective year, shall be recovered or refunded by the generating company within six months from the date of the tariff order issued by the Commission."

Accordingly, amount under-recovered or over-recovered as a result of this order shall be passed on to MP Power Management Company Ltd. / three Distribution Companies of the state in terms of above Regulation.

### **MPPMCL Comment**

17. In Para 14, the Petitioner has indicated to have attached “Reconciliation” of the Gross Fixed Assets (GFA) as on 31.03.2019”, based on transition from Indian GAAP to Indian AS, said to have been duly certified by the Auditor, as Annexure-2 beginning at Page 78 of the Petition.

It is bringing to the kind notice of the Commission that the above said Auditor Certified Reconciliation shows an increase of Rs. 9,977.61 Lakhs in the value of Gross Fixed Assets when “Audited Ind AS” GFA is converted back to “Previous GAAP” as on 31.03.2019 (at Page No. 86 of the Petition).

Therefore, for the purpose of Tariff Determination/ True up of tariff, the same should only be accepted. In the present case the assets of the Generation Unit 1, valued under Indian AS are clearly lower by about Rs. 9,977.61 Lakhs and its use for Tariff Determination/ True up is likely to result in lower tariff. Therefore, it is prayed that the Commission may be graciously be pleased to consider Gross Fixed Asset valued under Indian AS only.

### **Petitioner’s Response**

*The contents of MPPMCL Reply except those which are a matter of record are wrong and denied. It is submitted that the transition from Generally Accepted Accounting Principles in India (“IGAAP”) to Indian Accounting Standards (“IND AS”) is in compliance with the Gazette Notification dated 16.02.2015 issued by Ministry of Corporate Affairs. Since then, MBPL has been preparing the Annual Audited Accounts for every financial year based on IND AS accounting standards*

*It is submitted that the Commission, vide Order dated 06.09.2018 in Petition No.11 of 2018 while truing-up the tariff for Unit-1 of the Project for FY 2016-17, has appreciated the fact that MBPL had adopted IND AS accounting standards notified under the Companies (Indian Accounting Standards) Rules, 2015 under Section 133 of the Companies Act, 2013 for the very first time in preparation of its Annual Audited Accounts for FY 2016-17 instead of IGAAP accounting standards.*

*It is further submitted that this Hon’ble Commission in its Order dated 12.06.2019 in Petition No. 51 of 2018 (filed by MBPL before the Commission for true-up of tariff of Unit-1 of the Project for FY 2017-18) had duly acknowledged a variance of (-) Rs.113.24 Crore in the value of Gross Fixed Assets (“GFA”) as on 31.03.2018 on account of transition in accounting standards from IGAAP to INDAS and the same*



variance of (-) Rs.113.24 Crore is getting reflected in the value of GFA as on 31.03.2019. Nonetheless, an Auditor certified statement showing reconciliation between the Project GFA as per IGAAP and IND AS accounting standards is already placed at Annexure-2 to the present Petition.

It is submitted that capital cost based on historical cost is being consistently considered and allowed by Regulatory Commissions including this Hon'ble Commission for determination of tariff and not on fair value basis (as in the case of IND AS) as introduced by Companies Act, 2013. Accordingly, MBPL has claimed tariff in the present Petition, considering capital cost based on Indian GAAP accounting standards after due reconciliation in this regard clearly depicting the changes in presentation of capital cost in Annual Audited Accounts due to transition from Indian GAAP to IND AS.

It is submitted that there is no consequential impact on tariff being claimed in the present Petition due to transition in accounting standards from IGAAP to IND AS. In this regard it is pertinent to note the observations of Hon'ble Appellate Tribunal for Electricity ('Tribunal') in Judgment dated 13.06.2007 passed in Appeal No. 139 of 2006 & batch matters titled NTPC Ltd vs CERC & Ors: -

*"It is clear from the abovementioned Clause 18 of the CERC Regulations that additional capitalization after the date of commercial operation is recognized as part of the capital expenditure. **Historical cost does not literally mean that the cost on the date of the commercial operation. The term historical cost is used so as to distinguish it from 'book value' or 'the replacement cost'.** The cost of maintenance spares limited to 1% of the historical cost corresponds to the plant and equipment and installations which are required to be maintained. **If the cost of additional equipment is not included in the historical cost, how spares for the additional equipment be procured for maintenance of the additional equipment.** In this view of the matter, the CERC needs to examine afresh in the light of the aforesaid observations."*

*[Emphasis Supplied]*

In view of the above it is humbly requested that this Hon'ble Commission may consider the value of reconciled GFA as on 31.03.2019 based on IGAAP accounting standards as being consistently done by this Hon'ble Commission while truing-up the tariff of Unit-1 of the Project for FY 2016-17 (under Petition No. 11 of 2018) and FY 2017-18 (under Petition No. 51 of 2018).

**Observation:**

The subject petition is for true-up of FY 2018-19 of generation tariff of Unit No. 1 of petitioner's power project. The Multi-year tariff for FY 2016-17 to FY 2018-19 was determined vide Commission's order dated 01.12.2017 in petition No. 68 of 2016.

In compliance with the change in Accounting Standards under Section 133 of the Companies Act, 2013 vide notification dated 16.02.2015 issued by the Ministry of Corporate Affairs, the petitioner for the first time adopted "Indian Accounting Standards (Ind AS)" in its Audited Accounts for FY 2016-17. Therefore, this issue had already come up in past true-up petitions for FY 2016-17 and FY 2017-18 and dealt with in details by the Commission in para 23 to 32 of true-up order dated 06.09.2018 in petition No. 11 of 2018.

### **MPPMCL Comment**

18. It is humbly submitted that Regulation 8.7 to 8.10 of Tariff Regulations, 2015 mandate trueing 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 in the reply:
19. 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.
20. In view of the above, the Petitioner is required to file the monthly details of aforesaid performance parameters actually achieved vis-à-vis normative parameters under MPERC 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. Since the Petitioner has not filed this information along with the present Petition, therefore, it is prayed that the Petitioner may kindly be directed to file the same.

### **Petitioner's Response**

*The contents of MPPMCL Reply except those which are matter of record are wrong and denied. It is submitted that the month wise details of the actual performance parameters achieved by Unit-1 of the Project during FY 2018-2019 vis-à-vis their respective normative values under Tariff Regulations 2015 have already been submitted by MBPL before this Hon'ble Commission, which clearly establishes that no*

*financial gains on account of the same have been made by MBPL during FY 2018-19.*

**Observation:**

In terms of Regulation 8.7 of MPERC Generation Tariff Regulations, 2015, vide Commission's letter dated 30<sup>th</sup> May' 2020, the petitioner was asked to file the monthly details of performance parameters actually achieved vis-à-vis normative parameters under the aforesaid Regulations, 2015. The petitioner was also asked to file the details of financial gain if any, on account of controllable parameters and that shared with the beneficiaries in light of the Regulations 8.9 of the Regulations, 2015.

In response to the above, by affidavit dated 14<sup>th</sup> July' 2020, the petitioner submitted the monthly details of operational parameters achieved by its generating Unit No. 1. On perusal of aforesaid details filed by the petitioner, it is observed that actual parameters achieved by the petitioner during FY 2018-19 have been inferior than the normative parameters under MPERC Tariff Regulations, 2015. Hence, the petitioner has incurred loss on account of the inferior performance and poor actual operating parameters achieved by it during FY 2018-19. This issue has been dealt with in detail in para 137 to 140 of Commission's order in the subject matter.

**MPPMCL Comment**

21. It is also submitted that Unit-1 has now been on Commercial Operation for about 5 years (since 20-05-2015) and Unit-2 has been on Commercial Operation for almost 4 year (since 07-04-2016). It is therefore, humbly prayed that the Petitioner may kindly be directed to file the details of liquidated damages (LD) and insurance claims, if any, recovered/ to be recovered from various contractors/ vendors in different packages against delay in execution of the contracts.

**Petitioner's Response**

*The contents of Para 37 of MPPMCL Reply except those which are matter of record are wrong and denied. It is submitted that no liquidated damages have been recovered by MBPL from its contractors/vendors till date.*

**Observation:**

By affidavit dated 14<sup>th</sup> July' 2020, the petitioner has confirmed that no liquidated damages for delay in completion of works have been recovered by the petitioner from its contractors/ vendors as on 31.03.2019.

**Annexure-II**

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

**Comment:**

The Petitioner has failed to provide the details of the Additional Capital Expenditure ('ACE') of Rs. 32.81 Crore and the same is claimed after the Cut-off date of 31.03.2018, hence the same ought to be disallowed by this Commission.

**Petitioner's Reply:**

*The contents of stake holder are wrong and denied. It is submitted that the Objector has alleged that the Petitioner has not submitted the details of ACE of Rs. 32.81 Crore in the present Petition and that the same has been claimed after the Cut-off-Date of the Project i.e., 31.03.2018, hence the same may be disallowed. Such disallowance is being sought pursuant to Regulation 20 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 ("Tariff Regulations, 2015") without demonstrating any reason for the same. In this context, it is submitted that the allegations raised by the Objector are misconceived, baseless and erroneous for the following reasons: -*

- (a) The Petitioner has filed all necessary details with respect to ACE before this Hon'ble Commission at Para 15 to 16 of the present Petition and also vide its Reply dated 14.07.2020 to the queries raised by this Hon'ble Commission vide its letter dated 30.05.2020.*
- (b) Unit-1 of the Project achieved Commercial Operation Date, ("COD"), on 20<sup>th</sup> May 2015 and Unit-2 of the Project achieved COD w.e.f. 07<sup>th</sup> April 2016. Accordingly, in terms of Regulation 4.1 (I) of Tariff Regulations 2015 the Cut-off-Date of the Project is 31.03.2019. Even this Hon'ble Commission for the purpose of tariff determination considers 31.03.2019 as the current Cut-off-Date of the Project. Hence, the Objector has wrongly assumed Cut-off-Date of the Project as 31.03.2018.*
- (c) Accordingly, the Petitioner has filed the present Petition before the Hon'ble Commission claiming the said ACE in accordance with Regulation 20.1 Tariff Regulations 2015.*
- (d) Even otherwise in terms of Regulation 20.2 and 20.3 of Tariff Regulations 2015, Additional Capital Expenditure incurred or projected to be incurred after the Cut-off-Date of the Project may be admitted by the Hon'ble Commission subject to prudence check. Hence, there is no such embargo in the Regulations qua admissibility of ACE after the Cut-off-Date.*
- (e) Notwithstanding the above it is submitted that MBPL had filed Petition No. 18 of 2019 seeking extension of Cut-off-Date of the Project on account of anticipated spilling*

over of certain works beyond the then existing Cut-off-Date of 31.03.2019, for reasons beyond the control of MBPL. Pursuant thereto, this Hon'ble Commission by Order dated 27.04.2019 disposed-off the said Petition observing that in terms of Regulation 4.1(I) of Tariff Regulations 2015, Cut-off-Date of the Project may be extended after due prudence check of the documentary evidence establishing that such spilled over works could not be capitalized within the Cut-off-Date for the reasons beyond the control of MBPL. Accordingly, liberty was granted to MBPL to approach this Hon'ble Commission with actual additional capitalization of all works beyond Cut-off-Date as per the Annual Audited Accounts along with all details and documents while filing the True-up Petition for respective financial year.

*It is submitted that it is a settled position of law that true-up exercise is carried out to fill the gap between actual expenses at the end of every year and anticipated expenses in the beginning of the year. In this regard reliance is placed on judgment of Hon'ble Appellate Tribunal for Electricity ("Hon'ble Tribunal") in North Delhi Power Ltd. v. Delhi Electricity Regulatory Commission and Ors.: 2007 ELR (APTEL) 193 (Para 60):-*

*"60. Before parting with the judgment we are constrained to remark that the Commission has not properly understood the concept of truing up. While considering the Tariff Petition of the utility the Commission has to reasonably anticipate the Revenue required by a particular utility and such assessment should be based on practical considerations. It cannot take arbitrary figures of increase over the previous period's expenditure by an arbitrarily chosen percentage of 4 per cent or 20 per cent and leave the actual adjustments to be done in the truing up exercise. The truing up exercise is mentioned to fill the gap between the actual expenses at the end of the year and anticipated expenses in the beginning of the year. When the utility gives its own statement of anticipated expenditure, the Commission has to accept the same except where the Commission has reasons to differ with the statement of the utility and records reasons thereof or where the Commission is able to suggest some method of reducing the anticipated expenditure. This process of restricting the claim of the utility by not allowing the reasonably anticipated expenditure and offering to do the needful in the truing up exercise is not prudence. In any case, the method adopted by the Commission has not helped either the consumer or the utilities. It can only be expected that the Commission will properly understand its role in assessing the Revenue requirement of the utility and in determination of the Tariff in accordance with the policy directions and the relevant law in force"*

**Observation:**

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

under:

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

The Unit No. 1 of M. B. Thermal Power Project under subject petition achieved COD on 20<sup>th</sup> May’ 2015 and Unit No. 2 achieved the COD on 07<sup>th</sup> April’ 2016, hence, the cut-off date of the project shall be 31<sup>st</sup> March’ 2019 in accordance with Regulations, 2015. Therefore, the additional capitalization claimed during FY 2018-19 in the subject petition is within the cut-off date and the same has been examined in accordance with Regulation 20.1 of Tariff Regulations, 2015.

The petitioner has filed the details of additional capitalization in format TPS 9A filed with the subject petition and supplementary details in additional submissions filed with the Commission.

**Comment:**

The Petitioner has not provided data pertaining to the Controllable parameters viz. Station Heat Rate, Secondary Fuel Oil Consumption and Auxiliary Consumption in the format prescribed by the Commission along with the Public Notice dated 25.06.2020.

**Petitioner’s Reply:**

*That the contents of stakeholder are wrong and denied. It is submitted that the Petitioner has provided data/details pertaining to the Controllable parameters viz. Station Heat Rate (“SHR”), Secondary Fuel Oil Consumption (“SFoC”) and Auxiliary Consumption (“AUX”) at Para 31 to 33 of the Petition. Further, the month wise details of actual SHR, AUX and SFoC achieved by Unit-1 of the Project during FY 2018-19 vis-à-vis their respective normative values under the applicable Tariff Regulations 2015 has already been submitted by MBPL to this Hon’ble Commission vide its Reply dated 14.07.2020 to the queries raised by this Hon’ble Commission vide its letter dated 30.05.2020.*

**Observation:**

The petitioner filed the month wise details of Actual Station Heat Rate, Actual Auxiliary Energy consumption and Actual Secondary Fuel Oil Consumption achieved by Unit-1 of its Project during FY 2018-19 vis-à-vis the normative values under the applicable MPERC Tariff Regulations 2015.

The actual parameters achieved by the petitioner during FY 2018-19 are inferior than the normative parameters under the Regulations. Therefore, the petitioner has incurred loss on

account of the inferior performance and poor actual operating parameters achieved by it during FY 2018-19.

**Stakeholder's Comment:**

The Petitioner has claimed landed cost of coal as Rs.2707.61 per MT, which is very high compared to other nearby project. Therefore, the Hon'ble Commission should carry out True-up on the basis of actual bill paid by the petitioner to coal companies, Transportation cost and other cost as per Regulation 8.8. Due to absence of statutory format, it is difficult to say that whether Petitioner procured any E-auction coal and justification for procurement of the same.

**Petitioner's Reply**

*That the contents of stakeholder are wrong and denied. The Objector has baselessly contended that MBPL's landed cost of coal i.e., Rs.2707.61 per MT, is higher as compared to other nearby project. It is pertinent to mention that the Objector has not provided any data to substantiate its contention. MBPL's has claimed the fuel cost in accordance with the provisions of Tariff Regulations 2015. Notwithstanding, the above it is a settled position of law that under a Section-62 PPA (like Petitioner's PPA with MPPMCL) the actual landed cost of fuel incurred by the generating company is a pass through in tariff. In this regard reliance is placed upon the following Judgments: -*

- (a) *Hon'ble Appellate Tribunal for Electricity ("Tribunal") Judgment dated 23.03.2015 passed in O.P No. 3 of 2012 titled 'Indian Biomass Power Association Vs. Ministry of Power, Govt. of India & Anr' [Para 10]*
- (b) *Hon'ble Tribunal Judgment dated 19.09.2014 passed in Appeal No. 207 of 2013 titled 'Rana Sugars Limited vs. Punjab State Electricity Regulatory Commission &Ors' [Para No. 23]*
- (c) *Hon'ble Tribunal Judgment dated 30.01.2013 passed in Appeal No. 34 of 2012, titled 'Maharashtra State Power Generation Company Limited vs. Maharashtra Electricity Regulatory Commission & Ors' [Para 39]*

*It is submitted that the Energy Charges claimed in the present Petition has been strictly calculated based on the actual fuel price and Gross Calorific Values of coal for the three months (January 2016, February 2016 and March 2016) preceding 01.04.2016 as stipulated under Regulation 34.2 of Tariff Regulations, 2015 and as approved by this Hon'ble Commission in its Order dated 01.12.2017 passed in Petition No. 68 of 2016. In light of the above, it is submitted that the contentions of the Objector are baseless, unsubstantiated and deserve to be rejected by this Hon'ble Commission.*

**Observation:**

With regard to truing-up exercise, Regulation 8.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:

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

In term of above provision, the truing up exercise is mainly based on additional capital expenditure during the year for which true up is sought by the petitioner. Further the interest on working capital being a component of Annual Fixed Cost is also determined as per norms provided in MPERC Tariff Regulations. No escalation in fuel cost is considered during truing up exercise while computing interest on working capital.

Further, Regulation 36.7 provides that ‘the generating company shall provide to the beneficiaries of the generating station, the details of parameters of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal, etc. The aforesaid Regulation also provides that the details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal and the weighted average GCV of the fuels as received shall also be provided separately to the procurer, along with the bills of the respective month.

In view of the aforesaid provisions, the procurer has to verify the actual price of coal and GCV of coal on month-to-month basis.

### **Comment**

Petitioner’s Project has a poor performance and runs on the PLF of 65% and the reason for such poor performance is not indicated in the Petition.

### **Petitioner’s Reply**

*The Objector has further contended that the Petitioner’s Project has a poor performance and runs on the PLF of 65% and the reason for such poor performance is not indicated in the Petition. Such a contention of Objector is completely baseless. Tariff Regulations 2015 mandates Normative Annual Plant Availability Factor(“NAPAF”) and not PLF as a measure of performance of any generating project. The details of such NAPAF under the applicable Tariff Regulations 2015 have already been submitted by MBPL to this Hon’ble Commission vide its Reply dated 14.07.2020 to the queries raised by this Hon’ble Commission vide its letter dated 30.05.2020.*

### **Observation:**

As per the provisions under Regulation 36 of MPERC Tariff Regulations, 2015, the recovery of true-up Annual Fixed Charges determined by the Commission is based on the actual



Annual Plant Availability Factor achieved by the generating Unit during FY 2018-19. Therefore, the impact of poor performance is borne by the generator.

### **Stakeholder's Comment**

The Petitioner has failed to provide any specific data towards O&M expenses in the Petition, therefore actual O&M expenses cannot be ascertained. Further, several expenses of administrative and general nature has been claimed under the head of Statutory Charges, vide para 39, which shall be rejected.

### **Petitioner's Reply**

*That the contents of objector are wrong and denied. It is submitted that the O&M Expenses have been claimed considering the norms for tariff period 2018-2019 as specified in Regulation 35.8 of Tariff Regulations, 2015. Further, the computation of O&M Expenses claimed for FY 2018-19 is provided at Para 22 of the Petition.*

*It is submitted that O&M expenses are provided on normative basis and in terms of Regulation 35.6 of Tariff Regulation 2015, the generating company is allowed to retain any saving achieved by it on the normative O&M package allowed in such year: -*

*“35.6 Any saving achieved by a generating company in any year shall be allowed to be retained by it. The generating company shall bear the loss if it exceeds the targeted O&M expenses for that year.”*

*The aforesaid position has been upheld by the Hon'ble Tribunal in Judgment dated 04.05.2016 passed in Appeal No. 148 of 2015 titled NTPC Limited vs Uttar Pradesh Power Corporation Limited & Ors, wherein it was held that O&M expenses which is one of the components of tariff is a complete normative package (i.e., based on norms and not actuals). It is possible that under recovery of one of the elements of O&M may be offset against over-recovery of another element of O&M. Hence, any one element of O&M charges cannot be considered in isolation.*

*It is submitted that the Petitioner has claimed that certain Statutory Charges paid by the Petitioner may also be considered in the true-up for tariff of Unit-1 of the Project. Regulation 52(5) of Tariff Regulations 2015 allows recovery of electricity duty, cess and water charges. However, there may be certain other statutory charges, duties and taxes being levied upon MBPL, which may not be recognized under Tariff Regulations 2015. Thus, MBPL has not been able to recover the same.*

*It is submitted that such statutory charges are uncontrollable in nature and are directly linked with generation of electricity from the Project and hence ought to be allowed to be recovered by MBPL by way of pass-through in tariff.*

*It is submitted that under the cost-plus regime, any increase in input cost of generation is considered as an automatic pass through in tariff subject to prudence check by this Hon'ble*

Commission. Hon'ble Tribunal in various cases has held that Tariff is reflection of costs and unless there is imprudence in the manner in which cost is incurred the expenditures of the generator under Section-62 PPA should be passed on. Reliance is placed upon the following judgments:

- (a) Appeal No. 170 of 2010 - Madhya Pradesh Power Generation Company Limited vs. MPERC & Ors: -
- (b) Appeal No. 273 of 2007 - Damodar Valley Corporation vs. CERC & Ors.

**Observation:**

In the subject true-up order, the annual operation and maintenance expenses are considered as per the norms specified under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015.

**Comment**

In the Petition, MBPL has indicated regarding sale of fly-ash to Cement Companies. However, the revenue earned from sale of such fly-ash has not been shown under the head "Other Income".

**Petitioner's Reply**

*That the contents of objector are wrong and denied. It is submitted that the Petitioner has not earned any income from disposal of Fly-Ash from its Project during FY 2018-19. Therefore, the submissions of the Objector are devoid of merit and ought to be rejected by this Hon'ble Commission.*

**Observation:**

In the subject true-up petition, the petitioner has confirmed that it has not earned any income from disposal of Fly-Ash from its Project during FY 2018-19. The non-tariff income is considered as per the Annual Audited Accounts for FY 2018-19.

**Comment**

According to the provision of second proviso to Regulation 36.7, the petitioner has not shared the various details of fuel (coal) pertaining to GCV, price of fuel, blending ratio of coal and quantum of e-auction coal etc in website and violate the Regulation in this behalf, therefore it shall be required to be instructed to petitioner for transparency and to follow the regulation, comments in true-up is not possible in absence of aforesaid key information, that too according to the Regulations.

**Petitioner's Reply**

*That the contents of objector are wrong and denied. The Petitioner has duly shared various details of fuel (coal) with its beneficiary (MPPMCL) in accordance with the provisions of Tariff Regulations 2015*

**Observation:**

Regulation 36.7 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 provides that the copies of the bills and details of parameters of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal, etc, details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal shall be displayed on the website of the generating company. It is further mentioned that the details should be available on its website on monthly basis for a period of three months.'

In view of the aforesaid provision of the Regulations, the petitioner is required to update the aforesaid details on its web site also. Therefore, the petitioner is directed to ensure that all information related to fuel be updated on its web site in accordance with the aforesaid Regulation.

### **Comment**

The petitioner fails to provide the actual PAF/PLF of the plant. However, as per the calculation on the basis of monthly generation provided in Format, it is revealed that petitioner plant PLF was only around 65%, though PAF have never indicated in whole petition. Petitioner get the payment on the basis of PAF but not indicated anywhere in the true up petition.

According to the PPA, for regulated power executed with the petitioner on dated 05.01.2011, it is a provision under clause 4.3.3 and 4.3.4 that for any unscheduled power by the procurer, the petitioner is free to sell it on open market/bilateral arrangement, subject to, sale realization in excess of energy charge shall be equally shared by the petitioner and the procurer. The petitioner fails to provide such information. The aforesaid information is mandatory according to the chapter 5 scheduling and Despatch, clause 5(2) to 5(14) of the MP Electricity Balancing and Settlement Code' 2015.

It is observed that out of the Entitlement of about 1260 MU regulated power and around 210 MU concessional power from Unit 1, MPPMCL schedule 1100 MU power only during FY 2018-19 and petitioner sold remaining power through long term agreement with UP and in open market. On the basis of above limited schedule the cost of power from MB Power Unit 1 comes to around Rs 5.00 per Kwh. Therefore, prudence check is required in public interest, while True up.

Hence, the Petitioner has not provided any details regarding the sale of unscheduled energy to third parties.

### **Petitioner's Reply**

*The contents of objector are wrong and denied. It is submitted that the Petitioner has not sold any power from the quantum of power made available to MPPMCL but not scheduled by it, to any third-party during FY 2018-19. Notwithstanding the above, it is submitted that the Power Purchase Agreement ("PPA") dated 05.01.2011 is an agreement inter-se between the Petitioner and Respondent No. 1, Madhya Pradesh Power Management Company Ltd. ("MPPMCL") and Procurers of Madhya Pradesh. The Objector has no locus*

to raise questions regarding the provisions of the said PPA. Further, the dealing of the Petitioner with any third party is not the subject matter of the present Petition and therefore the contention of the Objector in this regard ought to be rejected.

**Observation:**

The petitioner confirmed that it has not sold any power to any third-party during FY 2018-19 out of the quantum of power made available to MPPMCL but not scheduled by it. However, it is the responsibility of both the parties who have entered into the PPA to ensure compliance of the same.

**Comment**

In the interest of consumers of Madhya Pradesh, it is worthwhile to analyse whether implementation of the framework stipulated under Proviso to Article 10.1.1. of the PPA (i.e., to adopt the competitively discovered tariff for supply of power to UP Discoms) would be beneficial to the Consumers of Madhya Pradesh.

**Proviso 10.1.1 in PPA dated 05.01.2011**

*However, the Company, at any time, offers the sale of any part of the capacity from the project on long term basis pursuant to any competitive bidding process, it shall be open to the Appropriate Commission, either on an application filed by the procurer or any consumer or suo motu and if considered to be beneficial to the consumers after considering the terms and conditions of such tariff, to decide to adopt such competitive tariff offered by the company in the competitive bidding process in place of tariff specified under this tariff. In case of such decision by the Appropriate Commission, the Company agrees to generate and sell and the procurer agrees to purchase from the company the quantum of electricity under this agreement at the said tariff.*

The petitioner enters into two long term agreement with the UP power Corporation for sale of net total 361 MW power. In the interest of consumers of MP, it is worth while to take up the matter whether to adopt the aforesaid stipulation of PPA is beneficial to the state of MP consumers. Commission requested to issue appropriate direction to DISCOM/MPPMCL in this regard.

**Petitioner's Reply**

*That the content of stake holders are wrong and denied. The Objector has contended that in terms of Article 10.1.1 of the MPPMCL PPA, the tariff of power supplied by the Petitioner to the State of Uttar Pradesh under a separate long-term PPA may be considered by this Hon'ble Commission for supply of power to MPPMCL also.*

*It is submitted that the Petitioner has been supplying power to the State of Uttar Pradesh through PTC India Ltd. on the tariff discovered and adopted through competitive bidding process under a Section-63 long-term PPA. However, present proceedings involve true-up of tariff by this Hon'ble Commission under a Section-62 (Cost Plus) long-term PPA. It is*

respectfully submitted that the principles of tariff true-up under the present proceedings are entirely different from tariff discovered/ adopted under competitive bidding process and as such the tariff under both these processes are different and non-comparable. Further, the present proceedings are restricted to true-up of already determined MYT Tariff of Unit-1 of the Project for FY 2018-19.

Without prejudice to above, it is further submitted that this Hon'ble Commission has the jurisdiction under Section- 86(1)(b) of the Electricity Act, 2003 to regulate the purchase of electricity, including the price at which the electricity is to be procured from the generating companies. This Hon'ble Commission has the powers to either grant approval to the PPA under Section-62 of the Electricity Act, 2003 or to direct the distribution licensee to resort to Competitive Bidding Process as per Section- 63 of the Electricity Act, 2003. In this regard reliance is placed upon the following judgments: -

- (a) Judgment dated 31.03.2010 in BSES Rajdhani Power Ltd. v. DERC &Ors.: 2010 ELR(APTEL) 0404:-

“32. In the light of the above discussions, the argument advanced by the Ld. Counsel for the Appellants that resort to tariff determination under Section 62(1)(a) without adopting the Competitive Bidding Process will render clause 5.1 of the NTP redundant as the distribution licensees in the future will procure power from the generating companies only through the negotiated route, cannot be accepted as it is always open to the State Commission to direct the distribution licensee to carry out power procurement through Competitive Bidding Process only in case where the rates under the negotiated agreement are high. **In other words, the State Commissions have been given discretionary powers either to chose Section 62, 62(1)(a) to give approval for the PPA or to direct the distribution licensee to resort to the Competitive Bidding Process as per clause 5.1 of the NTP read with Section 63 of the Act.** As such, the main contention urged by the Ld. Counsel for the Appellant would fail.”

- (b) Judgment dated 28.05.2015 passed in Noida Power Company Ltd. v. UPERC &Ors. in Appeal No. 88 of 2015:-

“22. [...] **The State Commission's observation that for long term power purchase, only competitive route is available appears to be in teeth of the clear finding of this Tribunal in BSES Rajdhani that the procurement of power through the negotiated route and not through the competitive route is permissible under Section 62 of the Electricity Act notwithstanding Section 63 thereof and MoP Guidelines mandating such Competitive Bidding Process for procuring power on long term basis.** Undoubtedly, this Tribunal has also laid down that the State

Commissions have been given discretionary powers either to choose Section 62, 62(1)(a) to give approval to PPA or to direct the distribution licensee to resort to the Competitive Bidding Process as per Clause 5.1 of the National tariff Policy. **The State Commission, therefore, can in its discretion choose either course.** But, exercise of discretion has to be based on rules of reason and justice. Arbitrary exercise of jurisdiction is opposed to principles of fair play....”

In view of the above it is submitted that the Electricity Act only specifies two terms, viz. ‘determine’ and ‘adopt’. As per Section-62 of the Electricity Act, 2003, the Appropriate Commission shall ‘determine the tariff’ and as per Section-63 of the Electricity Act, 2003, the Appropriate Commission will ‘adopt the tariff’. In the present case, this Hon’ble Commission chose Section-62 of the Electricity Act, 2003 for the determination of tariff and as such, there is no occasion for the Objector to contend otherwise at such belated stage. If such baseless contention of the Objector is accepted then the entire tariff determination exercise under Section-62 of the Electricity Act, 2003 and the applicable Tariff Regulations will be rendered otiose. It is submitted that the Objector’s contentions are wrong and based on an incorrect understanding of the existing framework. As such, contentions of the Objector in this regard merit no consideration by this Hon’ble Commission.

It is submitted that the Petitioner has submitted all necessary and relevant details with respect to the Financial, Operational and Technical performance of Unit-1 of the Project vide its various submissions. It is submitted that conducting prudence check is the prerogative of this Hon’ble Commission and the Objector has no role in the same.

**Observation:**

The above issue raised by the stakeholder does not pertain to the subject true-up petition.

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