

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION**

**5<sup>th</sup> Floor, "Metro Plaza", Bittan Market, Bhopal - 462 016**



**Petition No.16 of 2014**

**PRESENT:**

**Dev Raj Birdi, Chairman**

**A.B. Bajpai, Member**

**Alok Gupta, Member**

**IN THE MATTER OF:**

**Determination of the final generation tariff of the Petitioner's Unit No. 1 (45 MW) coal based power project at Village Niwari, Tehsil Gadarwara, District Narsinghpur (M.P.) for FY 2012-13 to FY 2013-14 and generation tariff for FY 2014-15 to FY 2015-16.**

**M/s B L A Power Pvt. Ltd., Mumbai**

**Petitioner**

**Versus**

- 1. Energy Department, Govt. of Madhya Pradesh, Bhopal**
- 2. M. P. Power Management Co. Ltd., Jabalpur**
- 3. M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd., Jabalpur**
- 4. M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal**
- 5. M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd., Indore**
- 6. M. P. Power Transmission Co. Ltd., Jabalpur**
- 7. M. P. State Load Despatch Centre, Jabalpur**

**Respondents**

## ORDER

(Passed on this day of 22<sup>nd</sup> May' 2015)

### A1: BACKGROUND OF THE PETITION

1.1 M/s. BLA Power Pvt. Ltd. (hereinafter called the "petitioner") filed the subject petition on 1<sup>st</sup> August, 2014 under the provisions of MPERC (Terms and Conditions for determination of Generation Tariff) (Revision II) Regulations, 2012 for determination of final generation tariff for FY 2012-13 to FY 2013-14 of its 45 MW Unit No.1 of coal based power project at Village Niwari, District Narsinghpur and generation tariff of the aforesaid unit for FY 2014-15 to FY 2015-16 for sale of power generated by its plant to M.P. Power Management Company Ltd., Jabalpur. The petition has been registered as Petition No. 16 of 2014.

1.2 The petitioner broadly submitted the following in its petition:

- (i) *"B L A Power Pvt. Ltd., Mumbai, hereinafter referred as the Petitioner is a Company incorporated under Companies Act, 1956 and having its registered office at 84, Maker Chamber III, Nariman Point, Mumbai, was incorporated in the month of November 2006 for development of Power Plants in the State of Madhya Pradesh. The Petitioner has entered into a Memorandum of Understanding [MoU] with Government of Madhya Pradesh [GoMP], hereinafter referred as Respondent 1, on 10<sup>th</sup> Aug' 2007 for setting up of thermal power stations with proposed capacity of 140 MW in the State of Madhya Pradesh. Subsequently, GoMP and the Petitioner have also entered into an Implementation Agreement [IA] on 1<sup>st</sup> Sept' 2008.*
- (ii) *In pursuance with the above agreements, the Petitioner has installed and commissioned its first unit of 45 MW on build, own and operate basis, at Village Niwari, in Tehsil Gadarwara, in Narsinghpur District of Madhya Pradesh. The unit has successfully achieved its CoD on 2<sup>nd</sup> April' 2012, much ahead of the target schedule date, as agreed in PPA (30<sup>th</sup> Sept' 2012).*
- (iii) *In accordance with the terms of Implementation Agreement, GoMP has a right to purchase power from the power stations, at all the time so long the power stations exist including any enhanced, expanded and / or renovated and / or modernized plant, equal to five percent (5%) of the net power (gross*

power generated less permitted auxiliary consumption) at a price equivalent to Variable Charge / Cost only, which shall be determined by Hon'ble Madhya Pradesh Electricity Regulatory Commission [MPERC]. Accordingly, a Power Purchase Agreement [5% PPA] has been executed on 4<sup>th</sup> May' 2011 by the Petitioner with GoMP and MP Power Management Company Ltd, Jabalpur [MPPMCL] earlier being M.P. Power Trading Co. Ltd., a GoMP undertaking, hereinafter referred as Respondent 2. In this agreement GoMP has nominated MPPMCL, to receive this power on its behalf. Thus, both of them are considered as respondent to the petition.

- (iv) In addition to the above, the Petitioner, in accordance with the provisions of IA has also entered into another Power Purchase Agreement [30% PPA] collectively with GoMP, Madhya Pradesh Poorva Kshetra Vidyut Vitran Co. Ltd. [Discom 1], hereinafter referred as Respondent 3, Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. [Discom 2] , hereinafter referred as Respondent 4 and Madhya Pradesh Paschim Kshetra Vidyut Vitran Co. Ltd. [Discom 3] , hereinafter referred as Respondent 5, on 5<sup>th</sup> Jan 2011 for sale of thirty percent (30%) power (of Installed Capacity of the power station, having 2 units each of 45 MW) for a period of 20 years at the tariff as determined by Hon'ble MPERC. In this Power Purchase Agreement also, GoMP has nominated MPPMCL, to receive the power on its behalf. The three Discoms have also agreed to receive the aforesaid power through the MPPMCL, in the proportion as directed by GoMP from time to time. The responsibility of power transmission is vested with M.P. Power Transmission Co. Ltd., herewith referred as Respondent 6. As all the three Discoms and the Transmission Company are also affected parties, therefore all of them are considered as respondent to the petition. State Load Despatch Centre is the apex body to ensure integrated operations of the power system in the State of Madhya Pradesh and is responsible for optimum scheduling of electricity within the State in accordance with the contracts entered into with the licensees or the generating companies operating in the state. Hence is also considered as respondent to the petition [hereinafter referred as respondent 7].
- (v) It is pertinent to mention that the Commission has approved PPA vide its order dated 07<sup>th</sup> Dec' 2012 for sale of power to MPPMCL, on behalf of the three Discoms of Madhya Pradesh. In the PPA, the scheduled Date of

Commercial Operation [CoD] have been agreed by MPPMCL as 30<sup>th</sup> Sept' 2012 for Unit # 1.

- (vi) *Further, in the Power Purchase Agreement, the rate of sale of power is to be determined by Hon'ble MPERC. In the Regulations, completion time for 45 MW size of unit has not been specified. Thus, the completion time as mutually agreed in a PPA, duly submitted before the Commission shall apply. Thus, the submission of the Company that it has commissioned its unit # 1, well ahead of the Commissioning Schedule date may kindly be considered.*
- (vii) *The Company had filed its petition in March 2012, for provisional approval of the capital cost and provisional tariff on its basis, in accordance with the provisions of Hon'ble MPERC Regulation {Terms and Conditions for Determination of Generation Tariff (Revision -1) Regulations, 2009 (RG-26 (I) of 2009)}. The Commission had issued a provisional tariff order (on 24<sup>th</sup> July' 2012), permitting sale of power on the basis of rates determined to MPPMCL, Jabalpur on provisional basis. Accordingly, the Company has been billing provisionally, for the power actually supplied by it and is being paid by MPPMCL, Jabalpur.*
- (viii) *In accordance with the applicable regulations, elaborated in subsequent section "Legal Provisions" in this petition, the Company is required to file its petition for approval of Final Capital Cost, True up of Tariff order dated 24<sup>th</sup> July' 2012 and Multi Year tariff for FY 14-16. Accordingly, the same are being submitted in this petition in the subsequent para.*
- (ix) *In context with various communications held with Hon'ble Commission, the petitioner had submitted provisional project cost as ₹ 283.62 Crores in June' 2012. In the provisional tariff order issued on 24<sup>th</sup> July' 2012, probably based on actual cash expense till that date, Hon'ble Commission had provisionally permitted capital expenditure of the project as ₹ 254.73 Crores. In this provisional tariff order the Hon'ble Commission has specifically mentioned that it has not considered any additional capitalisation at this juncture and therefore it has considered ₹ 254.73 Crores as against ₹ 283.62 Crores. Further, in the petition submitted by the petitioner, it was submitted that the expenses are on provisional basis and final details shall be submitted on*

completion of the project.

- (x) Now almost all the works has been completed and project cost has been finalised. Accordingly, the petitioner submits to consider the final capital cost of the project as given in the table hereunder. The details of the project cost, justification for change in each line item w.r.t. provisionally approved and funding thereof are elaborated in the respective section “Project cost & Funding” enclosed with this petition.

Particulars		Amount in ₹ Crores	
1	Land & Development Cost	4.91	
2a	Civil, Foundation & Buildings	Plant Civil Works	66.41
2b		Roads	5.46
2c		Non-Plant Building	0.70
3	Plant & Machinery (Boiler, Turbine & Generator)	90.42	
4	Balance of Plant including Cooling Tower	70.76	
5	Water Intake System	11.40	
6	Power Transmission System	3.44	
7	Others including Pre Operative Expenses	10.96	
8	Interest During Construction	42.21	
9	Margin Money towards working capital	0.00	
10	Less Income from sale of infirm power	(2.44)	
11	<b>Total</b>	<b>304.23</b>	

- (xi) The funding of the capital expenditure is elaborated in the table given below:

Sources of Funding		Value
1	Debt in ₹ Crores	212.96
2	Equity in ₹ Crores	91.27
3	<b>Total in ₹ Crores</b>	<b>304.23</b>
4	Debt %	70.00%
5	Equity %	30.00%

- (xii) In the provisional tariff order, Hon’ble Commission had permitted tariff on provisional basis. In this, the energy charges were recoverable based on rate of coal and through the mechanism permitted in the regulations. The same is being duly recovered by the petitioner and no separate true up on account of energy charges is necessary on normative basis.

- (xiii) The Company in the section “Performance Parameter” has elaborated that

*the norms specified by the Hon'ble Commission towards Auxiliary Consumption and Heat rate are quite difficult and have submitted for relaxing the same as under:-*

- a. **Auxiliary Consumption** : From 10.50% to 11.00%*
- b. **Heat rate** : From 2792 K Cal/kWH to 2835 K Cal/kWH*

- (xiv) On account of the above submission, energy charges will also change and true up of the energy charges shall be necessary. The Company humbly submits that the unit size is small and the financial capability of the firm is also limited to bear disallowance on account of above performance benchmarks, which despite best performance appear un-achievable. It is therefore requested to kindly reconsider the bench marks and relaxation as submitted in Para 14 above may kindly be permitted.*
- (xv) The tariff order issued by Hon'ble Commission was valid for FY 12-13. For FY 14 & onward, the petitioner was required to file separate petition. As the figures for project cost were under finalisation and petitioner would further require time for certification of project cost after duly settling contractual provisions with its vendors and contractors for the project, the petitioner humbly submitted before the Hon'ble Commission to kindly permit continuance of same tariff for further period, till it submits its petition for approval of Final Capital Expenditure and tariff for FY 14, FY 15 & FY 16.*
- (xvi) Hon'ble Commission had considered the request of the petitioner and vide its order dated 2<sup>nd</sup> April' 2013 had permitted to continue with the present tariff under following provisions of the Regulations:*

*"In case of the existing Projects, the Generating Company shall continue to provisionally bill the Beneficiaries based on the Tariff approved by the Commission and applicable as on 31<sup>st</sup> March' 2013 for the period starting from 1<sup>st</sup> April' 2013 till approval of Tariff by the Commission in accordance with these Regulations:*

*Provided that where the Tariff provisionally billed exceeds or falls short of the final Tariff approved by the Commission under these Regulations, the Generating Company, shall refund to or recover from the Beneficiaries, within six*

*months from the date of determination of final Tariff under these Regulations along with simple interest at the rate equal to the State Bank of India's Base Rate as on 1<sup>st</sup> of April of that year plus 3.50%."*

*(xvii) Now the project cost has been duly finalised by the petitioner. It is therefore submitting the proposed tariff for FY 14, FY 15 & FY 16 as per provisions of "Terms and Conditions for Determination of Generation Tariff (Revision –II), Regulations, 2012"*

## **A2: TARIFF FILED IN THE PETITION**

- 2.1 In the subject petition, the petitioner prayed for determination of final tariff for FY 2012-13 and FY 2013-14 based on the annual audited accounts and also the tariff for FY 2014-15 and FY 2015-16 without annual audited accounts.
- 2.2 The petitioner claimed the generation tariff in two ways; one is based on the norms prescribed in Regulations and second on its proposed operating parameters for which it is seeking relaxation. The relaxation in norms i.e. Auxiliary Consumption and Station Heat Rate is sought by the petitioner on the ground that it is very difficult to achieve the norms.
- 2.3 The Annual Capacity charges and Energy charges for Unit No. 1 claimed by the petitioner are as given below:

**Table 1: Annual Capacity charges (based on Norms) filed by the petitioner (₹ Crores)**

Parameters	FY 12-13 (Unit # 1)	FY 13-14 (Unit # 1)	FY 14-15 (Unit # 1)	FY 15-16 (Unit # 1)
RoE Amount	13.91	21.07	21.07	21.07
Interest Charges	28.84	28.17	26.02	23.86
Depreciation	14.63	14.63	14.63	14.63
Lease / Hire Purchase	0.00	0.00	0.00	0.00
O&M Charges	10.80	11.47	12.17	12.92
Other O&M Charges	4.08	4.08	4.08	4.08
Interest on Working Capital	4.61	5.54	5.53	5.54
Cost of Sec. Oil	1.90	1.90	1.90	1.91
Special Allowance in lieu of R&M	0.00	0.00	0.00	0.00
<b>Total Fixed Cost</b>	<b>78.78</b>	<b>86.87</b>	<b>85.41</b>	<b>84.01</b>
Net Sales (Proposed)	279.56	299.89	299.89	300.71
Impact on Sales Rate-Proposed	282	289.66	284.80	279.38

**Table 2: Annual Energy charges (based on Norms) filed by the petitioner (₹ Crores)**

Parameters	Unit	FY 12-13 (Unit # 1)	FY 13-14 (Unit # 1)	FY 14-15 (Unit # 1)	FY 15-16 (Unit # 1)
Gross Station Heat Rate	kCal / kWhr	2792	2792	2792	2792
GCV of Coal	kCal / kg	4240	4396	4396	4396
Sp. Oil Consumption	MI / KWHr	1.00	1.00	1.00	1.00
GCV of Secondary Oil	kCal / kg	10000	10000	10000	10000
Sp Coal Consumption	Kg / kWhr	0.66	0.63	0.63	0.63
Gross Generation	MU	312.36	335.07	335.07	335.99
Quantity of Coal Required	MT	204961	212071	212071	212652
Transit Loss	%	0.20%	0.20%	0.20%	0.20%
Transit Loss	MT	410	424	424	425
<b>Quantity of Coal Purchased</b>	<b>MT</b>	<b>205371</b>	<b>212495</b>	<b>212495</b>	<b>213077</b>
Rate of Coal	₹ / MT	2646.74	3359.72	3359.72	3359.72
<b>Cost of Coal</b>	<b>₹ Crores.</b>	<b>54.36</b>	<b>71.39</b>	<b>71.39</b>	<b>71.59</b>
Net Sales (Proposed)	MU	279.56	299.89	299.89	300.71
Impact on Sales Rate-Proposed	p / unit	194	238.06	238.06	238.06

2.4 The petitioner filed the following Annual Capacity charges and Energy charges for Unit # 1 based on the proposed relaxation in norms also:

**Table 3: Annual Capacity charges (based on relaxed norms sought in the petition) filed by the petitioner (₹ Crores)**

Parameters	FY 12-13 (Unit # 1)	FY 13-14 (Unit # 1)	FY 14-15 (Unit # 1)	FY 15-16 (Unit # 1)
RoE Amount	13.91	21.07	21.07	21.07
Interest Charges	28.84	28.17	26.02	23.86
Depreciation	14.63	14.63	14.63	14.63
Lease / Hire Purchase	0.00	0.00	0.00	0.00
O&M Charges	10.80	11.47	12.17	12.92
Other O&M Charges	4.08	4.08	4.08	4.08
Interest on Working Capital	4.65	5.59	5.58	5.58
Cost of Sec. Oil	1.90	1.90	1.90	1.91

Parameters	FY 12-13 (Unit # 1)	FY 13-14 (Unit # 1)	FY 14-15 (Unit # 1)	FY 15-16 (Unit # 1)
Special Allowance in lieu of R&M	0.00	0.00	0.00	0.00
<b>Total Fixed Cost</b>	<b>78.82</b>	<b>86.91</b>	<b>85.46</b>	<b>84.06</b>
Net Sales (Proposed)	278	298.21	298.21	299.03
Impact on Sales Rate-Proposed	284	291	287	281

**Table 4: Annual Energy charges (based on relaxed norms sought in the petition) filed by the petitioner  
(₹ Crores)**

Parameters	Unit	FY 12-13 (Unit # 1)	FY 13-14 (Unit # 1)	FY 14-15 (Unit # 1)	FY 15-16 (Unit # 1)
Gross Station Heat Rate	kCal / kWhr	2835	2835	2835	2835
GCV of Coal	kCal / kg	4240	4396	4396	4396
Sp. Oil Consumption	MI / kWhr	1.00	1.00	1.00	1.00
GCV of Secondary Oil	kCal / kg	10000	10000	10000	10000
Sp Coal Consumption	Kg / kWhr	0.67	0.64	0.64	0.64
Gross Generation	MU	312.36	335.07	335.07	335.99
Quantity of Coal Required	MT	208129	215349	215349	215939
Transit Loss	%	0.20%	0.20%	0.20%	0.20%
Transit Loss	MT	416	431	431	432
<b>Quantity of Coal Purchased</b>	<b>MT</b>	<b>208545</b>	<b>215780</b>	<b>215780</b>	<b>216371</b>
Rate of Coal	₹ / MT	2646.74	3359.72	3359.72	3359.72
<b>Cost of Coal</b>	<b>₹ Crores</b>	<b>55.20</b>	<b>72.50</b>	<b>72.50</b>	<b>72.69</b>
Net Sales (Proposed)	MU	278	298.21	298.21	299.03
Impact on Sales Rate-Proposed	p / unit	199	243	243	243

2.5 With the above submissions, the petitioner prayed the following:

- a. *“Approve the Capital Expenditure of ₹ 304.23 Crores incurred by B L A Power Pvt. Ltd. till CoD and thereafter for the purpose of computation of tariff for the power generated from unit #1, as elaborated in Para 10 of the present Petition.*
- b. *Consider to relax the norms of performance parameters as elaborated in Para 14 of the present Petition.*
- c. *Approve true up of fixed cost based on actual project cost w.r.t. provisionally approved in tariff order dated 24<sup>th</sup> July’ 2012, as elaborated in Para 16 & 17 of the present Petition.*
- d. *Approve proposed tariff for FY 14, FY 15 & FY 16 based on regulations, as elaborated in Para 22 of the present Petition.*

- e. Issue necessary orders to MPPMCL, Jabalpur for reimbursement of full amount of fee, paid to Hon'ble Commission for determination of tariff.”

**A3: DETAILS REGARDING PROVISIONAL TARIFF DETERMINED BY THE COMMISSION:**

- 3.1 Vide Commission's order dated 24<sup>th</sup> July' 2012, the provisional tariff for 45 MW Unit No. 1 of the generating station was determined from its CoD to 31<sup>st</sup> March' 2013. The summary of Annual Fixed Charges and Energy charges provisionally determined by the Commission are as given below:

**Table 5: Annual Capacity (Fixed) Charges provisionally approved for Unit # 1 (45 MW) (₹ Crores)**

S. No.	Particular	Unit	Approved provisionally
1	Return on equity	₹ Crores	15.55
2	Depreciation	₹ Crores	11.90
3	Interest charges on loan	₹ Crores	26.93
4	Operation & Maintenance expenses	₹ Crores	10.80
5	Secondary fuel oil expenses	₹ Crores	1.52
6	Interest on working capital	₹ Crores	4.28
7	<b>Annual capacity (fixed) charges</b>	<b>₹ Crores</b>	<b>70.97</b>
8	<b>Annual capacity charges for 362 days</b>	<b>₹ Crores</b>	<b>70.39</b>
9	<b>Annual fixed cost corresponding to 30% of the installed capacity of the unit</b>	<b>₹ Crores</b>	<b>21.12</b>
10	<b>90 % of above fixed cost allowed to be recovered by the petitioner.</b>	<b>₹ Crores</b>	<b>19.01</b>

As per the provisions under Regulation 15.4 of the third amendment to MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 notified on 30<sup>th</sup> June' 2012, the petitioner was provisionally allowed to recover 90% of the fixed cost allowed at serial No.9 of the above table.

**Table 6: Energy Charges provisionally approved for Unit # 1 (45 MW) (₹ Crores)**

S. No.	Particular	Unit	Approved provisionally
1	Capacity	MW	45
2	NAPAF	%	85
3	Gross Station Heat Rate	kCal/kWh	2792
4	Sp. Fuel Oil Consumption	ml/kWh	1.00
5	Aux. Energy Consumption	%	10.50
6	Transit Loss	%	0.20
7	Weighted average GCV of Oil	kCal / ltr.	10,000
8	Weighted average GCV of Coal	kCal / kg	5200

S. No.	Particular	Unit	Approved provisionally
9	Weighted Average price of Coal	₹ / MT	2861
10	Heat Contributed from HFO	kCal / kWh	10
11	Heat Contributed from Coal	kCal / kWh	2782
12	Specific Coal Consumption	Kg / kWh	0.5350
13	Sp. Coal Consumption including Transit Loss	Kg / kWh	0.5361
14	Rate of Energy Charge from Coal	Paise/kWh	159.42
<b>15</b>	<b>Rate of Energy Charge from Coal at ex bus</b>	<b>₹ / kWh</b>	<b>1.71</b>

3.2 In the aforementioned order, the Commission made the following observations:

- i. *The Commission observed that the capital cost for Unit # 1 is un-audited and the financial accounts have also not attended finality. Therefore, the Commission has provisionally considered the capital cost as on CoD, as filed by the petitioner in its additional submission. The Commission has not considered any additional capitalization at this juncture therefore, the capital cost of ₹ 254.73 Crores only as on CoD is considered in this provisional order.*
- ii. *As per provisions under Regulation, the petitioner in its revised submission has filed the original cost as ₹ 283.62 Crores and the capital cost incurred up to the date of commercial operation of Unit # 1 is claimed as ₹ 254.73 Crores hence, the additional capital cost now claimed after CoD is (₹ 283.62 Crores - ₹ 254.73 Crores) ₹ 28.89 Crores.*
- iii. *The petitioner has also submitted that the aforementioned capital cost as on CoD has been funded through ₹ 188.50 Crores debt from consortium of five banks and ₹ 66.23 Crores equity component which contribute debt-equity ratio of 74:26 well within the normative debt-equity ratio. Hence, same is considered by the Commission in this provisional order.”*

3.3 In its order dated 24<sup>th</sup> July’ 2012, the Commission directed the petitioner to file the final tariff petition for Unit # 1 at the earliest along with the unit wise break-up of audited accounts in favour of its claims. The petitioner was also directed to eliminate all discrepancies/inconsistencies and information gaps observed by the Commission in its order dated 24<sup>th</sup> July, 2012, while filing the final tariff petition.

- 3.4 M.P.Power Management Co. Ltd (Respondent No. 2) filed an Appeal before the Hon'ble Appellate Tribunal for Electricity, New Delhi against certain issues in the above mentioned order of the Commission. Vide order dated 17<sup>th</sup> May'2013 in Appeal No.188 of 2012, Hon'ble Tribunal for Electricity disposed of the appeal with the observations that the petition along with audited report would be filed by the petitioner by the end of June'2013 and directed the State Commission to pass a final tariff order after allowing the Appellant (Respondents herein the subject petition) to raise all the contentions raised in the Appeal as well as the reply filed by Respondents (Petitioner herein the subject petition) in the aforesaid Appeal
- 3.5 On the petition (P-14/2013) filed by M/s. BLA Power Pvt. Ltd. on 01<sup>st</sup> March' 2013, vide Commission's order dated 2<sup>nd</sup> April' 2013, the petitioner was allowed to provisionally bill the Respondent No. 2 for the period starting from 1<sup>st</sup> April' 2013 till approval of final tariff by the Commission as per the above-mentioned order passed by the Commission in Petition No. 28/2012.
- 3.6 In compliance with the above directives of the Hon'ble Appellate Tribunal for Electricity and the Commission, the petitioner filed the subject petition on 1<sup>st</sup> August' 2014 (after a period of more than a year from the time period observed in the above mentioned order passed by Hon'ble Tribunal), for approval of capital expenditure and determination of final tariff for Unit No. 1 (45 MW). The petitioner filed the following documents along with the instant application:
- a. The Audited Financial Statements for FY 2012-13 and FY 2013-14
  - b. The Fixed Asset Registers for FY2012- 13 and FY2013- 14.
  - c. Certificate from Chartered Accountant for the apportionment of the Capital Cost between Unit # 1, Unit # 2 and Unit # 3.
  - d. Certificates by the Chartered Accountant regarding the total loan outstanding and interest on loan up to CoD of Unit # 1 and quarter wise breakup of the loan and interest amount.
  - e. Certificates by the Chartered Accountant for the apportioned financing charges of ₹ 61,107,059 (excluding interest) capitalised on CoD of Unit # 1.
  - f. Certificates by the Chartered Accountant regarding the details of fuel consumption capitalised as per books of account for the period 8<sup>th</sup> March' 2012

till CoD of Unit # 1.

- g. The petitioner has not claimed any cost regarding additional capitalization in the instant petition.

3.7 Accordingly, the scope of this order is summarised as under:

- a. Determination of capital cost of Unit # 1 as on its Date of Commercial Operation;  
b. Determination of the final generation tariff of Unit No. 1 for FY 2012-13 and FY 2013-14 based on the audited accounts and the generation tariff for the remaining control period of FY 2014-15 and FY 2015-16 without annual audited accounts subject to true up.

3.8 The Commission has examined the subject petition in accordance with the provisions under Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) (Revision –I) Regulations, 2009 {RG-26 (I) of 2009} (hereinafter referred to as “Generation Tariff Regulations, 2009”) and Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) (Revision-II) Regulations, 2012 {RG-26 (II) of 2012} (hereinafter referred to as “Generation Tariff Regulations, 2012”)

**A.4: Chronology of events of the proceedings in the matter:**

**Chronology of event**

S.	Date	Event
1.	9 <sup>th</sup> September, 2014	Motion hearing held and the petition was admitted by the Commission. The respondents were asked to file their comments.
2.	12 <sup>th</sup> September, 2014	On preliminary scrutiny of the petition, the information gaps and requirement of additional details/documents were communicated to the petitioner vide Commission’s letter No. 1487
3.	29 <sup>th</sup> September, 2014	One month time extension was sought by Respondent (MPPMCL) for filing its comments on petition.
4.	29 <sup>th</sup> September, 2014	Partial reply filed by petitioner on the information gaps communicated by the Commission
5.	29 <sup>th</sup> October, 2014	Supplementary reply filed by M/s. BLA on the remaining issues
6.	10 <sup>th</sup> November, 2014	Comments filed by the respondent MPPMCL on the petition.
7.	5 <sup>th</sup> December, 2014	Rejoinder filed by the petitioner on the comments offered by Respondent (MPPMCL)
8.	9 <sup>th</sup> December, 2014	Queries communicated to the petitioner on its supplementary submission.

9.	31 <sup>st</sup> December, 2014	Time extension for 10 days sought by petitioner for filing its reply.
10.	10 <sup>th</sup> January, 2015	Reply filed by the petitioner on the issues (on its supplementary submission) communicated by the Commission
11.	22 <sup>nd</sup> January, 2015	Respondent MPPMCL filed its reply to the rejoinder (dated 5 <sup>th</sup> December, 2015) filed by the petitioner.
12.	24 <sup>th</sup> January, 2015	Clarification on certain issues was sought from the petitioner. The petitioner was also asked to publish public notice in Hindi and English news papers.
13.	29 <sup>th</sup> January, 2015	Public notices published in Patrika (Hindi) and Hindustan Times (English) news papers. Date of public hearing was fixed on 24 <sup>th</sup> February, 2015.
14.	4 <sup>th</sup> February, 2015	Information regarding the Energy Charges was sought from MPPMCL.
15.	9 <sup>th</sup> February, 2015	Time extension of 10 days was sought by petitioner for filing its clarification to the issues communicated by the Commission.
16.	19 <sup>th</sup> February, 2015	Petitioner confirmed that no comments received by them.
17.	20 <sup>th</sup> February, 2015	Respondent MPPMCL filed the information regarding energy charges sought by the Commission.
18.	20 <sup>th</sup> February, 2015	Reply filed by the petitioner, on the issues raised by the Commission vide letter dated 24 <sup>th</sup> January, 2015.
19.	23 <sup>rd</sup> February, 2015	Response filed by the petitioner on the reply filed by Respondent No. 2
20.	24 <sup>th</sup> February, 2015	Public Hearing was held on the petition. During the public hearing, the parties sought a week's time to respond on each other's submission.
21.	28 <sup>th</sup> February, 2015	Vide Commission's letter No.368 dated 28.02.2015, the Respondent No. 2 and the petitioner were asked to file their response on the submissions made/to be made by each other by 3 <sup>rd</sup> March, 2015 and 9 <sup>th</sup> March, 2015 respectively.
22.	2 <sup>nd</sup> March'2015	Respondent No. 2 filed its rejoinder.
23.	5 <sup>th</sup> March 2015	Vide Commission's letter 1401 dated 05.03.2015, the observations of Commission on the additional submission made by the petitioner on 20 <sup>th</sup> February'2015 were communicated to M/s BLA.
24.	9 <sup>th</sup> March 2015	Petitioner filed its counter affidavit on the rejoinder filed by Respondent No.2
25.	20 <sup>th</sup> March'2015	Petitioner filed its response on the observations of the Commission on its additional submission dated 20 <sup>th</sup> February'2015.

4.1 The following operational status is observed for the petitioner's power plant:

**Table 7: Operational status of Petitioner's plant**

S. No.	Unit	Installed Capacity (MW)	Status of Operation	Commercial Date of Operation
1	Unit-I	45 MW	Operational	03 <sup>rd</sup> April' 2012

4.2 The petitioner filed the following certificates also for the expenses incurred on Unit # 1 (45 MW) project:-

- a. *“Certificate for the amount of Fixed assets as on COD of Unit # 1 along with interest and finance charges calculated as per the guidelines of MPERC along with apportionment between Unit # 1, Unit # 2 and Unit # 3”*
- b. *“Certificate for the amount of Gross block of Fixed assets as on COD of Unit # 1”*
- c. *“Certificate for the amount of funds used in respect of Unit # 1 out of bank loans till CoD”*
- d. *“Certificate for the total loan outstanding and interest on loan as per books of account up to CoD of Unit # 1”.*
- e. *“Certificate for the apportioned financing charges (excluding interest) capitalised on CoD of Unit # 1”*
- f. *“Certificate for the fuel consumption capitalised as per books of account for the period 8<sup>th</sup> March 2012 till CoD OF Unit # 1”.*

#### **A5: STAKEHOLDER CONSULTATION AND SCRUTINY OF PETITION**

5.1 The respondents in the matter were asked to file their comments on the petition. M.P. Power Management Co. Ltd. (Respondent No. 2) filed the comments on behalf of all the Distribution Companies also. The comments filed by MPPMCL on the petition and the rejoinders filed by the petitioner are annexed as **Annexure 1** with the order.

5.2 Vide Commission's daily order dated 14<sup>th</sup> Oct' 2014, the petitioner was directed to submit the draft public notice ( in English and Hindi version) to be published in newspapers inviting comments/ suggestions from all stakeholders. The public

notice as approved by the Commission was published in newspapers on 29<sup>th</sup> January' 2015 inviting comments/ suggestions from all stakeholders in the matter.

5.3 The public hearing in the matter was fixed on 24<sup>th</sup> Feb' 2015. The public notice and the petition along with all submissions of the petition were also uploaded on the Commission's website. The Commission received no comments in writing till due date for offering comments/ suggestions on the petition. The petitioner confirmed that it has also received no comments from any stakeholder. The public hearing was held on 24<sup>th</sup> Feb' 2015 wherein no objector appeared and no written comments were submitted on the petition.

5.4 Vide Commission's letter No. 1487 dated 12<sup>th</sup> September' 2014, the information gaps and the requirement of several supporting documents/additional data were communicated to the petitioner.

5.5 By affidavit dated 29<sup>th</sup> September' 2014, the petitioner filed its response on the information gaps communicated by the Commission. Issue-wise response of the petitioner is as given below:

**i. Issue**

The petitioner has entered into a power purchase agreement with the respondent for sale of 30% power from its 2x45 MW generating units for a period of 20 years at the tariff determined by the Commission. The present status of unit 2 & unit 3 be informed.

**Petitioner's Response**

*"Unit 2 is expected to be commissioned by March' 2015. Further, the petitioner has obtained environmental clearance for Unit 3. However, no financial closure for Unit 3 has been achieved so far."*

**ii. Issue**

The Board's resolution for investment approval of the project be submitted.

**Petitioner's Response**

*"A copy of Board Resolution for investment approval of the project is enclosed as Annexure I."*

**iii. Issue**

The petitioner has entered into two Power Purchase Agreements (PPAs) for sale of only 35% power from its power plant. The petitioner is required to inform whether any Long Term PPA has been executed for sale of power from the balance 65% capacity of its Plant. The details of buyers if identified, for the balance 65% power of the installed capacity along with the volume and rate of electricity sold since CoD of the unit be submitted.

**Petitioner's Response**

*"No long term PPA has been executed by the petitioner for the remaining 65% capacity of the power plant."*

**iv. Issue**

The instant petition is filed seeking the following in prayer:

- a. True up for the provisional Tariff Order for FY2012-13 based on the Audited Financial Statements of FY 2012-13.
- b. Generation tariff for FY 2013-14 to FY 2015-16.

Subsequent to filing of the instant petition, the petitioner has submitted its Final Audited Balance Sheet for FY2013-14 on 21<sup>st</sup> August' 2014. The petitioner is required to inform whether the figures in its petition for determination of tariff for FY 2013-14 are based on Audited Financial Statements of FY 2013-14. If not, it is required to explain the reason for the same and revise the figures accordingly.

**Petitioner's Response**

*"The petitioner has filed the following documents before the Hon'ble Commission,*

- a. *Annual Report for FY 2011-12 (filed along with the petition)*
- b. *Certificate from the Statutory Auditor duly certifying the capital expenditure as on CoD of Unit # 1 (filed along with the petition)*
- c. *Annual Report for FY 2012-13 (filed along with the petition)*
- d. *Annual Report for FY 2013-14 (filed subsequently on 21.08.2014)*

*It is most humbly submitted that the capital expenditure, as claimed in the*

*petition, are based on the capitalization of Fixed Assets of Unit # 1 on its CoD (based on the annual report of FY 2011-12 and the certificate of Statutory Auditor). No additional capital expenditure for Unit # 1 has been incurred or claimed by the petitioner post CoD. The petitioner has only filed the Annual Report for subsequent years, as this Hon'ble Commission is determining final tariff and conducting a true up for FY 2011-12, FY 2012-13 and FY 2013-14. Accordingly, no revision is required in the figures submitted by the petitioner."*

**v. Issue**

In CA Certificate dated 31<sup>st</sup> July' 2014, the petitioner has mentioned that the Fixed Assets details have been prepared on the basis of the Audited Financial Statements and the Fixed Assets Register for the respective period. The petitioner is required to substantiate the Fixed Assets as on COD of Unit # 1 and as on 31<sup>st</sup> March 2013.

**Petitioner's Response**

*"It is most humbly submitted to this Hon'ble Commission that the petitioner has submitted its clarification in the point with respect to paragraph no. 4. No additional capital expenditure for Unit # 1 has been incurred or claimed by the petitioner post CoD of Unit # 1. Thus, the certificate of the Statutory Auditor dated 31.07.2014, filed along with the petition holds good to substantiate the fixed assets of Unit # 1 on CoD and as on 31.03.2013. In any event, a further detailed certificate no. 143/2014-15 dated 26.09.2014 (issued by the Statutory Auditor) containing the break-up of fixed assets, as capitalised, is enclosed as Annexure II."*

**vi. Issue**

The Fixed Assets Register for the period ending 31<sup>st</sup> March 2013 and 31<sup>st</sup> March 2014 be also submitted.

**Petitioner's Response**

*"The Fixed Assets Register for the period ending 31.03.2013 and 31.03.2014 are enclosed as **Annexure III & Annexure IV.**"*

**vii. Issue**

The Audited balance sheets for FY 2012-13 and FY 2013-14 have been finalised and submitted by the petitioner. The status regarding cost of road, water

reservoir and ash pond clearly indicating their actual apportionment among various units of the power plant be submitted. The response on the issues in this regard raised in the dissenting views (Annexure 2) of the Commission's provisional order dated 24th July' 2012 be also submitted.

### **Petitioner's Response**

*"The actual apportionment of cost of road, water reservoir and ash pond is given in the below table,*

*(Figures in ₹)*

No.	Head	Apportioned in Unit # 1	Apportioned in Unit 2	Apportioned in Unit 3	Total Cost
1	Road & Drainage	5,46,30,701	5,46,30,701	5,46,30,701	16,38,92,103
2	Water Reservoir	2,44,36,921	2,44,36,921	0	4,88,73,842
3	Ash Pond	1,19,46,007	1,19,46,007	0	2,38,92,014

*It is most humbly submitted to this Hon'ble Commission that the cost towards road & drainage is equally apportioned among all 3 units. It is further submitted that water reservoir is been built with a capacity of 50000 m<sup>3</sup> to meet make up water requirements for Unit # 1 and Unit 2, considering 7 days storage therefore has been apportioned equally in Unit # 1 and Unit 2. The ash pond has also been apportioned equally among 2 units in the present petition as can be observed from the above table.*

*Further, the Hon'ble Member Shri C.S. Sharma dissented from the majority judgment in Petition No.28 of 2012. The relevant extract of the dissenting order is reproduced hereunder for convenience:*

*"Dissenting views of Member – Shri C. S. Sharma*

- 1) As regards the capital cost, the cost of roads as claimed and apportioned amongst the units, the petitioner submitted that the road cost of ₹ 16.80 crores was not considered in the DPR. Respondent No.2 has stated that since these were not included in original scope of work, their cost should not form part of capital cost. They have also stated that since capacity of water reservoir was increased vis-a-vis original and ash pond was created, related cost should also not be considered. As regards, later submission of respondent, at this stage, neither the related cost can be identified nor a view on essentiality or otherwise on these additionalities can be formed. These can be looked in to while deciding final tariff. However, so far as roads are concerned, the cost is identified and no specific reason for including*

*this in scope of work has been mentioned. Accordingly, this cost is not being admitted at present. Annual fixed charges based on above will work out to ₹1.85 unit on 90% basis.”*

*This Hon’ble Commission has given its view in the provisional tariff petition order dated 24.07.2012 that the provisions for roads and water reservoir are shown in the DPR dated 28.12.2011 filed with this Hon’ble Commission. The Petitioner supports to the response given by this Hon’ble Commission.”*

**viii. Issue**

In CA Certificate dated 31<sup>st</sup> July 2014, the petitioner has submitted the capital cost of ₹ 433.20 Cr. as on CoD. However, these figures are not reconciled with the Audited Financial Statements for FY 2012-13. The unit- wise capital cost as on the following dates duly certified by the Chartered Accountant be submitted:

- a. as on CoD,
- b. as on 31<sup>st</sup> March 2013,
- c. as on 31<sup>st</sup> March 2014

The petitioner is also required to reconcile the same with its audited books of accounts.

**Petitioner’s Response**

*“The petitioner humbly submits that Unit # 1 has achieved CoD on 03.04.2012. All the construction work of Unit # 1 was completed before CoD and invoices raised by the suppliers / vendors / contractors were booked by the petitioner in its books of accounts respectively. The basis of final CAPEX towards Unit # 1 is determined from the fixed assets capitalized as on CoD date. Since the Annual Report for FY 2011-12 is for the period ending 31.03.2012 and for the entire project, therefore the Statutory Auditor has duly audited and provided a certificate for the Total CAPEX with its bifurcation in all units respectively as on the CoD of Unit # 1. It is further submitted to this Hon’ble Commission that no additional CAPEX towards Unit # 1 has been incurred post CoD of Unit # 1 except ₹ 28.83 Crs of capital liabilities (creditors) have been discharged post CoD of Unit # 1 but are already considered as a part of CAPEX for Unit # 1 of ₹. 304.23 Crs as on CoD of Unit # 1 as certified by the Statutory Auditor and filed in the present*

*petition.”*

**ix. Issue**

As per the Audited Financial Statements for FY 2013-14, the additions to Gross Fixed Assets for FY 2013-14 are ₹ 1.082 Cr. However, no additional capitalisation is proposed in the petition in any year of the MYT period. Therefore, the petitioner is required to explain the following:

- a. What addition has been made to Fixed Asset during FY 13-14, if no additional capitalization is proposed for unit #1?
- b. Whether the additions made in FY 13-14 do not pertain to Unit # 1? If not, the details for the same and the unit to which it pertains to be explained.

**Petitioner's Response**

*“It is most humbly submitted to this Hon'ble Commission that the addition to Gross Fixed Assets for FY 2013-14 is ₹ 1.028 Cr (after considering adjustment of ₹. 53.06 Lacs in Factory Buildings as referred in the Annual Report of FY 2013-14). The addition made in the Fixed Asset during FY 13-14 has been provided in **Annexure IV** as covered in reply with respect to paragraph no. 6. The petitioner has not incurred any additional cost towards for Unit # 1 post CoD in any year of the MYT period therefore it has not claimed any additional cost in its present petition.”*

**x. Issue**

In para 4.1.12 of the petition, the petitioner has provided the “actual cash drawl schedule” wherein the total debt outstanding of ₹ 192.78 Cr and the total equity infusion of ₹ 82.62 Cr. is mentioned till CoD. This implies that total funds of ₹275.40 Cr were available as on CoD from debt and equity.

It is noted that the fixed assets as on CoD (as also submitted by the petitioner in certificate dated 31<sup>st</sup> July 2014) is ₹ 304.23 Cr. If the total funds available from debt and equity were ₹ 275.40 Cr (as detailed above), the petitioner is required to explain the following:

- a. The source of funding for balance ₹ 28.83 Cr.
- b. The reasons for non-payment of the amount of ₹ 28.83 Cr. for which the works are completed and the amount is capitalised.

### Petitioner's Response

“As certified by the Statutory Auditor in its certificate no. 147/2014-15 dated 26.09.2014 Annexure V that total cost incurred for Unit # 1 is ₹ 304.23 Cr of which ₹ 275.40 Cr were paid till the CoD of Unit # 1 from the total funds available as on CoD from debt and equity. Further, the balance of ₹ 28.83 Cr was capitalized as on CoD of Unit # 1 since the work was completed and invoices raised by the vendors/ suppliers/ contractors were booked. This amount was outstanding as capital liabilities (creditors) as on CoD of Unit # 1. Subsequently as detailed out in the Petition (paragraph 4.1.12 on page 31 of the petition) the liabilities ₹ 28.83 Cr were discharged after CoD of Unit # 1. For funding of these capital liabilities was done through equity amounting to ₹ 8.65 Cr and loan amounting to ₹ 20.18 Cr. The same is indicated in the table below:-

Source of Funding		Funding (Cr. ₹)		
		Till CoD	After CoD	Total
1	Allahabad Bank	59.34	20.19	79.53
2	Andhra Bank	34.00	-0.01	33.99
3	Bank of India	27.00	-	27.00
4	Union Bank of India	38.44	-	38.44
5	Corporation Bank	34.00	-	34.00
6	Total Loan	192.78	20.18	212.96
7	Equity	82.62	8.65	91.27
8	Total Funding	275.40	28.83	304.23

The loan amounting to ₹ 20.18 Cr was borrowed after CoD for discharge of capital liabilities. Thus, the interest on the loan after CoD has been considered as revenue expenditure and has not been capitalised.”

#### xi. Issue

In Para 4.1.7 of the petition, the petitioner has provided the comparative details of the capital cost as on CoD of Unit # 1, revised capital cost of ₹ 283.62 crore as on 8<sup>th</sup> June 2012 and final capital cost of ₹ 304.23 crore. The petitioner is required to provide the information in the following table:

S. No.	Particulars	Revised Capital Cost as on 8 <sup>th</sup> June' 2012 (₹ Crore)				Final Capital Cost (₹ Crore)			
		Unit # 1	Unit 2	Unit 3	Total	Unit # 1	Unit 2	Unit 3	Total

S. No.	Particulars	Revised Capital Cost as on 8 <sup>th</sup> June' 2012 (₹ Crore)				Final Capital Cost (₹ Crore)			
1									
2									

### Petitioner's Response

*"The petitioner has provided a comparative table mentioning details of revised capital cost as on 08.06.2012 (as filed in provisional tariff petition) and final capital cost. The table has been enclosed as Annexure VI"*

### xii. Issue

As per the CA Certificate dated 31<sup>st</sup> July 2014, the common costs have been apportioned based on management certification. The petitioner is required to submit the details of the total common costs as on CoD duly tallied with the books of accounts in the table below: (₹ Crore)

Common Facility	Total Cost as on CoD	Apportioned to Unit # 1	Apportioned to Unit 2	Apportioned to Unit 3
Facility 1				
Facility 2				

The basis of apportionment explaining the reasons for such apportionment on such basis considered by the petitioner instead of MW Capacity basis in terms of MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2009 be explained.

### Petitioner's Response

*"The petitioner has enclosed as Annexure VII the total common costs as on CoD duly tallied with the books of accounts and further humbly submits that the explanation for the basis of apportionment of such cost has been provided for each common cost in the Annexure."*

### xiii. Issue

The following details for initial spares considered, if any be submitted:

- Detailed list of the initial spares capitalized by the petitioner with quantity and amount reflected in its books of accounts;
- All necessary supporting documents to verify the same.

### Petitioner's Response

*"It is most humbly submitted to this Hon'ble Commission that the initial spares are included in the EPC contracts executed by the petitioner and therefore not*

*capitalized separately.”*

**xiv. Issue**

- a. The petitioner is required to submit the loan account statement as on CoD of Unit # 1 duly reconciled with the audited balance sheet.
- b. A certificate for average interest rate payable since CoD in each Financial Year to substantiate the claims in the petition be also filed.
- c. The total outstanding loan of ₹ 188.50 Cr as on 3rd April, 2012 (CoD of Unit # 1) was informed in earlier Petition N0.28 of 2012. In the current petition, the loan outstanding as on CoD is submitted as ₹ 192.78 Cr. Therefore, the petitioner is required to explain the reasons for change in the figures of outstanding loans as on COD along with all supporting documents to substantiate its claims in the petition.
- d. The petitioner is also required to submit a statement duly verified by the Chartered Accountant to tally the loan outstanding as on CoD with the audited books of account.

**Petitioner's Response**

- a. *“The petitioner has enclosed as Annexure VIII submitting the certificate no. 146/2014-15 dated 26.09.2014 from the Statutory Auditor certifying total loan outstanding as on CoD of Unit # 1 duly reconciled with the audited books of accounts.*
- b. *The petitioner has received a certificate from its banker certifying the average interest rate payable since CoD in each financial year to substantiate the claims filed in the present petition. A copy of certificate is enclosed as ANNEXURE – I.*
- c. *The petitioner has given below the reasons for change in figures of outstanding loans as on CoD,*
  - *The Company had filed its petition in March 2012, for provisional approval of the capital cost and provisional tariff on its basis. In context to with various communications were held with Hon'ble Commission, the petitioner had submitted provisional project cost as ₹ 283.62 Cr in June 2012 and the cash expenditure for Unit # 1 as ₹ 254.73 Cr.*

- *The term loan outstanding as on CoD of Unit # 1 is ₹ 322.49 Cr out of which ₹188.50 Cr was provisionally certified by the CA has been utilized in Unit # 1 as the annual accounts for the year were under preparation and pending for audit completion.*
  - *The provisional order was issued by this Hon'ble Commission on 24.07.2012, post which the annual accounts were duly prepared and audit was completed.*
  - *Based on the audited accounts, the actual CAPEX for Unit # 1 is filed for ₹304.23 Cr of which actual cash expenditure is ₹ 275.40 Cr till the CoD of Unit # 1. Further, the Petitioner has utilized ₹ 192.78 Cr from the total term loan outstanding ₹ 322.49 Cr as on CoD of Unit # 1.*
  - *It is most humbly submitted to this Hon'ble Commission that from the above that the total loan outstanding as on CoD of Unit # 1 ₹ 322.49 Cr has not changed. Only utilization of term loan has changed based on the audited accounts.*
- d. *The certificates issued by the Statutory Auditor bearing no. 147/2014-15 & 146/2014-15 dated 26.09.2014 for the total loan outstanding as on CoD for Unit # 1 and also for Unit # 1 are enclosed herewith as Annexure V & Annexure III. The outstanding loan as on CoD is ₹ 322.49 Cr and is apportioned between Unit # 1 and 2 as ₹ 192.78 Cr and ₹ 129.71 Cr respectively.”*

**xv. Issue**

Detailed statement in excel sheet along with necessary documents in form of bank certification regarding weighted average interest rate on the basis of the actual loan portfolio on the following dates be submitted:

- a. as on CoD of Unit # 1
- b. as on 1st April' 2013
- c. as on 1st April' 2014

**Petitioner's Response**

*“The petitioner humbly submits to this Hon'ble Commission that it has submitted the copies of Bank Statements as Annexure IX (from page no. 83 to 140) to the reply filed on affidavit dated 30.09.2014 by the petitioner in the present petition. Further, the petitioner has also enclosed as ANNEXURE – I a copy of certificate received from the banker certifying the weighted average interest rate on the basis of the actual loan portfolio on the dates as specified by this Hon'ble Commission.”*

**xvi. Issue:**

The petitioner is required to submit the certificates regarding IDC paid to banks along with detailed statements for the same along with the reason why no IDC has been attributed to Unit 3 as per the CA Certificate dated 31<sup>st</sup> July 2014.

**Petitioner's Response**

*"The petitioner has enclosed as **Annexure VIII** the certificate issued by the Statutory Auditor certifying the IDC paid to banks as on CoD of Unit # 1 and have also enclosed as **Annexure IX** the detailed bank statements of all the 5 banks from which loan is borrowed namely Allahabad Bank (lead bank), Andhra Bank, Bank of India, Corporation Bank and United Bank of India.*

*It is further submitted that the Petitioner has utilized the loan only for the purpose of its Unit # 1 and Unit 2 and not for Unit 3. The source of funding for the amount attributed to Unit 3 is equity only therefore no IDC has been attributed to Unit 3 as certified by the Statutory Auditor in its certificate dated 31.07.2014."*

**xvii. Issue:**

In para 4.1.8.8 of the petition, the petitioner has submitted that the "IDC has increased mainly due to increased requirement of fund and higher rate of interest in the market prevailing". The petitioner is required to explain its aforesaid contention as the claims made for the interest on loan are based on the same interest rate i.e. 14.75% in the petition filed for approval of provisional tariff for FY 2012-13.

**Petitioner's Response**

*"In paragraph 4.1.8.8 of the petition, the petitioner has submitted that the "IDC has increased mainly due to increased requirement of fund and higher rate of interest in the market prevailing". To explain its contention the petitioner has given below a table showing the comparison of its filings in provisional tariff petition and present petition for Unit # 1,*

No	Head-wise Description	As filed on 08.06.2012 in Provisional Tariff Petition (Cr. ₹)	As filed on 01.08.2014 in present petition (Cr. ₹)
1	Loan utilized upto CoD of Unit # 1	188.50	192.78
2	IDC & Financing Charges upto CoD of Unit # 1	34.71	42.21

*It is most humbly submitted to this Hon'ble Commission that the loan utilization up to CoD of Unit # 1 has increased in the present petition as compared to filed on 08.06.2012. This is due to the apportionment of actual cost has been done in the present petition based on audited accounts duly certified by the Statutory Auditor. Thus the loan amount in comparison to earlier filing as on 08.06.2014 has increased due to which IDC for Unit # 1 has gone up proportionately.*

*It may further be appreciated that the loan was sanctioned by the consortium of bankers in 2009 wherein the interest rate was 12.00% p.a. which has been increased periodically by the banks and as on CoD of Unit # 1 the interest rate was 14.75% p.a.”*

**xviii. Issue:**

As per Format 5D, the financing charges are ₹ 4.67 Cr. for Unit # 1 and ₹ 1.45 Cr. for Unit 2. The petitioner is required to submit the basis and computations of the financing charges duly tallied with the Books of Accounts. A reconciled statement of the figures with the audited books of accounts be also submitted.

**Petitioner's Response**

*“The financing charges as submitted by the petitioner in this petition are ₹ 4.67 Cr for Unit # 1 and ₹ 1.45 Cr for Unit 2. These charges mainly consist of processing charges, syndication fees, commitment charges and other bank charges respectively. Further, the financing charges have been broadly allocated between Unit # 1 and Unit 2 in the ratio of capital cost of respective units before allocation financing charges. It is further submitted to this Hon'ble Commission that the financing charges are verified by the Statutory Auditor with the books of accounts and have enclosed the certificate from the Statutory Auditor bearing no. 144/2014-15 dated 26.09.014 duly certifying the financing charges duly tallied/verified with the books of accounts as **Annexure X.**”*

**xix. Issue:**

The petitioner had submitted a debt-to-equity ratio of 74:26 as on CoD of Unit # 1 in its earlier Petition No. 28 of 2012. The same has now been submitted as 70:30 in the current petition. The petitioner is required to explain the reason for change in the ratio.

**Petitioner's Response**

“The Company had filed its petition in March 2012, for provisional approval of the capital cost and provisional tariff on its basis. In context to various communications held with this Hon’ble Commission, the petitioner had submitted provisional project cost as ₹ 283.62 Cr in June 2012 and the cash expenditure for Unit # 1 as ₹ 254.73 Cr. Below is the table showing the comparison of debt-to-equity ratio between filing in Petition no. 28/2012 and Petition no. 16/2014,

<i>Head-wise Description</i>	<i>As filed on 8 Jun 2012 (provisionally certified)</i>	<i>As filed on 1 Aug 2014 (based on audited accounts)</i>
<i>Debt (Cr. ₹.)</i>	188.5	192.78
<i>Equity (Cr. ₹.)</i>	66.23	82.62
<i>Paid up to CoD of Unit # 1 (Cr. ₹.)</i>	254.73	275.40
<b><i>Debt %</i></b>	<b>74%</b>	<b>70%</b>
<b><i>Equity %</i></b>	<b>26%</b>	<b>30%</b>

The term loan outstanding as on CoD of Unit # 1 is ₹ 322.49 Cr out of which ₹188.50 Cr was utilized in Unit # 1 and balance ₹ 66.23 Cr was paid from equity. However, the figures were provisionally certified by the CA and were not based on audited accounts. Further, the CAPEX paid up to CoD of Unit # 1 as filed in the present petition are based on audited accounts and thus maintaining the 70:30 debt-to-equity ratio as per the MPERC regulation.”

**xx. Issue:**

The petitioner is also required to submit the quarterly details of the loan drawn and the equity infused along with the debt-equity ratio.

**Petitioner’s Response**

“The petitioner has enclosed as **Annexure XI** submitting the quarterly details of loan drawn and the equity infused with the debt-equity ratio.”

**xxi. Issue:**

The Board’s Resolution approving the decision of not availing taxation benefits under Section 80 (I) A for the initial 4-5 years be submitted.

**Petitioner’s Response**

*“A copy of Board Resolution for approving the decision of not availing taxation benefits under Section 80(I) A is enclosed as **Annexure XII.**”*

**xxii. Issue:**

SLDC’s Certificate for the month-wise statement of Plant Availability Factor of unit-I for FY 12-13 and FY 13-14 be submitted.

**Petitioner’s Response**

*“A copy of M.P. State Load Despatch Centre’s Certificate dated 25.09.2014 for the month-wise statement of Plant Availability Factor of Unit # 1 for FY 12-13 and FY 13-14 is enclosed as **Annexure XIII.**”*

**xxiii. Issue:**

The petitioner is required to submit the details of revenue earned from the sale of infirm power of ₹ 2.44 Cr. mentioning the month wise quantum of sale and the rate of infirm power along with necessary supporting documents.

**Petitioner’s Response**

*“The petitioner has mentioned below the table showing the month-wise details of revenue earned from the sale of infirm power of ₹ 2.44 Cr,*

No.	Month	Infirm power supplied to grid (kWh)	Revenue from Infirm power (₹)	Rate of Infirm power (₹/kWh)
1	Mar-12	8,011,335	20,417,852	2.549
2	Apr-12	1,852,554	3,934,328	2.124
<b>3</b>	<b>Total</b>	<b>9,863,889</b>	<b>24,352,180</b>	<b>2.469</b>

*The petitioner has enclosed as Annexure XIII the copy of certificate received from M.P. State Load Despatch Centre dated 25.09.2014 certifying the quantum and revenue earned from sale of infirm power.”*

**xxiv. Issue:**

SLDC’s certificate certifying quantum and revenue from sale of infirm power be also submitted.

**Petitioner’s Response**

*“It is most humbly submitted to this Hon’ble Commission that the information has been provided with respect to its paragraph no. 23.”*

**xxv. Issue:**

The petitioner is required to submit documents to substantiate its claims of ₹ 6.34 Cr towards fuel requirement during start up duly certified by the Chartered Accountant.

**Petitioner's Response**

*"The petitioner has enclosed as **Annexure XIV** the certificate bearing no. 145/2014-15 dated 26.09.2014 received from the Statutory Auditor duly certifying the fuel quantity (coal & HSD) and claim of ₹ 6.34 Cr towards fuel consumed (coal & HSD) during start-up."*

**xxvi. Issue:**

The details relating to infirm power and the cost of the start-up fuel be submitted in the prescribed table:

**Petitioner's Response**

*"The details relating to infirm power and the cost of the start-up fuel has been enclosed as **Annexure XV** in the prescribed format as required by this Hon'ble Commission."*

**xxvii. Issue:**

The petitioner is required to submit the following details on monthly basis for each financial year from CoD to FY 2012-13 and FY 2014-15:

- a. Source of Coal
- b. quantity and grade of coal received ;
- c. copy of coal supply bills ;
- d. coal analysis sampling reports for past six months.

**Petitioner's Response**

*"With respect to the information sought by the Hon'ble Commission regarding primary fuel, the submissions of the Petitioner are as follows:*

- Source of Coal: *The source of coal of the Petitioner is the Fuel Supply Agreement (FSA) dated 25.04.2011, which the Petitioner has executed with B L A Industries Pvt. Ltd.*
- Quantity and grade of coal received: *The details of the quantity of coal received is given in the table below:*

<b>Quantity Received (MT)</b>	
FY 12-13	226,840.11
FY 13-14	211,080.55

Grade of coal received: Non-coking washed coal of 5200 GCV on Air Dried Basis

Further, the Petitioner craves leave of this Hon'ble Commission to file its reply on the details of computation of landed cost of secondary fuel shortly.

- Copy of coal supply bills: The copies of all the coal supply bills are attached hereto and marked as **Annexure XVI**.
- Coal analysis sampling reports for past six months: The copies of coal analysis sampling reports for coal received and coal consumed in last six months are attached hereto and marked as **Annexure XVII**.”

**xxviii. Issue:**

Detailed computation of the landed cost of the fuel (primary as well as secondary) along with full justifications for computation of fuel cost with breakup of each cost component be submitted.

**Petitioner's Response**

“The computation showing landed cost of primary fuel as per the Fuel Supply Agreement with break-up of each component are attached hereto and marked as **Annexure XVIII**.

The petitioner humbly submits to this Hon'ble Commission that a detailed statement of opening stock, purchase, consumption and closing stock of secondary fuel for FY 2012-13 has been enclosed as **ANNEXURE – II** based on which the petitioner in the present petition filed with this Hon'ble Commission on 01.08.2014 has arrived at the weighted average landed price of Secondary Fuel Oil for the year and claimed the cost Secondary Fuel Oil for true-up of FY 2012-13 and MYT for FY 2014-16.”

**xxix. Issue:**

Detailed justification for coal cost claimed in the instant petition with respect to the issues raised in the dissenting views (Annexure 2) of the Commission's provisional order dated 24<sup>th</sup> July' 2012 be submitted.

## **Petitioner's Response**

*"With respect to the issues raised in the dissenting views of this Hon'ble Commission's provisional order dated 24.07.2012, the submissions of the petitioner are as follows:*

- *At the outset it is stated that the petitioner does not have any firm linkage/ FSA for supply of coal from Coal India Limited (herein "CIL") and/ or its subsidiaries. The petitioner applied for linkage, which is pending. Since linkage was not available to projects (IPPs) less than 200 MW, the petitioner executed a Fuel Supply Agreement (FSA) dated 25.04.2011 with B L A Industries Pvt. Ltd.*
- *For the purposes of execution of FSA, BLA Industries and the petitioner approached the Ministry for Corporate Affairs, Government of India, for approval of FSA between two group companies in terms of section 297 of the Companies Act, 1956. The Central Government on 02.02.2012, while approving the contract for supply of coal by BLA Industries to the petitioner for a period of three years has, inter alia, placed the following conditions:*
  - "ii) The total value of the contract from the contractee party/ parties mentioned herein above shall not exceed the limit mentioned in para 2 above, exclusive of taxes.*
  - iii) The prices to be paid/ received to/ from the contractee party/ parties shall be reasonable and shall not be higher/ lower, as the case may be, than the prevailing market rates.*
  - iv) Company shall ensure that the contract with the contractee party is competitive and is not less advantageous to it as compared to similar contracts with other party/ parties."*

*A copy of the said approval is annexed to the appeal paper book as Annexure XI at page 266-267.*

*From the aforesaid approval it is quite clear that BLA Industries is required to charge prices, which were reasonable and not higher or lower than the prevailing market rates. Further, the approval expressly provides that BLA Industries shall ensure that the contract with the contractee party/ petitioner is competitive and is not less advantageous to it as compared to similar contracts with other party/*

parties.

- *Having regard to the fact that the transaction between the group companies was legally permissible, the issue which is to be analysed is whether the cost of coal charged by BLA Industries is reasonable, aligned to market prices and competitive. In this context, reference may be made to the view of the Hon'ble Chairman of this Commission gave a separate opinion in the matter.....”*

**xxx.**

**Issue:**

The cost of secondary fuel oil be submitted as per the provisions under Regulation 36.1 of MPERC (Terms & Conditions for determination of Generation Tariff) Regulations, 2009 (for FY 2012-13) and Regulation 38 of MPERC (Terms & Conditions for determination of Generation Tariff) Regulations, 2012 (For FY 13-14 to FY 15-16).

**Petitioner's Response**

*“The petitioner humbly submits to this Hon'ble Commission that the cost of secondary fuel oil has been submitted in para from 6.49 to 6.52 on page no. 59 & 60 of the present petition filed with this Hon'ble Commission on 01.08.2014. It is further submitted that the cost of secondary oil consumed for FY 2012-13 has been provided as per the provisions under Regulation 36.2 of MPERC (Terms & Conditions for determination of Generation Tariff) Regulations, 2009 (for FY 2012-13) filed in the present petition as the petitioner has prayed for True-up of Provisional Tariff Order for FY 2012-13.*

*The petitioner further humbly submits to this Hon'ble Commission that the cost of secondary fuel oil for FY 2013-14 to FY 2015-16 has been submitted in para 6.53 on page no. 60 of the present petition filed with this Hon'ble Commission on 01.08.2014 as per the provisions under Regulation 38 of MPERC (Terms & Conditions for determination of Generation Tariff) Regulations, 2012 (for FY 2013-14 to FY 2015-16).”*

**xxxi.**

**Issue:**

The FSA signed with M/s BLA Industries Private Limited by the petitioner is for a period of 10 years which can be extended by another 5 years with the consent of both the parties. However, both the PPAs for sale of power have been executed for a period of 20 years. What arrangements have been made by the petitioner

for the balance period? Whether any other FSA has been executed by the petitioner?

The petitioner is required to submit all bills/ other supporting documents in support of all above information. The petitioner is also required to reconcile the same with the audited annual accounts of the respective year.

### **Petitioner's Response**

*"It is most humbly submitted to this Hon'ble Commission that as per the orders of the Hon'ble Supreme Court, in WP no. 120 of 2012, all coal blocks allocated to private entities since 1993 have been cancelled. However, the coal blocks from which coal is being extracted have been given a time till 31.03.2015 to continue functioning, before the said cancellation takes effect. It is stated that till 31.03.2015, the Petitioner will source coal under the FSA with BLA Industries, however, post 31.03.2015; the Petitioner is likely to obtain coal from Coal India Limited. The said sourcing of coal will be as per the policy which will be formulated for supply of coal to generators who have PPAs with the distribution companies. Therefore, post 31.03.2015, the coal cost will be claimed by the petitioner based on the cost of coal supplied by CIL, including any sourcing of coal from third parties in the event of any shortfall in supply from CIL. In this context reference may be made to the CCEA decision dated 21.06.2013, the amended NCDP dated 26.07.2013 and the MOP letter dated 31.07.2013."*

**xxxii.**

### **Issue:**

In terms of Clause 4.2 of the power purchase agreement (PPA), establishing necessary evacuation infrastructure beyond delivery point for evacuation of the contracted capacity is procurer's obligation. The reasons for establishing and claiming the cost of transmission system for evacuation of the contracted capacity in the petition be explained in light of the provisions under the PPA.

### **Petitioner's Response**

*"The petitioner humbly submits to this Hon'ble Commission that even though as per Clause 4.2 of the Power Purchase Agreement, the Procurer is required to establish the necessary infrastructure beyond the delivery point for evacuation of the contracted capacity, the Discom failed to provide/construct the line. Accordingly, the petitioner has constructed the 132kV line between the 132kV substation of its power plant at Niwari, and the 132kV substation of the East*

*Discom at Gadawara for evacuating power from its power plant. The petitioner has obtained all the necessary approvals and has borne the entire cost for laying the 132kV line and therefore, the cost for this line is being claimed in the present petition.”*

**xxxiii. Issue:**

The petitioner has submitted the formats for FY 14-FY 16 for only 1\*45 MW. As the costs have been incurred for unit no. 2 and unit no. 3 also, the petitioner is required to submit all formats filled as on 31<sup>st</sup> March 2013 and 31<sup>st</sup> March 2014 duly reconciled with the Audited books of accounts and projections for FY 2014-15 and FY 2015-16 for all three units of the company separately.

**Petitioner’s Response**

*“It is most humbly submitted to this Hon’ble Commission that the books of accounts are not prepared unit-wise and the petitioner thus has provided the certificate from the Statutory Auditor certifying the total capitalized amount along with the cost bifurcated among all three units respectively. The petitioner in its present petition has not prayed to this Hon’ble Commission for finalizing its capital expenditure of Unit 2 and/or determination of provisional/ final tariff for Unit 2 and therefore the petitioner shall file a separate petition for Unit 2 with this Hon’ble Commission at an appropriate stage.”*

**xxxiv. Issue:**

As the Unit # 1 has achieved CoD on 3<sup>rd</sup> April 2012, the formats for FY 2012-13 regarding Unit # 1 need to be submitted for the number of days in operation only and not for the entire financial year. The formats be revised accordingly.

**Petitioner’s Response**

*“The petitioner has re-verified the formats for FY 2012-13 regarding Unit # 1 and humbly submits to this Hon’ble Commission that it has found only two formats need to be changed so as to reflect CoD on 3<sup>rd</sup> April 2012 i.e. (Form No. 5A & Form No. 6 for FY 2012-13 True-Up). Rest all other formats for FY 2012-13 submitted along with the petition filed on 1<sup>st</sup> Aug 2014 are based on the number of days the Unit # 1 has been in operation. The two revised formats as mentioned above are revised and enclosed as **ANNEXURE – III.**”*

**xxxv. Issue:**

Form 5D needs to be filled up as on 31<sup>st</sup> March 2013 and 31<sup>st</sup> March 2014 for

Unit # 1 duly reconciled with the books of accounts.

### **Petitioner's Response**

*"The petitioner has duly filled up Form 5D as on 31.03.2013 and 31.03.2014 for Unit # 1 duly reconciled with the books of accounts and has enclosed as Annexure XIV."*

### **A:6 Additional information gaps in the petition**

- 6.1 Vide Commission's letter dated 09<sup>th</sup> December' 2014, the observations of the Commission on the reply filed by the petitioner alongwith the requirement of some more supporting documents/additional data were communicated to the petitioner.
- 6.2 By affidavit dated 10<sup>th</sup> January' 2015, the petitioner filed its reply to the queries raised by the Commission. Issue-wise response of the petitioner is as given below:

#### **i. Issue:**

The certified true copy of the Board's Resolution (dated 21<sup>st</sup> August, 2012) passed after CoD of Unit-1 is submitted. The date of commercial operation is wrongly mentioned as 2<sup>nd</sup> April 2012 in the aforesaid resolution whereas, it is 3<sup>rd</sup> April 2012 as certified by SLDC.

The intent of the query is to obtain the Board's Resolution for initial approval of the estimated project cost before execution of the project. Therefore, the Board's Resolution initially passed for approving the estimated project cost / investment (both for original and revised) is required to be submitted indicating the date of investment approval for the project as required under Appendix I of Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2009{RG-26 (I) of 2009} and its revision / amendments.

### **Petitioner's Response**

*"Appendix 1 of the Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2009 {RG-26 (I) of 2009} is reiterated below,*

*"1. The completion time schedule shall be reckoned from the date*

of investment approval by the Board (of the Generating Company), up to the Date of Commercial Operation of the Units or Block of units...”

The Petitioner humbly submits that the Board’s Resolution for initial investment approval was passed on 27.07.2009 before execution of the project. A copy of Certified True Copy is enclosed as **ANNEXURE I**. Further, the Board’s Resolution for Capital Expenditure up to CoD of Unit # 1 was passed on 21.07.2012, a copy of which has already been submitted on 30.09.2014 enclosed as Annexure I of the affidavit submitted to this Hon’ble Commission.”

**ii. Issue**

The information regarding details of the buyers along with the volume and rate of electricity for the balance 65% power, if any sold since CoD of Unit-1 be submitted.

**Petitioner’s Response**

“The Petitioner humbly submits to this Hon’ble Commission that the present petition is filed in relation to the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2009 {RG-26 (I) OF 2009} and MPERC (Terms and Conditions for Determination of Generation Tariff) (Revision – II) Regulations, 2012 {RG-26 (II) OF 2012} respectively. There are no terms and conditions in the regulations on the basis of which this information is sought by this Hon’ble Commission. Further, the sale of electricity on short-term basis to any third party has no bearing on determination of final tariff under the regulations. Since the electricity is mostly sold on power exchange the identification of buyer is not possible. However, in any event this information is given in form of overall revenue as mentioned in the Annual Report of each financial year that comes in the Petitioner’s company. The copies of Annual Report for FY12, FY13 and FY14 respectively. Please find below a table showing the year-wise revenue from electricity sold in short term market on annual basis,

<b>Year-wise revenue from electricity sold on short term basis</b>	
<b>Year</b>	<b>Revenue (₹)</b>
FY13	580,704,018
FY14	320,683,831
FY15 till Nov 2014	358,848,285

*The rate realized in short term market varies from time to time due to various factors. The decision to sell electricity by the Petitioner in the short term market depends on the ability to recover the variable cost and part of the operating costs. Because of under recovery of fixed cost, the company has suffered a loss of FY-13, FY-14 and FY-15 (till March)."*

**iii. Issue**

The date of commercial operation is wrongly mentioned as 2<sup>nd</sup> April 2012 at various places in the Statutory Auditor's certificate and the petition. In fact, the date of commercial operation is 3<sup>rd</sup> April 2012 as certified by SLDC. This correction is required to be made at all relevant places in the petition and certificates and the amended copies be submitted to the Commission.

**Petitioner's Response:**

*"The Petitioner humbly submits to this Hon'ble Commission that the date of commercial operation is 3<sup>rd</sup> April 2012 as certified by SLDC and it has been erroneously mentioned as 2<sup>nd</sup> April 2012 in the present petition. Therefore, it is clarified that the date of commercial operation is 3<sup>rd</sup> April 2012 and that all figures mentioned in the present petition and in Statutory Auditor's certificate is based on CoD of Unit # 1 as 3<sup>rd</sup> April 2012. Further, the Certificate of Statutory Auditor's with correct date of CoD of Unit # 1 certifying the CAPEX is re-submitted and enclosed as **ANNEXURE II.**"*

**iv. Issue**

The copies of audited accounts of the respective years do not contain the complete Annual Report for such period. The Director's Report for FY 2012-13 & FY2013-14 be submitted.

**Petitioner's Response**

*"The copies of Director's Report for FY 2012-13 & FY 2013-14 are enclosed as **ANNEXURE III & ANNEXURE IV** respectively."*

**v. Issue**

The Statutory Auditor of the petitioner has been changed for the period FY 2011-12 and FY 2012-13 and 2013-14. The certified true copy of the Board's Resolution and the minutes of the meeting for the appointment of the Statutory

Auditor for FY 2012-13 and FY 2013-14 be submitted.

### **Petitioner's Response**

*"The certified true copy of the Board's Resolution for the appointment of Statutory Auditor for FY 2012-13 and FY 2013-14 are enclosed as **ANNEXURE V & ANNEXURE VI** respectively."*

#### **vi. Issue**

- a. The Certificate of Statutory Auditor dated 31st July 2014 has been provided with the petition. The other certificate of Statutory Auditor dated 26th September 2014 has been filed with the additional submission. Both the certificates certify the amount of Gross Fixed Assets as on CoD of Unit-1. However, the figures in both the certificates do not reconcile with each other. The total Gross Fixed Assets (for unit No. 1 to 3) as on CoD of Unit-1 are ₹ 426.8 Crs and ₹ 433.19 Crs as per certificate dated 26th September 2014 and 31st July 2014, respectively. In view of the aforesaid inconsistency, the petitioner is required to submit/ clarify the following:

- The reasons for the above mentioned inconsistency in figures of Gross Fixed Assets.
- Detailed break-up of Gross Fixed Assets indicated in the Auditor's Certificate dated 26th September 2014 in the format of Annexure 1 of the Auditor's Certificate dated 31st July 2014.
- It is mentioned in para 3 of the certificate of the Statutory Auditor as on 31st July 2014 that the *"amount of fixed assets as on 2nd April 2012 including interest and finance charges calculated as per guidelines of MPERC is ₹ 433.19 Crs."* The petitioner is required to explain the difference between the amount of fixed assets in the books of accounts and its computations as per the guidelines of MPERC as on 2nd April 2012, which is not identifiable as per the Certificate provided.
- The petitioner has provided the apportionment between three units in Certificate of Statutory Auditor dated 31st July 2014. The aforesaid apportionment be provided for the amount of Gross Fixed Assets as per the Certificate of Statutory Auditor dated 26th September 2014 duly certified by the Statutory Auditor.

### **Petitioner's Response**

*“The Petitioner humbly submits to this Hon’ble Commission that the certificate of the Statutory Auditor dated 31.07.2014 certifies an amount of ₹ 433.19 Crs. Below is the table reiterated from the certificate of the Statutory Auditor dated 31.07.2014,*

**Total CAPEX considered for apportionment in 3 units**

Particulars	Amount in ₹
Gross block as per books of account as on 3 <sup>rd</sup> April 2012 excluding interest cost and financing charges	3,768,633,787
Interest cost and financing charges calculated as per MPERC guidelines	563,329,979
<b>Total</b>	<b>4,331,963,766</b>

*Below is another table showing the break-up of Interest cost and financing charges duly capitalized and balance in CWIP as on CoD of Unit # 1,*

**Break-up of interest cost and financing charges as on 03.04.2012**

Particulars	Amount in ₹
Interest cost and financing charges Capitalized as on 03.04.2012	499,445,782
Interest cost and financing charges in CWIP as on 03.04.2012	63,884,198
<b>Total</b>	<b>563,329,980</b>

*From the above tables it can be observed that interest cost and financing charges in CWIP as on 03.04.2012 has also been included in the total CAPEX so that the total interest cost and financing charges can be appropriately apportioned in all 3 units and thus to arrive at the final CAPEX of Unit # 1.*

*It is further submitted that the Certificate from the Statutory Auditor dated 26.09.2014 certifies the Fixed Assets capitalized (Fixed Asset Register) as on CoD of Unit # 1 i.e. ₹ 426.8 Crs. which does not include interest cost and financing charges included in CWIP as on CoD of Unit # 1.*

*The detailed breakup of the Gross Fixed Assets indicated in the Auditor’s Certificate dated 26.09.2014 in the format of Annexure I of the Auditor’s Certificate dated 31.07.2014 is enclosed as **ANNEXURE VI** which has been duly certified by the Statutory Auditor.”*

**vii. Issue:**

- a. It is observed that there have been significant additions after CoD of Unit-1 up to 31st March 2013 and 31st March 2014. The petitioner is required to submit a certificate of the statutory auditor for the unit wise breakup of the addition to fixed assets as on 31st March 2013 and 31st March 2014.
- b. While going through the list of detailed information provided in the fixed asset registers for the period ending 31st March' 2013 and 31st March' 2014 (Annexure III & IV), the following issues are observed:
- At Sr. No FABLAP/01309 of the fixed asset register, the acquired cost of ₹48,30,506/- is mentioned for Helipad. It needs to be informed whether the aforesaid item was included in the DPR / original scope of work.
  - A certificate from the Chartered Accountant that all the items in the FAR are as per the original scope of work be submitted.
  - Out of three temporary sheds mentioned in the Fixed Asset Register, disposal of only one shed at Newari has been considered. The status of other two temporary sheds at FABLAP/00078 and 00079 be informed.
  - Addition towards land is shown at Sr. No. 164 to 168 and 1230 of the Fixed Asset Register. The reasons for the aforesaid land addition be informed.

### **Petitioner's Response**

*"The Petitioner humbly submits to this Hon'ble Commission that the amount has been capitalized as on CoD of Unit # 1 i.e. 03.04.2012. Since the Annual Accounts are prepared at the end of financial year the Petitioner has submitted a certificate from the Statutory Auditor duly certifying the unit-wise breakup of the CAPEX in all 3 units as on CoD of Unit # 1. Further, it is humbly submitted to this Hon'ble Commission that no additional CAPEX has been incurred towards Unit # 1 post 03.04.2012 and therefore addition to fixed assets post capitalization on 03.04.2012 (refer to the Certificate from Statutory Auditor dated 26.09.2014) is towards units 2 & 3 respectively. As the present petition is filed for determination of final tariff for Unit # 1 therefore breakup of addition to fixed assets as on 31.03.2013 and 31.03.2014 in unit 2 & 3 shall not be relevant.*

*Further, this Hon'ble Commission has provided certain observations while going through the list of detailed information provided in the fixed assets registers for the period ending 31.03.2013 and 31.03.2014. It is humbly submitted that at Sr.*

No. FABLA/01309 of the fixed asset register, the acquired cost is ₹ 4,48,831/- and not ₹ 48,30,506/- for Helipad. The aforesaid item was not included in the DPR / original scope of work. It is further clarified that the cost of ₹ 4,48,831/- towards Helipad was incurred post CoD of Unit # 1 i.e. 03.04.2012 and is not part of the fixed asset register as on 03.04.2012 based on which final CAPEX of Unit # 1 is filed in the present petition.

It is further submitted, that the Fixed Asset Cards FABLAP/00078 and FABLAP/00079 are relating to temporary sheds. These sheds are still being used for the purpose of storage.

It is further submitted, that the addition in land shown at Sr. No. 164 to 168 is of amount totalling ₹ 35,770/- is additional stamp duty paid on land purchased earlier. It was paid response to assessment and demand from the revenue authorities. Further, the addition in land shown in Sr. No. 1230 of ₹ 2,76,505/- is towards purchase of land for the purpose of the power project. It is humbly clarified by the Petitioner to this Hon'ble Commission that the addition in land shown at Sr. No. 164 to 168 and in 1230 are not part of the fixed asset register as on 03.04.2012 based on which final CAPEX of Unit # 1 is filed in the present petition.

It is further submitted that, as per the provisions under the Regulations of MPERC (Terms & Conditions for determination of Generation Tariff) Regulations, 2012 this Hon'ble Commission is required to examine whether the expenditure incurred is prudence and necessary. For this purpose the Petitioner has submitted the project DPR with the provisional tariff petition dated 29.03.2012 filed with this Hon'ble Commission and the Certificate from the Statutory Auditor duly certifying the capital expenditure made as on CoD of Unit # 1 has been submitted in the present petition filed on 01.08.2014 with this Hon'ble Commission. No other information is available with the Petitioner."

**viii. Issue:**

- a. In the list of Common Facilities provided in Annexure VII, it is observed that the Coal Handling Plant has been mentioned twice as Sr. No. 4 and Sr. No. 13 with different amounts. The reason for the aforesaid be explained.

- b. The basis for apportionment of the items at S. No. 18, 23 and 24 in Annexure VII of the additional submission is not provided. It is observed that a major part of these items have been apportioned to Unit # 1. The basis for the aforesaid apportionment along with the computation of the same be submitted.
- c. In case of any change in the figures on account of the above mentioned observations the appropriate changes are to be made in the Annexure VII and the same be provided duly certified by the Statutory Auditor.
- d. The reconciliation of the Head-wise description of the Capital Cost as provided in Annexure VI and breakup of the Common Facilities as provided in Annexure VII be submitted as the figures in both the tables do not reconcile with each other.

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

*"The Petitioner humbly submits to this Hon'ble Commission that in the list of Common Facilities provided in Annexure VII, the Coal Handling Plant mentioned at Sr. No. 13 is towards civil work and its cost has been shown separately. It is further clarified that the cost mentioned in Sr. No. 13 does not include in the cost mentioned in Sr. No. 4. It is shown separately as per format prescribed in Form 5D of the Tariff Filing Forms (Thermal). For the purpose of completion of details, the Petitioner has enclosed the Common Cost statement in the format prescribed earlier by this Hon'ble Commission with necessary gaps as identified by this Hon'ble Commission being answered. It is clarified that there has been no change in the figures on account as compared to earlier filings made to this Hon'ble Commission.*

*Further, the Petitioner has enclosed as **ANNEXURE VIII** the statement showing reconciliation of the head-wise description of the Capital Cost as provided in Annexure VI and breakup of the Common Facilities as provided in Annexure VII of the filing done on 30.09.2014."*

#### **ix. Issue:**

The petitioner has not provided the details of initial spares. The aforesaid details be submitted.

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

*"The Petitioner humbly re-submits to this Hon'ble Commission that the initial*

*spares are included in the EPC contracts executed by the Petitioner and therefore not capitalized separately.”*

**x. Issue:**

- a. In Annexure VIII, the petitioner has provided the certificate of Statutory Auditor certifying that total loan outstanding of ₹ 322.49 Cr as on CoD of Unit-1.
- b. In Annexure V, the petitioner has provided the certificate of Statutory Auditor which states that the debt- equity ratio for Unit-1 has been considered as 70:30 (i.e as prescribed in the MPERC Regulations). Thus, it is observed that the petitioner has provided the funding details for Unit-1 considering the normative parameters rather than the actual funding.
- c. Therefore, the petitioner is required to provide the statement of actual outstanding loan pertaining to Unit-1 as on its CoD duly certified by Statutory Auditor.
- d. The petitioner is also required to provide the unit-wise details regarding quarterly drawdown of loan as well as the equity infusion for the actual funding details duly reconciled with the books of accounts.

**Petitioner’s Response**

*“The Petitioner humbly submits to this Hon’ble Commission that the actual funding from debt and equity utilized for funding final CAPEX of Unit # 1 is maintained in the ratio of 70:30 which also complies with the normative parameters. It is further submitted that, in Annexure XI of the affidavit submission dated 30.09.2014 (i.e. page no. 141) actual quarterly drawdown of debt and equity for Unit # 1 has been provided wherein it can be observed that the ratio between debt and equity changes on quarterly basis, however, the ratio of total debt and total equity is 70:30 respectively. Further, as required by this Hon’ble Commission, the Petitioner has enclosed herewith as **ANNEXURE IX** a statement showing quarterly drawdown of loan as well as equity infusion for the project and unit-wise duly reconciled with the books of accounts.”*

**xi. Issue:**

- a. On perusal of the bank statements of Allahabad Bank, it is observed that the interest rate for Account No. 50164318286 is 12.75% per annum whereas the interest rate is 14.50% per annum on Account No.

50049354214. It is also observed that the interest rate for infrastructure and large scale industries has wide variance. In view of the aforesaid, it needs to be clarified why loans at varying rate of interest were taken from Allahabad Bank.

- b. On perusal of the banker's certificate for weighted average interest rate filed by the petitioner, it may be observed, that the interest rate as claimed by the petitioner is on much higher side as compared to the weighted average rate of interest at which the funding is observed in the power sector during the same period. The petitioner is required to give the detailed justification in this regard.

### **Petitioner's Response**

*"The Petitioner humbly submits to this Hon'ble Commission that the interest rate on CoD of Unit # 1 for both the term loans was 15% p.a. Since Unit # 1 has achieved its CoD, the Banks have reduced the interest rate to 12.75% on first loan as the construction risk of Unit # 1 is over whereas the interest rate on second loan will be reduced after CoD of Unit 2. It is clarified that the categorization of loan in infrastructure and large scale industries has no relevance for charging the interest rate.*

*It is further submitted that the bank statements of Allahabad Bank reflect the actual loan drawn and interest on loan paid to the bank. Further, the Petitioner has also submitted to this Hon'ble Commission with the Certificate of Bank certifying the interest rate charged by the Banks on the term loans. The Petitioner has no right on deciding the interest rate and banks have the sole right to charge the interest rate based on their assessment of various projects in power sector."*

### **xii. Issue**

The petitioner is required to provide a certificate from the Statutory Auditor certifying that the amount of revenue earned from the Sale of Infirm Power has been adjusted from the amount of Gross fixed assets as on CoD of Unit # 1 and the capital cost is the adjusted capital cost.

### **Petitioner's Response**

*"The copy of certificate from Statutory Auditor duly certifying the amount of revenue from Sale of Infirm Power being adjusted from the final capital cost of Unit # 1 is enclosed as Annexure II of this submission respectively."*

**xiii. Issue:**

- a. By affidavit dated 29th October' 2014, the petitioner has filed the monthly statement regarding secondary fuel oil for FY 2012-13 in Annexure II. The same details for secondary fuel oil be submitted for FY 2013-14 also.
- b. It needs to be confirmed whether two types of secondary fuel oil were used by the petitioner. If so, separate details for each type of secondary fuel oil be submitted.
- c. The copies of the invoice for purchase of secondary fuel oil be also submitted along with computation of arriving at the landed price of secondary fuel oil.

**Petitioner's Response**

*"The Petitioner humbly submits to this Hon'ble Commission that a detailed statement of opening stock, purchase, consumption and closing stock of secondary fuel for FY 2013-14 is enclosed as **ANNEXURE X** along with copy of invoices for purchase of secondary fuel oil enclosed as **ANNEXURE XI**. It is further confirmed that the Petitioner is using only one type of secondary fuel oil i.e. HSD."*

**xiv. Issue:**

It is observed from the invoices that in certain instances the coal has been purchased and transported by Shri Vankatesh Trading Company and certain amount has been debited to M/s. BLA Power Industries Pvt. Ltd. by the petitioner. The reasons for the aforesaid procurement of coal be explained.

- a. The petitioner is required to provide a summary of monthly transactions regarding purchase of fuel and the computation of the landed cost of fuel.
- b. The coal analysis report filed by the petitioner does not indicate the GCV on "As fired basis". The petitioner is required to file the monthly details of weighted average GCV pertaining to Unit # 1 since its CoD to August 2014 on "As fired basis".

**Petitioner's Response**

*"The Petitioner humbly submits to this Hon'ble Commission that in few months coal was procured from Alternate Source (purchased and transported by Shri Venkatesh Trading Company) as M/s B L A Industries Pvt. Ltd. (Seller) was*

*unable to supply the monthly required quantity of coal from its coal mine. Further, as per the clause no. 3.3.3 of the Fuel Supply Agreement with M/s B L A Industries Pvt. Ltd., in the event the Applicable Price of the Alternate Supplies is higher than the Landed Cost of Coal from the Coal Mine of M/s B L A Industries Pvt. Ltd., then the Purchaser (Petitioner's Company) shall be entitled to recover the difference between the Applicable Price and the Landed Cost of Coal from the Coal Mine of M/s BLA Industries Pvt. Ltd. Thus, the differential amount has been debited to M/s B L A Industries Pvt. Ltd. and incremental cost has been recovered.*

*The Petitioner has provided a summary of monthly transactions regarding purchase of fuel and the computation of the landed cost of fuel in its Annexure IX (page 94 to page 96) of the affidavit submission made on 05.12.2014 to this Hon'ble Commission. The Petitioner has also provided the monthly details of weighted average GCV on "As fired basis" pertaining to Unit # 1 since its CoD to Oct 2014."*

**Further additional information gaps in the petition**

- 6.3 On scrutiny of the above-mentioned reply filed by the petitioner, vide Commission's letter No. 180 dated 24<sup>th</sup> January' 2015, the petitioner was asked to explain some issues in details along with details/documents.
- 6.4 By affidavit dated 20<sup>th</sup> February' 2015, the petitioner filed its response on the queries raised by the Commission. Issue-wise response of the petitioner is as given below:
- i. Issue:**

The unit-wise and year-wise Fixed Assets Register mentioning the date of capitalization of each asset up to 3<sup>rd</sup> April 2012 (CoD of Unit # 1), 31<sup>st</sup> March 2013 and 31<sup>st</sup> March 2014 be submitted.

**Petitioner's Response**

*"The Petitioner hereby humbly submits to this Hon'ble Commission that the Fixed Assets Register is prepared on consolidated basis for the company. Further, the Petitioner had submitted the Fixed Assets Register for 31st March 2013 and 31st March 2014 along with the reply on affidavit filed on 30.09.2014 with this Hon'ble Commission. However, based on this Hon'ble*

*Commission's request, the Petitioner is enclosing the Fixed Assets Register as on 3rd April 2012 (COD of Unit # 1), 31st March 2013 and 31st March 2014 as **ANNEXURE I, ANNEXURE II & ANNEXURE III** respectively."*

**ii. Issue:**

Regarding initial spares, it has been stated that the initial spares are included in the EPC contracts and are not capitalized separately. To exercise prudent check in terms of Regulation 17.1 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 and its amendment, details of initial spares included in the EPC contract along with the percentage of total initial spares (included in the EPC contracts) of the original project cost as on CoD of Unit # 1 be informed.

**Petitioner's Response**

*"The petitioner humbly submits to this Hon'ble Commission that the EPC Contracts do not specify the initial spares separately. Therefore, the petitioner humbly prays to this Hon'ble Commission to kindly grant the cost of initial spares as mentioned in Regulation 17.1 of MPERC (Terms and Conditions of determination of Generation Tariff"*

**iii. Issue:**

- a. It has been submitted that the banks have reduced the interest rate to 12.75% on the first loan after CoD of Unit # 1 as the construction risk of Unit # 1 is over.
- b. The certificates for the period up to CoD show the interest rate of 15.00% whereas, the Bank's Certificate dated 21st October 2014 for the applicable interest rate as on CoD and other dates provides that the change in the interest rate for Term Loan 1 is effective from 1.4.2014.

The aforesaid contentions of the petitioner are not found in the loan documents filed with the Commission. Therefore, the petitioner is required to inform/clarify the following:

- a. The date/month from which the new reduced rate of interest is applicable on the loan amount pertaining to Unit # 1.
- b. The net applicable rate of interest when the construction risk is over, along with the loan document wherein such terms and conditions are agreed to by the petitioner and lender be also submitted.

- c. The funding details of term loan used for Unit # 1.
- d. The details duly tallied with the books of accounts be filled-up in the following tables and submitted to the Commission:

**(a) Computation of Interest Rate (weighted average) charged to P&L Account:**

Month	Interest Paid Term Loan 1	Loan Outstanding	Interest paid-Term Loan 2	Outstanding	Weighted average rate of Interest
April 2012					
May 2012					
March 2014					

**(b) Computation of weighted average rate of interest in IDC**

Month	Interest Paid Term Loan 1	Loan Outstanding	Interest paid-Term Loan 2	Outstanding	Weighted average rate of Interest
April 2012					
May 2012					
March 2014					

**Petitioner Response**

*“The Petitioner humbly submits to this Hon'ble Commission that the new interest rate of 12.70% p.a. (being the sum of Base Rate of the Lead Bank plus 2.50%) is floating has come into effect from 27th September 2013 on the new loan facility sanctioned for ₹ 230 Crs. The new loan facility is provided by the existing consortium of bankers namely Allahabad Bank (being the Lead Bank), Andhra Bank, Bank of India, United Bank of India and Corporation Bank respectively. It is further submitted that the first term loan of ₹ 157.60 Crs has been entirely prepaid to the respective banks out of the new loan facility of ₹. 230 Crs. This new loan facility also pertains for CAPEX towards Unit # 1 and Unit 2 which includes common facilities for both the units also. A copy of the new facility loan agreement is duly enclosed as **ANNEXURE IV**.*

*It is further submitted that all the term loans sanctioned by the consortium of bankers is for CAPEX required of Unit # 1 and Unit 2 together which includes common facilities for both the units as well. A copy of letter dated 12.02.2015 as received from Allahabad Bank (being the lead bank) is enclosed as **ANNEXURE V** confirming the same. Below is a table in which total term loan amount and utilization towards Unit # 1 is mentioned,*

No.	Period of Term Loan Sanction	Term loan Amount Sanctioned (in ₹ Crore.)
1	July 2009	157.60
2	May- 2010	167.50
3	Dec-2012	230.00
4	Dec-2012*	(157.60)
5	Total	397.50
6	Utilized towards Unit # 1	192.78
7	Balance available for Unit 2	204.72

\*In Dec 2012 ₹ 230 Crs. was sanctioned of which term loan 1 of ₹ 157.60 Crs. Was prepaid.

The Petitioner humbly submits to this Hon'ble Commission that the statement showing computation of monthly weighted average interest rate charged by the Lead Bank in FY 2012-13 and FY 2013-14 enclosed as **ANNEXURE VI**. It is also submitted that the interest rate charged by the other consortium banks is the same as charged by the Lead Bank.”

**iv. Issue:**

The statement of opening stock, purchase, consumption and closing stock of secondary fuel oil for FY 2013-14 has been submitted. The weighted average rate of ₹ 70,995/ KL for secondary fuel oil is worked out on the basis of the closing stock of the secondary fuel oil.

The weighted average landed price of secondary fuel oil received by the petitioner be submitted.

**Petitioner's Response**

“The petitioner hereby humbly submits to this Hon'ble Commission that the weighted average landed price of secondary fuel oil received by the petitioner is given below:

Year	Purchase Quantity(KL)	Purchase Amount(₹)	Weighted Average Landed Price (₹ / KL)
FY 2012-13	320.052	15301506	47809.44
FY 2013-14	99.400	6178700	62159.96

**v. Issue:**

It has been informed that, the petitioner has recovered the incremental cost from M/s BLA Industries Pvt. Ltd. on account of the coal purchased and transported

from alternate source (Shri Venkatesh Trading Co.) The petitioner is required to inform following:

- a. Whether the cost recovered as per Clause 3.3.3 of FSA with M/s. BLA Industries Pvt. Ltd. has been adjusted in the coal cost claimed by the petitioner?
- b. The statement of amount adjusted, indicating the adjustment of the recovery with suitable credit memos raised or any other supporting documents.

The approval for entering into contract for supply of coal by M/s. BLA Industries Pvt. Ltd. to the petitioner was accorded by the Ministry of Corporate Affairs subject to the following conditions:

- “The contract shall be for the period of three years w.e.f. 09.01.2012.
- The total value of the contract from the contractee party/ parties mentioned herein above shall not exceed the limit mentioned in para 2 above, exclusive of taxes.
- The prices to be paid/ received to/from the contractee party/parties shall be reasonable and shall not be higher/lower, as the case may be, than the prevailing market rates.
- Company shall ensure that the contract with the contractee party is competitive and is not less advantageous it as compared to similar contracts with the other party/parties.
- No direct or indirect loans or financial accommodation will be given to the contractee party without permission of the Central Government under Section 295 of the Act.”

In view of the above, the petitioner is required to demonstrate/establish with all supporting documents that how the above conditions put forth by the Ministry of Corporate Affairs while approving the contract for supply of coal by BLA Industries to the petitioner are ensured by the petitioner.

### **Petitioner's Response**

*“The Petitioner hereby humbly submits to this Hon'ble Commission that the cost recovered as per Clause 3.3.3 of FSA with M/s BLA Industries Pvt. Ltd. has been adjusted in the coal cost claimed by the Petitioner. The*

cost recovered has been reflected in the books of accounts duly audited. Copy of books of accounts for FY12 to FY14 has already been submitted to this Hon'ble Commission. Further, the copies of invoices for such purchase and credit/ debit memos has been submitted as Annexure XVI of the reply filed on affidavit dated 30.09.2014 with this Hon'ble Commission.

With respect to paragraph no. (vii)

- i. With respect to point no. (a): Although the FSA was for 10 years, the approval was granted for 3 years and the approval was to be renewed after the completion of three years. The present approval was upto 08.01.2015. However, the requirement of approval was amended by the enactment of The Companies Act 2013 w.e.f. Sep 2013 and therefore no further approval is required since then.
- ii. With respect to point no. (b): Please find below a table showing the actual value of coal procured under the FSA which is less than the value of Rs. 135.00 Cr. per annum as approved by the Central Government.

Year	Value of coal procured under FSA (₹ Crore)
FY 2012-13	56.67
FY 2013-14	57.78

- iii. With respect to point no.( c ): The price at which the transaction happens is determined as per the formula given in Article 7 of the FSA .The copy of FSA was submitted to the Central Govt. based on which the approval has been granted .The FSA has been subsequently signed and executed by the petitioner 's company .Therefore , we are already in compliance of the same through approved FSA which has been executed after Central Govt. 's approval.
- iv. With respect to point no. (d): The landed price billed to the Petitioner's company for coal sourced from the alternate source(s) was much higher than the coal procured from the coal mines of M/s BLA Industries Pvt. Ltd. which proves that the coal sources from the coal mines of M/s BLA Industries Pvt. Ltd. is always advantageous to the Petitioner's company.
- v. With respect to point no. (e): The transaction was done at standard commercial

*conditions applicable in the industry and no direct or indirect loans or financial accommodation was given to the contractee party.”*

**vi. Issue:**

With regard to the plant availability factor for FY 2013-14, the monthly statement of SLDC for April' 2013 to March' 2014 be submitted.

**Petitioner Response**

*“The petitioner humbly submits to this Hon'ble Commission that the extract from the monthly statement of SLDC for FY 2013-14 with regard to plant availability factor is enclosed as **ANNEXURE VII.**”*

6.5 Vide Commission's letter No. 1401 dated 05<sup>th</sup> March' 2015, the observations of the Commission were communicated to the petitioner.

6.6 By affidavit dated 20<sup>th</sup> March' 2015, the petitioner filed its response on the observations of the Commission. Issue-wise response of the petitioner is as given below:

**i. Issue:**

The petitioner is required to confirm that all the assets capitalized and recorded in its Fixed Asset Register filed with its reply under reference are under original scope of work/DPR. The details of any asset which is beyond the original scope of work be submitted.

**Petitioner's Response**

*“The Petitioner hereby humbly submits to this Hon'ble Commission that all the assets capitalized and recorded in its Fixed Asset Register filed with the reply under reference are under the original scope of work.”*

**ii. Issue**

From the instant submission, it is understood that the consortium of banks have provided a new loan facility w.e.f. 27th September 2013 @ 12.70% (being the sum of Base Rate of the Lead Bank plus 2.50%). The first term loan of ₹ 157.60 Crs has been entirely prepaid to the respective banks out of the new loan facility of ₹ 230 Crs. This indicates that the Bank has re-financed the loan to the petitioner with revised terms of sanction (lower rate of interest). This new loan

facility also pertains for CAPEX towards Unit # 1 and Unit 2 which includes common facilities for both the units also.

Since the reduction in rate of interest on re-financing has resulted in net savings therefore, the following details are required to be submitted:

- The approvals from the Board for Re-financing of the loan;
- The loan documents for closure of earlier loan and sanction of new loan.
- The Certificate from the Statutory Auditor for the Computation of Net Savings from the re-financing arrangement duly reconciled with the Audited Financial Accounts.

The Certificate from the Statutory Auditor for the cost associated with such refinancing duly reconciled with the Audited Financial Accounts.

### **Petitioner's Response**

*"The Petitioner has hereby annexed the following documents:*

- i. ANNEXURE I – Board approval dated 11.09.2013 for re-financing of loan*
- ii. The loan document for closure of earlier loan and sanction of new loan has been submitted in Annexure IV (from page 97 to 141) with the reply under reference*
- iii. ANNEXURE II – Certificate from the Statutory Auditor for the computation of monthly weighted average interest rate charged by the Lead Bank in FY2012-13 and FY2013-14 duly reconciled with the Audited Financial Accounts.*
- iv. ANNEXURE III – Certificate from the Statutory Auditor certifying the cost associated with re-financing for loan duly reconciled with the Audited Financial Accounts.*

*It is further submitted that as per the Certificate of the Statutory Auditor filed as Annexure II of this filing the actual weighted average interest rate in FY 2012-13 was 14.27% and in FY 2013-14 it was 13.60%. Thus it is humbly submitted to this Hon'ble Commission that the Petitioner has been able to make a saving of 0.67% on interest rate due to re-financing of the loan in FY 2013-14."*

### **iii. Issue**

It is submitted by the petitioner that no further approval is required from the Central Government for entering into contract for supply of coal by BLA Industries Pvt. Ltd. to the petitioner as the provision for approval has been amended on enactment of the Companies Act, 2013. On perusal of the amended provisions in the Companies Act, 2013, it is observed that the petitioner is required to obtain its Board's approval by a special resolution and the approval of Audit Committee for entering into such transactions. Therefore, the copy of the Board's resolution and approval of Audit Committee for entering into such transactions be submitted.

**Petitioner's Response**

*"The Petitioner hereby has enclosed the Board's approval dated 08.02.2011 approving the FSA for supply of coal by M/s BLA Industries Pvt. Ltd. as ANNEXURE IV. It is further submitted that the Petitioner's company is a private limited company therefore the provisions of Audit Committee is not applicable."*

## **A7 : CAPITAL COST**

### **Provision under Regulations**

7.1 With regard to the capital cost for a project, Regulation 17 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2009 and Regulations, 2012 provides the following:

*“Capital cost for a Project shall include the Expenditure Incurred or Projected to be incurred on original scope of work, including interest during construction and financing charges, any gain or loss on account of foreign exchange risk variation during construction on the loan - (i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or (ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed, - up to the Date of Commercial operation of the Project, as admitted by the Commission, after prudent check shall form the basis for determination of Tariff.*

- a) *capitalized initial spares subject to the ceiling norms as specified below:*
- i. *Coal-based/lignite-fired thermal generating stations - 2.5% of original Project Cost.*
  - ii. *Hydro generating stations - 1.5% of original Project Cost.*

*Provided that where the benchmark norms for initial spares have been published as part of the benchmark norms for capital cost under first proviso to 17.2, such norms shall apply to the exclusion of the norms specified herein.*

- b) *Additional capital expenditure determined under Regulation 20.*  
*Subject to prudent check, the capital cost admitted by the Commission shall form the basis for determination of Tariff:*  
*Provided that, prudent check of capital cost may be carried out based on the benchmark norms specified by the Central Commission from time to time:*

*Provided further that in cases where benchmark norms have not been specified by the Central Commission, prudent check may include scrutiny of the reasonableness of the capital expenditure, financing plan, interest during construction, use of efficient technology, cost over-run and time over-run, and such other matters as may be considered appropriate by the Commission for determination of Tariff :*

.....”

### **Capital Cost approved by the Commission in the Provisional Tariff Order**

7.2 In its order dated 24<sup>th</sup> July' 2012 for approval of provisional tariff the Commission had considered capital cost of ₹ 254.73 Crore as on 03<sup>rd</sup> April' 2012 based on the actual paid expenditure as certified in the Auditor's certificate filed by the petitioner.

7.3 The petitioner had also submitted that the aforementioned capital cost as on CoD was funded through ₹ 188.50 Crores debt from consortium of five banks and equity of ₹ 66.23 Crores for Unit # 1 as on the date of commercial operation with a debt-equity ratio of 74:26.

### **Petitioner's submission in the subject petition:**

7.4 In the subject petition, the petitioner submitted that the Unit # 1 achieved CoD on 3<sup>rd</sup> April' 2012. It was also mentioned that the Capital Cost and the tariff calculations in the petition are in accordance with the formats prescribed by the Commission.

7.5 In the subject petition, the petitioner submitted the final capital cost of the project as per annual audited books of accounts. The component-wise details of capital cost for the purpose of determination of tariff filed by the petitioner are reproduced below:

**Table 8: Component-wise final project cost (₹ Crores)**

S. No.	Particulars	As on 03 <sup>rd</sup> April, 2012
1	Land	1.18
2	Site Development	3.73
3	Civil Works: Plant Civil Works	66.41
4	Civil Works: Roads	5.46
5	Civil Works: Non Plant Building	0.70
6	Water Intake System	11.40
7	Power Transmission Line	3.44
8	Plant & Machineries: Boiler	63.43

S. No.	Particulars	As on 03 <sup>rd</sup> April, 2012
9	Plant & Machineries: Turbine & Generator	26.99
10	Coal Handling Plant	10.21
11	Fly Ash Handling Plant	2.10
12	Switch Yard, Transformers	11.45
13	6.6 KV & LT Panels	1.82
14	Ventilation & A/C	0.92
15	Compressed Air System	5.89
16	Fire Fighting Equipment's	1.14
17	D. M. Plant & Water Treatment Plant	5.08
18	Instrumentation	3.92
19	Cranes & Hoist	0.00
20	Cooling Towers	6.72
21	Cooling Water System	
22	Non-IBR & Butterfly Valves	15.17
23	MBOP	
24	Misc. Equipment's, Spares & Services	
25	<b>Total Hard Cost</b>	<b>247.16</b>
26	Contingency	0.00
27	Technical know-how fee	10.96
28	Pre-Operative Expense (POE)	
29	Interest During Construction (IDC)	42.21
30	Margin Money	0.00
31	Startup Fuel Expenses	6.34
32	Income from Sale of Infirm Power	(2.44)
33	<b>Total Soft Cost</b>	<b>57.07</b>
34	<b>Total Project Cost</b>	<b>304.23</b>

7.6 The petitioner further submitted that the aforesaid capital cost is the final project cost for Unit # 1 and it is based on the actual expenditure and capitalisation in the books of accounts as on CoD. The following was also mentioned by the petitioner with regard to the Capital cost of the project:

- The Capital Cost and the tariff calculations filed in the petition are in accordance with the formats prescribed by the Commission.
- All the costs have been duly incurred and capitalised. The petition is based on the Capital Expenditure incurred as under:
  - (a) CA certified Capital Expenditure upto CoD of Unit # 1 up-to 3<sup>rd</sup> April' 2012.
  - (b) Liabilities discharged after CoD till end of FY 13.
- The figures of FY 13 have also been audited by the Statutory Auditor and the Audited Balance Sheets for FY 13 is also submitted.

- The actual project cost is about ₹ 20.61 Crore (about 7.27%) more than that submitted on 8<sup>th</sup> Jun 2012. The comparative position with reasons for change in various cost items in the project cost as submitted in June 2012 and actual completed capital cost is mentioned in the petition.
- The petitioner further submitted that the project cost for unit #1 is ₹ 304.23 Cr and funding arrangement includes funding through debt of ₹ 212.96 Cr (70%) and balance from equity of ₹ 91.27 Cr (30%).
- The petitioner also submitted that the Final project cost is inclusive of the soft cost as overheads, preoperative expenses, IDC and other financing charges. The petitioner mentioned that the soft cost cannot be separately identified for each of the hard cost elements hence; it is apportioned on all the hard cost elements on pro-rata basis.
- The petitioner further mentioned that the work of commissioning of two similar units of 45 MW each was initiated simultaneously. The lenders for them were same and 100% of the equity was provided by the Company itself. Further, the contracts were entrusted to same parties for both the units and in many cases against the same order. Thus, there were few overlapping of expenses. However, CA certificate for the cost capitalised for Unit # 1 is submitted by the petitioner.
- In its petition, the petitioner mentioned that as per the Regulations, the tariff can be determined by the commission stage-wise, unit-wise or for the whole generating station. As per the Regulation 8.3 of Regulations, 2012 the capital cost of the generation project can be approved on unit wise basis and in case the breakup of the capital cost of the Unit is not available, the common facilities can be apportioned based on the proportion of the installed capacity of the generating units. Therefore, this petition is filed in line with the Regulations for determination of tariff for Unit # 1 of 45 MW of the generation project.
- The petitioner filed a CA Certificate dated 31<sup>st</sup> July' 2014 certifying the apportionment between Unit # 1, Unit # 2 and Unit # 3, wherein the total amount of fixed assets as on 3<sup>rd</sup> April' 2012 including IDC is ₹ 433.20

Crores and the amount for Unit # 1 is ₹ 304.23 Crores.

- Start-up fuel is the cost of Secondary Oil & Coal utilised for the purpose of undertaking testing and commissioning activities of the unit up to its CoD which amounts to ₹ 6.34 Crores. In the process, infirm power is also generated, which is sold at UI rates prevailing at the time of generation of infirm power which is equal to ₹ 2.44 Crores.
- The petitioner submitted that it has capitalised the actual cost of fuel expenses incurred and deducted income from sale of infirm power from the capital cost of project.
- Thus, after discounting the income from sale of infirm power from the total capital expenditure, net Capital Expenditure is worked out to ₹ 304.23 Crores.
- Further to the above submissions the petitioner submitted that as almost all the works of unit # 1 have been completed no additional capitalisation is proposed for FY 14, FY 15 & FY 16 at this stage and thus, the Capital Cost for FY 14, FY 15 & FY 16 has been considered as ₹ 304.23 Crores only.

### **Commission's Analysis**

- 7.7 The petitioner submitted the audited financial statements for FY 2012-13 and FY 2013-14 along with the expenditure incurred and capitalised as on CoD of the Unit # 1 duly certified by the Chartered Accountant.
- 7.8 The Certificate from the Chartered Accountant has been submitted to show the allocation of various capital cost components among all the three units whereas only Unit 1 has achieved CoD.
- 7.9 The Commission observed that no additional capital cost/capitalisation has been incurred for Unit # 1 after its CoD i.e. 03<sup>rd</sup> April' 2012. The petitioner clarified that the entire capital expenditure after the CoD of Unit # 1 is towards Unit # 2 and Unit # 3. In reply to the query of the Commission, the petitioner submitted that,

*“ No additional capital expenditure for Unit # 1 has been incurred or claimed by the Petitioner post CoD of Unit # 1”*

7.10 Thus, the Commission has not considered any addition to fixed assets of Unit # 1 post its COD on 3<sup>rd</sup> April' 2012.

7.11 While determining the capital cost of the project as on 03<sup>rd</sup> April' 2012, 31<sup>st</sup> March' 2013 and 31<sup>st</sup> March' 2014, the Commission has examined the submissions made by the petitioner in favour of its claim for capital cost components as discussed below:

**(a) Total Capitalised Cost as on CoD**

7.12 The petitioner submitted the details of capital costs as certified by a Chartered Accountant dated 31<sup>st</sup> July 2014 as well as allocation of such capital costs among Unit # 1, Unit # 2 and Unit # 3. Further, the petitioner has submitted that the books of accounts are not prepared unit-wise and therefore, it has filed the certificate from the statutory Auditor certifying the total capitalized amount along with the cost bifurcated among all three units respectively.

7.13 In the CA Certificate, the petitioner provided that the amount of Fixed Assets including IDC as on the CoD,. The summary of the Capital Cost as provided in the CA Certificate dated 31<sup>st</sup> July' 2014 is as given below:

**Table 9: Capital costs as per CA Certificate dated 31st July 2014 (₹ Crores)**

S. No	Particular	Total Cost	Unit # 1	Unit 2	Unit 3
1.	Land and Site Development	14.73	4.91	4.91	4.91
2	Plant and Equipment	-	-	-	-
	Steam Generator	56.56	56.56	-	-
	Turbine Generator	26.54	26.54	-	-
	BOP Mechanical	79.86	42.02	26.44	11.40
	BOP Electrical	33.25	26.95	3.15	3.15
	C&I Package	-	-	-	-
3	Initial Spares	-	-	-	-
4	Civil Works	106.09	72.57	26.98	6.53
5	Const. and Pre. Commissioning Exp.	26.95	21.52	3.29	2.14
6	OH	32.88	10.96	10.96	10.96
7	<b>Capital Cost excl. IDC</b>	<b>376.86</b>	<b>262.02</b>	<b>75.74</b>	<b>39.10</b>
8	IDC	56.33	42.21	14.12	-
9	<b>Capital Cost incl. IDC</b>	<b>433.20</b>	<b>304.23</b>	<b>89.86</b>	<b>39.10</b>

7.14 In Note D of the CA Certificate, it is mentioned that the Value of Fixed Assets as on 3<sup>rd</sup> April, 2012 is ₹ 426.81 Crore which was found in line with the detailed break-up as provided in the same CA Certificate. Therefore, this discrepancy was sought from the petitioner.

7.15 In response to the above, the petitioner submitted the following details of capital costs as certified by a Chartered Accountant ( Certificate dated 26<sup>th</sup> September 2014) by its additional affidavit dated 29<sup>th</sup> September 2014:

**Table 10: Capital costs as per CA Certificate dated 26th September 2014  
(₹ Crores)**

S. No	Particular	Unit # 1
1	Freehold Land	3.53
2	Buildings-Factory	53.59
3	Plant & Machinery	351.75
4	Computer	0.83
5	Furniture & Fixtures	0.33
6	Office Equipment's	0.69
7	Heavy Vehicles	0.28
8	Motor Cars	0.27
9	External Road	15.54
	<b>Total</b>	<b>426.81</b>

7.16 The petitioner responded that the difference in amount of fixed assets in two different Auditor's certificate is mainly due to the reason that the IDC Cost in CA Certificate dated 31<sup>st</sup> July 2014 of ₹ 6.39 Crore does not pertain to Unit No. 1 and is a part of CWIP as on CoD of Unit No. 1. This amount was utilized for creation of assets of Unit No. 2 as on 3<sup>rd</sup> April, 2012.

**Table 11: Comparison of Capital Cost as per two CA certificates**

S. No.	Particulars	Total Cost –CA Certified dated 31 <sup>st</sup> July 2014	Total Cost –CA Certified dated 26 <sup>th</sup> Sept 2014	Difference
1	Land and Site Development	14.73	14.73	0.00
2	Plant and Equipment	-	-	0.00
	Steam Generator	56.56	56.56	0.00
	Turbine Generator	26.54	26.54	0.00
	BOP Mechanical	79.86	79.86	0.00
	BOP Electrical	33.25	33.25	0.00
	C&I Package	-	-	0.00
3	Initial Spares	-	-	0.00
4	Civil Works	106.09	106.09	0.00
5	Const. and Pre. Commissioning Exp.	26.95	26.95	0.00
6	OH	32.88	32.88	0.00
7	<b>Capital Cost excl. IDC</b>	<b>376.86</b>	<b>376.86</b>	0.00
8	IDC	56.33	49.94	6.39
9	<b>Capital Cost incl. IDC</b>	<b>433.20</b>	<b>426.81</b>	

7.17 In view of the above, the total capital expenditure capitalized in the books of account for all three units is ₹ 426.81 Crore.

**(b) Cost of Common Facilities**

7.18 By affidavit dated 31<sup>st</sup> July, 2014, the petitioner submitted the following for apportionment of common facilities between Unit # 1, Unit # 2 and Unit # 3 of the BLA Power Plant.

*“In line with the Regulations as specified above, it is stated clearly that a tariff can be determined stage-wise, unit-wise or for the whole generating station. Also, for the purpose of determination of tariff, the capital cost of the generation project can be approved on unit wise basis and in case the breakup of the capital cost of the Units is not available, the common facilities can be apportioned based on the proportion of the installed capacity of the generating units. Therefore, this petition is filed in line with the given regulation for determination of tariff for Unit # 1 of 45 MW of the generation project.”*

7.19 The break-up of the Common Cost among all three Units, as provided by the petitioner is as below:

**Table 12: Breakup of the Cost of Common Facilities (₹ Crores)**

S. No.	Common Cost	Total Common Cost	Unit # 1	Unit 2	Unit 3
1	Land	<b>3.53</b>	1.18	1.18	1.18
2	Site Development	<b>11.20</b>	3.73	3.73	3.73
3	Ext. Water supply system	<b>34.21</b>	11.40	11.40	11.40
4	CHP	<b>19.70</b>	9.85	9.85	-
5	Fire fighting system	<b>2.07</b>	1.04	1.04	-
6	HP/LP Piping	<b>8.31</b>	4.15	4.15	-
7	Transmission Line and substation	<b>9.45</b>	3.15	3.15	3.15
8	Main Plant Admin Building (Unit # 1 + Unit 2)	<b>15.28</b>	7.64	7.64	-
9	Main Plant Admin Building (Unit # 1 + Unit 2 + Unit 3)	<b>2.11</b>	0.70	0.70	0.70
10	Cooling Towers	<b>1.93</b>	1.60	0.32	-
11	DM Water Plant	<b>5.30</b>	2.65	2.65	-
12	Fuel Handling Plant	<b>3.47</b>	1.74	1.74	-

S. No.	Common Cost	Total Common Cost	Unit # 1	Unit 2	Unit 3
13	CHP	<b>5.80</b>	2.90	2.90	-
14	Ash handling System	<b>5.24</b>	2.62	2.62	-
15	Temp Const. and enabling work	<b>1.10</b>	0.37	0.37	0.37
16	Road and drainage	<b>16.39</b>	5.46	5.46	5.46
17	Chimney	<b>5.17</b>	2.59	2.59	-
18	Erection testing and Comm.	<b>6.60</b>	4.67	1.54	0.39
19	Tools and Plants	<b>5.26</b>	1.75	1.75	1.75
20	Establishment	<b>30.40</b>	10.13	10.13	10.13
21	Design and Engineering	<b>2.46</b>	0.82	0.82	0.82
22	Audit and A/cs	<b>0.02</b>	0.01	0.01	0.01
23	IDC	<b>50.22</b>	37.54	12.68	-
24	FC	<b>6.11</b>	4.67	1.44	-
<b>25</b>	<b>Total Common Cost</b>	<b>251.33</b>	<b>122.36</b>	<b>89.86</b>	<b>39.10</b>

7.20 Regarding apportionment of the cost of common facilities, Regulation 8.3 of the MPERC (Terms and Conditions for Determination of Generation Tariff) (Revision-II) Regulations, 2012 {RG-26 (ii) of 2012} provides that:

*“For the purpose of Tariff, the capital cost of the Project shall be segregated into stages and by distinct Units forming part of the Project. Where the Stage-wise, Unit-wise break-up of the capital cost of the Project is not available and in case of on-going Projects, the common facilities shall be apportioned on the basis of the capacity of the Units. In relation to Multipurpose Hydroelectric Projects with irrigation, flood control and power components, the capital cost chargeable to power component of the Project only shall be considered for determination of Tariff.*

*Explanation: “Project” includes a generation station.”*

7.21 In its petition, the petitioner has submitted that the apportionment has been done in line with the Regulation 8.3 of the MPERC (Terms and Conditions for Determination of Generation Tariff) (Revision-II) Regulations, 2012 {RG-26 (ii) of 2012}. The apportionment of the Capitalised Cost filed by the petitioner has been analysed as under:

(i) The petitioner was asked to submit the status regarding the cost of road,

water reservoir and ash pond with details of actual apportionment. The petitioner submitted the following:

*“The actual apportionment of cost of road, water reservoir and ash pond is given in the below table,*

*(Figures in ₹)*

No.	Head	Apportioned in Unit # 1	Apportioned in Unit 2	Apportioned in Unit 3	Total Cost
1	Road & Drainage	5,46,30,701	5,46,30,701	5,46,30,701	16,38,92,103
2	Water Reservoir	2,44,36,921	2,44,36,921	0	4,88,73,842
3	Ash Pond	1,19,46,007	1,19,46,007	0	2,38,92,014

*It is most humbly submitted that the cost towards road & drainage is equally apportioned among all 3 units. It is further submitted that water reservoir is been built with a capacity of 50000 m3 to meet make up water requirements for Unit # 1 and Unit # 2, considering 7 days storage therefore has been apportioned equally in Unit # 1 and Unit # 2. The ash pond has also been apportioned equally among 2 units in the present petition as can be observed from the above table”*

- (ii) In the CA Certificate date 31<sup>st</sup> July 2014, the Statutory Auditor mentioned that *“for the purpose of segregation of the fixed assets between 3 units, we have relied on the management certification”*

The petitioner was asked to clarify the basis of apportionment of the common cost as submitted in the CA certificate dated 31<sup>st</sup> July 2014. The petitioner submitted the detailed explanation for the basis of apportionment for each of the common cost by additional affidavit dated 29<sup>th</sup> September 2014.

- In response to the various observations of the Commission on the list of Common Facilities, the petitioner submitted the following:

*“The list of Common Facilities provided in Annexure VII, the Coal Handling Plant mentioned at Sr. No. 13 is towards civil work and its cost has been shown separately. It is further clarified that the cost mentioned in Sr. No. 13 does not include in the cost mentioned in Sr. No. 4. It is shown separately as per format prescribed in Form 5D of the Tariff Filing Forms (Thermal). For the purpose of completion of details, the Petitioner*

*has enclosed the Common Cost statement in the format prescribed earlier by this Hon'ble Commission with necessary gaps as identified by this Hon'ble Commission being answered. It is clarified that there has been no change in the figures on account as compared to earlier filings made to this Hon'ble Commission.*

*Further, the Petitioner has enclosed as ANNEXURE VIII the statement showing reconciliation of the head-wise description of the Capital Cost as provided in Annexure VI and breakup of the Common Facilities as provided in Annexure VII of the filing done on 30.09.2014.”*

7.22 In light of the above submissions and the analysis of the additional submissions made by the petitioner, the Cost of Common Facilities are to be apportioned between all three units i.e, Unit # 1, Unit # 2 and Unit # 3 of the petitioner's Power Plant,. Accordingly, the following cost of Common facilities are considered towards Capital Cost of Unit # 1 in this order:

**Table 13: Cost of Common Facilities approved by the Commission**

S. No.	Common Cost	Unit # 1
1	Land	1.18
2	Site Development	3.73
3	Ext. Water supply system	11.40
4	CHP	9.85
5	Fire fighting system	1.04
6	HP/LP Piping	4.15
7	Transmission Line and substation	3.15
8	Main Plant Admin Building (Unit # 1 + Unit 2)	7.64
9	Main Plant Admin Building (Unit # 1 + Unit 2 + Unit 3)	0.70
10	Cooling Towers	1.60
11	DM Water Plant	2.65
12	Fuel Handling Plant	1.74
13	CHP	2.90
14	Ash handling System	2.62
15	Temp Const. and enabling work	0.37
16	Road and drainage	5.46
17	Chimney	2.59

S. No.	Common Cost	Unit # 1
18	Erection testing and Comm.	4.67
19	Tools and Plants	1.75
20	Establishment	10.13
21	Design and Engineering	0.82
22	Audit and A/cs	0.01
23	IDC	37.54
24	FC	4.67
<b>25</b>	<b>Total Common Cost</b>	<b>122.36</b>

7.23 However, the petitioner is directed to approach the Commission as an when the Unit # 2 is commissioned. The cost of Common Facilities apportioned to Unit # 2 and Unit # 3 shall be considered at the time of determination of the Capital Cost of Unit # 2.

**(C) Fixed Assets Register**

7.24 The petitioner was asked to file the Unit wise and year wise Fixed Asset Register highlighting the item wise details as on the CoD of Unit # 1.

7.25 With regard to the list of detailed information provided in the fixed asset registers for the period ending 31<sup>st</sup> March' 2013 and 31<sup>st</sup> March' 2014, the petitioner submitted the following:

*“The Petitioner humbly submits to this Hon’ble Commission that the amount has been capitalized as on CoD of Unit # 1 i.e. 03.04.2012. Since the Annual Accounts are prepared at the end of financial year the Petitioner has submitted a certificate from the Statutory Auditor duly certifying the unit-wise breakup of the CAPEX in all 3 units as on CoD of Unit # 1. Further, it is humbly submitted to this Hon’ble Commission that no additional CAPEX has been incurred towards Unit # 1 post 03.04.2012 and therefore addition to fixed assets post capitalization on 03.04.2012 (refer to the Certificate from Statutory Auditor dated 26.09.2014) is towards units 2 & 3 respectively. As the present petition is filed for determination of final tariff for Unit # 1 therefore breakup of addition to fixed assets as on 31.03.2013 and 31.03.2014 in unit 2 & 3 shall not be relevant.*

*Further, this Hon’ble Commission has provided certain observations while going*

*through the list of detailed information provided in the fixed assets registers for the period ending 31.03.2013 and 31.03.2014. It is humbly submitted that at Sr. No. FABLA/01309 of the fixed asset register, the acquired cost is ₹4,48,831/- and not ₹ 48,30,506/- for Helipad. The aforesaid item was not included in the DPR / original scope of work. It is further clarified that the cost of ₹ 4,48,831/- towards Helipad was incurred post CoD of Unit # 1 i.e. 03.04.2012 and is not part of the fixed asset register as on 03.04.2012 based on which final CAPEX of Unit # 1 is filed in the present petition.*

*It is further submitted, that the Fixed Asset Cards FABLAP/00078 and FABLAP/00079 are relating to temporary sheds. These sheds are still being used for the purpose of storage.*

*It is further submitted, that the addition in land shown at Sr. No. 164 to 168 is of amount totalling ₹35,770/- is additional stamp duty paid on land purchased earlier. It was paid response to assessment and demand from the revenue authorities. Further, the addition in land shown in Sr. No. 1230 of ₹ 2,76,505/- is towards purchase of land for the purpose of the power project. It is humbly clarified by the Petitioner to this Hon'ble Commission that the addition in land shown at Sr. No. 164 to 168 and in 1230 are not part of the fixed asset register as on 03.04.2012 based on which final CAPEX of Unit # 1 is filed in the present petition.*

*It is further submitted that, as per the provisions under the Regulations of MPERC (Terms & Conditions for determination of Generation Tariff) Regulations, 2012 this Hon'ble Commission is required to examine whether the expenditure incurred is prudence and necessary. For this purpose the Petitioner has submitted the project DPR with the provisional tariff petition dated 29.03.2012 filed with this Hon'ble Commission and the Certificate from the Statutory Auditor duly certifying the capital expenditure made as on CoD of Unit # 1 has been submitted in the present petition filed on 01.08.2014 with this Hon'ble Commission. No other information is available with the Petitioner."*

- 7.26 The petitioner submitted that the cost of Helipad of ₹ 4,48,831 was incurred post CoD of Unit # 1 i.e. 3<sup>rd</sup> April' 2012 and is not part of the fixed asset register as on 3<sup>rd</sup> April' 2012 based on which final CAPEX of Unit # 1 is filed in the present

petition and this was not included in the DPR /Original scope of work.

**7.27** The petitioner further submitted that the addition towards land as in the Fixed Asset Register are not part of the fixed asset register as on 03.04.2012 based on which final CAPEX of Unit # 1 is filed in the present petition. **In view of the above submissions, this issue shall be examined and taken up while determining the tariff for Unit No. 2.**

7.28 In response to MPPMCL Comments dated 10<sup>th</sup> November' 2014, the petitioner responded the following by its affidavit dated 5<sup>th</sup> December' 2014:

*"It is humbly submitted to this Hon'ble Commission that due to increase erection of sky climber the cost of boiler has increased by ₹ 0.13 Crs. Sky climber was essential for maintenance activities in the Boiler by mechanised lifting of man, materials and machines inside the furnace. Further, increase of length of main steam piping by 139.40 m the cost has increase by ₹ 1.67 Crs. Increase of main steam pipe was envisaged after finalisation of isometric drawing of Boiler. A copy of the orders placed is enclosed as ANNEXURE II & ANNEXURE III to this filing. The However the net impact of increase in cost of Boiler is ₹ 0.69 Crs. This is due to the Petitioner being able to save other cost by ₹ 1.11 Crs during the commissioning & erection of the Boiler.*

*The contract of EOT crane was be grouped to the Turbine & Generator package as was shown separate in earlier filings, thus due to which ₹ 0.65 lacs has been increased which is only due to presentation of the cost. A copy of EOT crane agreement is enclosed as ANNEXURE IV to this filing. In addition to above ₹0.30 lacs has been paid towards additional work of extra bus duct length of 32mts and EOP Pump supplied by M/s Siemens Ltd.*

**To this submission, MPPMCL further raised its comments as below:**

*"In Para 9 at page no. 4 of the Rejoinder, it has been stated that due to supply and erection of Sky Climber, the cost of boiler has increased by ₹ 0.13 Crores It is apparent that Sky Climber was not under Original Scope of work, as the Order for the same was placed only on 21-12-2012 (i.e., after COD). Therefore, by virtue of Regulation 17 and 20 of the Tariff Regulation 2009, the expenditure in this head may not be admissible.*

*Also in the same para, it is stated that the length of the main steam piping has*

*been shown to increase by 139.40 m (from original 50 m) resulting in increase of the cost by ₹ 1.67 Crores It may kindly be seen that, there has been gross mis- assessment of the required length of the main steam pipe line. It is obvious that the rates for only 50 m originally ordered would have been quoted on higher side and the cost of “additional quantity” would certainly be on the higher side, thus increasing overall cost significantly. Therefore, it is requested to apply prudence check and allow only reasonable cost for steam pipe line.”*

**Petitioner’s response on the same vide affidavit dated 23<sup>rd</sup> February’ 2015 on the MPPMCL’s contentions raised as above:**

*“The contents of are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. With respect to Para 10 it is stated that the Sky-Climber was erected before the COD of Unit # 1 on 03.04.2012, however, the amendment in the Order contract was made only on 21.12.2012. The actual photograph of the work done is annexed hereto and marked as ANNEXURE I. Therefore, when the expenditure was incurred before the COD, the Petitioner cannot be denied the set cost in its tariff.*

*With respect to the contents of Para 11, it is stated that the increase in the main steam piping was done as per the requirement. Even though in the original scope of work it was mentioned that the main steam piping would be around 50 meters, however, the same increased to 139.40 meters. The same can be analysed as to prudence of the Petitioner, however merely because a scope of work was not part of the original scope the same cannot be a reason for denial of costs when the said additional work was essential for the development of the project.”*

7.29 From the above, the Commission observed that the increased cost of Sky Climber of ₹ 0.13 Crores is the cost which is essential for maintenance activities in the Boiler by mechanised lifting of man, materials and machines inside the furnace. The Commission further asked the petitioner to confirm whether the capitalisation in the books of accounts is as per the original scope of work.

7.30 In response to the above query, the petitioner submitted as below:

*“The Petitioner hereby humbly submits to this Hon’ble Commission that all the assets capitalized and recorded in its Fixed Asset Register filed with the reply under reference are under the original scope of work.”*

- 7.31 It is also explicitly clear from the above submissions of the petitioner that the scope of work for steam piping was increased which was not a part of the original scope of work. The construction of line increased from 50 mts. To 139 mts. due to which the cost increased by ₹ 1.67 Cr.
- 7.32 Thus considering the submissions made by the petitioner that all the works which are completed and capitalised as on the date of CoD are within original scope of work, the additional cost of ₹ 1.67 Cr. for increased steam piping which was beyond the original scope of work is not allowed in this order.
- 7.33 In para 4.1.7 of the instant petition, the petitioner has submitted the comparative details of the capital cost components claimed by it vis-a-vis the total paid and unpaid capital expenditure duly certified by the Chartered Accountant on 08<sup>th</sup> June',2012 (filed in Petition No.28 of 2012). On perusal of the aforesaid statement, it was observed that the project cost on Plant Civil Works and Balance of Plant including cooling tower has been increased substantially. The expenditure on the Plant and Machinery (BTG) is also increased by ₹1.58 Crore. The interest during construction has also been increased by ₹7.50 Crore besides slight increase in some other items. On the other hand, the expenditure on certain capital cost components like Land and Development Cost, Water Intake System, Power Transmission System, Pre-Operating Expenses including some others has been reduced. As a net result of the aforesaid variation in capital cost components, there is an overall increase of ₹20.61 Crores from the total paid and unpaid capital expenditure in the CA certificate dated 08<sup>th</sup> June',2012 (filed in Petition No.28 of 2012).
- 7.34 In para 4.1.8 of the petition, the reasons for change in the above cost components are mentioned by the petitioner. However, the reasons mentioned by the petitioner seem superficial. Therefore, the petitioner was asked to explain in full details the reasons for aforesaid increase in the cost. Respondent No. 2 (MPPMCL) has also raised several objections to the variations in the aforesaid cost components particularly for increase in the cost of Plant civil Works. All the comments offered by Respondent No. 2 and the counter affidavits filed by the petitioner are mentioned in **Annexure 1** annexed with this order. In support of its clarification to the issue pertaining to increase in capital expenditure incurred on Plant Civil Works, the petitioner submitted the item-wise list of the Plant Civil Works executed by the contractor M/s GDCL indicating the quantity, rate and amount of each item as per BOQ and also as billed by M/s. GDCL. The

petitioner stated that the civil contract was awarded to M/s. GDCL in February 2011 and the Bill of Quantity (BOQ) in the contract was prepared based on the preliminary drawings submitted by the technical consultants, which were subsequently revised based on the actual site conditions and various inputs received from different vendors of the power plant.

7.35 On detailed scrutiny of the list of items submitted by the petitioner in **Annexure 1** of its reply by Affidavit dated 23<sup>rd</sup> February'2015, the following is observed:

- (i) There is a wide difference in quantity of most of the items as per BOQ and the billing done by M/s GDCL. The difference in amount of most of the unmeasureable items on account of manifold quantity variations, is in the range of about 200% to 2000%. The list of all such items along with percentage variations has been mentioned by Respondent No.2 also in its objections.
- (ii) In some of the tendered items under the contract, the quantity is not shown under BOQ column whereas, the quantity of all such items is mentioned under the column of billing by the contractor, M/s. GDCL.

7.36 It is observed in Clause 10.0.0 of the Special Conditions of Contract between M/s BLA Power Pvt Ltd and M/s GDCL that the Schedule of Rates were firm for the variation in quantities within 20%. It is further mentioned in the aforesaid Clause that the rates shall be mutually negotiated for execution of balance value of works, in case there is variation beyond 20% of the quantity of works.

7.37 In view of the aforesaid observations, the variation in the cost of all such items under Plant Civil works (as per details given by the petitioner in Annexure 1 by its affidavit dated 23<sup>rd</sup> February,2015) is considered only for quantity variations up to 20% from the BOQ as articulated in the contract award as given below:

1	Amount of Plant Civil Works awarded to M/s GDCL as per <b>BOQ</b>	23.03 Cr.
2	Amount of Plant Civil Works awarded to M/s GDCL as per <b>BOQ with increase of 20% only</b>	27.63 Cr.
3	Amount of Plant Civil Works (excluding non-tender items) <b>actually billed</b> by M/s GDCL	34.69 Cr.
4	Increase in cost on account of column 3 (excluding non-tender items)	7.06 Cr.
5	Increase in cost for <b>Unit # 1</b> on account of column 3 (excluding non-tender items) in the same proportion as considered by the petitioner	5.30 Cr.

7.38 Accordingly, the increase of ₹ 5.30 crore in project cost items under plant civil works is not allowed in this order and this amount is deducted from the the capital cost claimed by the petitioner..

**(d) Apportionment of Soft Cost**

7.39 The petitioner filed details of the actual expenditure details in respect of each package and the same has been elaborated in Form 5 D. The stream of funding is also provided in Form 13.

7.40 Based on the above, it can be observed that till CoD the Hard cost and Soft cost including IDC and Over heads of the unit is worked out to ₹ 247.16 Cr and ₹ 57.07 Crores respectively. The total Capitalisation as on CoD is ₹ 304.23 Crores.

7.41 The petitioner submitted that the soft cost cannot be separately identified for each of the hard cost items, therefore it is apportioned among all the hard cost elements on pro-rata basis.

7.42 The Commission observed that the allocation of the soft cost is in proportion to the directly attributable hard cost pertaining to Unit # 1. Thus the following allocation is considered by the Commission:

**Table 14: Apportionment of Soft Cost**

No.	Head-wise Description	Actual Break up			Allocation of Over Heads	Project Cost After Allocation of OH
		Hard Cost	Over heads	Total		
1	Land & Development Cost	4.91		4.91	1.13	6.04
	a Land	1.18		1.18	0.27	1.45
	b Site Development	3.73		3.73	0.86	4.60
2	Civil, Foundation & Buildings	72.57	0.00	72.57	16.76	89.33
	a Plant Civil Works	66.41		66.41	15.33	81.74
	b Roads	5.46		5.46	1.26	6.72
	c Non-Plant Building	0.70		0.70	0.16	0.87
3	Plant & Machinery (BTG)	90.42	0.00	90.42	20.88	111.30
	a Boiler	63.43		63.43	14.65	78.08
	b Turbine & Generator	26.99		26.99	6.23	33.22
4	Balance of Plant including Cooling Tower	64.42	6.34	70.76	14.87	79.29
	a Coal Handling Plant	10.21		10.21	2.36	12.57
	b Fly Ash Handling Plant	2.10		2.10	0.48	2.58
	c Switch Yard, Transformers	11.45		11.45	2.64	14.09
	d 6.6 KV & LT Panels	1.82		1.82	0.42	2.24
	e Ventilation & A/C	0.92		0.92	0.21	1.14
	f Compressed Air System & Piping	5.89		5.89	1.36	7.25
	g Fire Fighting Equipment	1.14		1.14	0.26	1.40
	h D. M. Plant & Water Treatment Plant	5.08		5.08	1.17	6.25
	i Instrumentation	3.92		3.92	0.90	4.82
	j Cranes & Hoist	0.00		0.00	0.00	0.00
	k Cooling Towers	6.72		6.72	1.55	8.28
	l Cooling Water System					
	m Non-IBR & Butterfly Valves	15.17		15.17	3.50	18.68
	n MBOP					
	o Misc. Equipment, Spares & Services					
	p Start-up Expense		6.34	6.34	0.00	0.00
5	Water Intake System	11.40		11.40	2.63	14.04
6	Power Transmission System	3.44		3.44	0.79	4.23
7	Contingency @ 5%	0.00	0.00	0.00	0.00	0.00
8	Total Hard Cost	247.16	6.34	253.50	57.07	304.23
9	Others including Pre Operative Expenses		10.96	10.96		
	a Technical know-how fee		10.96	10.96		
	b Pre-Operative Expense					
10	Interest During Construction		42.21	42.21		
	a Interest During Construction		37.54	37.54		
	b Other Financing Cost		4.67	4.67		
11	Margin Money		0.00	0.00		
12	Revenue Earned from Sale of Infirm Power		(2.44)	(2.44)		
13	<b>Total</b>	<b>247.16</b>	<b>57.07</b>	<b>304.2</b>	<b>57.07</b>	<b>304.23</b>

**(e) Cost of Initial Spares**

- 7.43 The petitioner submitted that the initial spares are included in the EPC Contracts executed and therefore not capitalized separately. In response to the queries raised by the Commission, the petitioner stated as under:

*“It is most humbly submitted to this Hon’ble Commission that the initial spares are included in the EPC contracts executed by the petitioner and therefore not capitalized separately.”*

- 7.44 On perusal of the above, the petitioner was asked to submit the details to confirm the average percentage of initial spares included in the EPC Contracts. Vide additional affidavit dated 20<sup>th</sup> February’ 2015, the petitioner submitted that,

*“The petitioner humbly submits to this Hon’ble Commission that the EPC Contracts do not specify the initial spares separately. Therefore, the petitioner humbly prays to this Hon’ble Commission to kindly grant the cost of initial spares as mentioned in Regulation 17.1 of MPERC (Terms and Conditions of determination of Generation Tariff)”*

- 7.45 In view of the above submissions made by the petitioner, the cost of initial spares included in the Capital cost filed by the petitioner is considered and **no further cost in the head of initial spares will be allowed in future for Unit # 1.**

**(f) Interest during construction (IDC) and incidental expenses during construction (IEDC)**

- 7.46 The total amount of ₹42.21 Crores comprises of the Interest During Construction (IDC) and the Financing Charges amounting to Rs. 37.54 Crores and Rs. 4.67 Crores, respectively. The petitioner has not claimed any Foreign Exchange Rate Variation (FERV) and the Hedging Cost. The financing charges mainly consist of the processing charges, syndication fees, commitment charges and other banking charges. The financing charges have been verified and certified by the statutory auditor with the books of account.

- 7.47 Regarding increase in the Interest During Construction (IDC), the petitioner submitted that the increase in IDC is not on account of delay in declaration of the Unit No. 1 under commercial operation as this Unit achieved CoD within the scheduled CoD as agreed to in the Power Purchase Agreement executed between the parties in this matter. It is further clarified by the petitioner that the

IDC is mainly increased due to increased requirement of fund envisaged in the earlier project cost and higher rate of interest over and above the loan part which was sanctioned by consortium of banks in 2009. The interest rate of 12.00% per annum on the loan sanctioned in 2009 has been increased periodically by the banks and it was 14.75% per annum as on CoD of Unit No. 1.

7.48 It is also observed that the allocation of the soft cost including Interest during construction (IDC) and incidental expenses during construction (IEDC) is in proportion to the directly attributable hard cost pertaining to Unit No.1. Considering the submissions and clarifications filed by the petitioner and also taking into cognizance that the increase in IDC is not on account of time overrun, the Interest during construction of ₹ 42.21 Crore as claimed by the petitioner for Unit No.1 is considered in this order.

7.49 The Other expenses including Pre operative expenses of ₹ 10.96 Crores for Unit No. 1 are also considered by the Commission

**(g) Pre-commissioning fuel expenses**

7.50 The petitioner submitted that it has incurred pre-commissioning fuel expense (towards coal and oil) of ₹ 6.34 Crores. The petitioner also submitted that it has earned revenue of ₹ 2.44 Crores from sale of infirm power. Accordingly, the petitioner has incurred net pre-commissioning fuel expense of ₹ 3.90 Crores (₹6.34 Crores – ₹ 2.44 Crores). The petitioner submitted the following details for such expenses and revenue from sale of infirm power:

**Table 15: Pre-commissioning fuel expenses and revenue from sale of infirm power as claimed by the petitioner**

Month	Generation in MU's	Coal Consumption		Oil Consumption		Revenue from sale of Infirm Power	Unrecovered Fuel Expenditure
		Qty in MT	Amt in ₹ Cr.	Qty in KL	Amt in ₹ Cr.		
Mar-12	8.01	8591.36	2.00	892.07	4.06	2.04	(4.02)
Apr-12	1.85	1078.61	0.28	0.00	0.00	0.39	0.11
Total	<b>9.86</b>	<b>9669.97</b>	<b>2.28</b>	<b>892.07</b>	<b>4.06</b>	<b>2.44</b>	<b>(3.90)</b>

7.51 Regulation 19 of the MPERC (Terms and Conditions for Determination of Generation Tariff) (Revision-II) Regulations, 2012 {RG-26 (ii) of 2012} provides the following with regards to adjustment of capital costs for revenue and expenses related to infirm power:

*“Infirm Power shall be accounted as Unscheduled Interchange (UI) and paid for from the regional / State UI pool account at the applicable frequency-linked UI rate:*

*Provided that any revenue earned by the Generating Company from sale of Infirm Power after accounting for the fuel expenses shall be applied for reduction in capital cost.”* (Emphasis supplied)

- 7.52 The Petitioner has reduced the Capital Cost with the revenue earned from the Sale of Infirm Power as per the provisions under Regulation 19 of the MPERC (Terms and Conditions for Determination of Generation Tariff) (Revision-II) Regulations, 2012 {RG-26 (ii) of 2012}.

**(h) Additional Capitalisation**

- 7.53 With regards to Additional Capitalisation towards Unit # 1 after the date of CoD as on 31<sup>st</sup> March’ 2013 and 31<sup>st</sup> March’ 2014 the petitioner in the additional affidavit dated 29<sup>th</sup> September’ 2014 submitted as below:

*“The petitioner humbly submits that Unit # 1 has achieved CoD on 03.04.2012. All the construction work of Unit # 1 was completed before CoD and invoices raised by the suppliers / vendors / contractors were booked by the petitioner in its books of accounts respectively. The basis of final CAPEX towards Unit # 1 is determined from the fixed assets capitalized as on CoD date. Since the Annual Report for FY 2011-12 is for the period ending 31.03.2012 and for the entire project, therefore the Statutory Auditor has duly audited and provided a certificate for the Total CAPEX with its bifurcation in all units respectively as on the CoD of Unit # 1.*

*It is further submitted to this Hon’ble Commission that no additional CAPEX towards Unit # 1 has been incurred post CoD of Unit # 1 except ₹28.83 Crs of capital liabilities (creditors) have been discharged post CoD of Unit # 1 but are already considered as a part of CAPEX for Unit # 1 of ₹304.23 Crs as on CoD of Unit # 1 as certified by the Statutory Auditor and filed in the present petition.”* (emphasis added)

- 7.54 Hence, no additional capitalisation is considered for any financial year towards Unit # 1 in this order after its CoD.

**Summary of the Capital Cost approved in this order:**

7.55 It is observed that the allocated soft costs comprising of IDC and IEDC to Unit No.1 is based on the directly attributable hard costs pertaining to this unit.

7.56 In view of the aforesaid findings, the Commission has considered the following capital costs post allocation of soft costs as on CoD of Unit # 1 for the purpose of determination of tariff in this order:

**Table 16: Capital costs approved towards Unit-I as on 03<sup>rd</sup> April, 2012 i.e. CoD of Unit-I (in ₹ Crores)**

S. No	Particular	Capital cost Approved
1	Land and Site Development	4.91
2	Plant and Equipment	-
	Steam Generator	56.56
	Turbine Generator	26.54
	BOP Mechanical	42.02
	BOP Electrical	26.95
	C&I Package	-
3	Initial Spares	-
4	Civil Works	72.57
5	Const. and Pre. Commissioning Exp.	21.52
6	OH	10.96
7	Capital Cost excl. IDC	262.02
8	IDC	42.21
9	<b>Capital Cost incl. IDC</b>	<b>304.23</b>
10	<b>Less: Cost disallowed (additional cost of steam piping for the increased scope of work)</b>	<b>1.67</b>
11	<b>Less: Increased cost of Plant civil works awarded to M/s GDCL</b>	<b>5.30</b>
11	<b>Capital Cost allowed (including IDC) in this order</b>	<b>297.26</b>

7.57 The petitioner has not claimed any additional capitalisation as per Regulation 20 of the MPERC (Terms and Conditions for Determination of Generation Tariff) (Revision-II) Regulations, 2012 {RG-26 (ii) of 2012}. Therefore, the capital cost of ₹ 297.26 Crore as on CoD of Unit # 1 and as on 31<sup>st</sup> March' 2014 is considered for FY 2014-15 and FY 2015-16 also for determination of tariff subject to true-up for FY 2014-15 and FY 2015-16 based on the audited accounts.

**A8: DEBT EQUITY RATIO AND FUNDING OF THE PROJECT**

8.1 With regards to the Debt – Equity ratio and funding of the project, Regulation 21 of MPERC (Terms and Conditions for determination of Generation tariff)

Regulations, 2012 provides that:

*“In case of the generating station declared under commercial operation prior to 1.4.2013, debt-equity ratio allowed by the Commission for determination of Tariff for the period ending 31.3.2013 shall be considered. For the purpose of determination of Tariff of new generating station Commissioned or capacity expanded on or after 01.04.2013, debt-equity ratio as on the Date of Commercial operation shall be 70:30. The debt-equity amount arrived in accordance with this clause shall be used for calculation of interest on loan, return on equity and foreign exchange rate variation.*

*Where equity actually employed is in excess of 30%, the amount of equity for the purpose of Tariff shall be limited to 30% and the balance amount shall be considered as loan. The interest rate applicable on the equity in excess of 30% treated as loan has been specified in Regulation 23. The normative repayment shall also be considered on the equity in excess of 30% treated as loan. Where actual equity employed is less than 30%, the actual equity shall be considered.”*

8.2 The petitioner submitted the following details:

- (a) The revised project cost is ₹ 304.23 Crores.
- (b) The petitioner submitted the CA certificate showing the Debt to Equity ratio of **70:30**, however the certificate specifically mentioned that the ratio has been derived as per the MPERC guidelines.
- (c) The petitioner has submitted a CA certificate of the capital cost for Unit # 1 which shows that the Cost incurred as on COD for Unit # 1 is ₹ 304.23 Cr. But the amount outstanding as on CoD is ₹ 28.83 Cr. being the outstanding liabilities, which shows that the funding had been done for ₹ 275.40 Cr. and the remaining balance is funded after the date of COD.
- (d) The petitioner submitted that the funding of the outstanding liabilities was funded through equity amounting to ₹ 8.65 Cr and loan amounting to ₹20.18 Cr.
- (e) The petitioner filed the following details of funding:

(Amount in ₹ Crores)

Source		Funding		
		Till CoD	After CoD	Total
1	Allahabad Bank	59.34	20.19	<b>79.53</b>
2	Andhra Bank	34.00	(0.01)	<b>33.99</b>
3	Bank of India	27.00	-	<b>27.00</b>
4	Union Bank of India	38.44	-	<b>38.44</b>
5	Corporation Bank	34.00	-	<b>34.00</b>
<b>6</b>	<b>Total Loan</b>	<b>192.78</b>	<b>20.18</b>	<b>212.96</b>
7	Equity	82.62	8.65	<b>91.27</b>
<b>9</b>	<b>Total Funding</b>	<b>275.40</b>	<b>28.83</b>	<b>304.23</b>

(f) The Commission also observed that the petitioner has not taken loan for Unit wise. Based on the details of the total drawdown of loan and total equity as provided by the petitioner, the ratio of total loan v/s total equity ratio is worked out as **72: 28**.

(g) Debt is being provided to BLA Power Limited by a consortium of banks with Allahabad Bank as the Lead banker. The Details of the loans taken for the BLA Project up to the date of COD as per CA certificate dated 26<sup>th</sup> Sep' 2014 are as under:

(All figures in ₹ Crores)

S. No	Bank	Loan outstanding as on CoD( ₹ in crores)	Interest on loan (₹ in Crores)
1	Allahabad Bank	84.71	14.07
2	Andhra bank	34.00	6.64
3	Bank of India	63.95	9.40
4	Corporation Bank	71.33	9.54
5	Union Bank of India	68.50	10.57
	<b>Total</b>	<b>322.49</b>	<b>50.22</b>

(h) Based on the above, the Commission has considered the actual Debt to Equity ratio of **72: 28** for funding of capital expenditure incurred for Unit # 1 till CoD and post CoD.

- (i) Based on the above, the Commission has considered the funding of project cost till CoD being funded by debt of ₹ 193.27 Crores and equity of ₹ 75.16 Crores in the ratio of 72 : 28. For additional funding same debt-equity ratio of 72:28 which amounts to debt of ₹ 20.75 Crores and equity of ₹ 8.07 Crores.
- (j) The details of the funding arrangement is observed as below:

**Table 17: Funding arrangement**

Particulars	Unit of Measure	As on 03 <sup>rd</sup> April, 2012	As on 31 <sup>st</sup> March, 2013	As on 31 <sup>st</sup> March, 2014	As on 31 <sup>st</sup> March, 2015	As on 31 <sup>st</sup> March, 2016
Total funding incurred	₹ Crores	275.40	304.23	304.23	304.23	304.23
Less: Cost disallowed	₹ Crores	6.97	6.97	6.97	6.97	6.97
Total Capital Cost	₹ Crores	268.43	297.26	297.26	297.26	297.26
Debt	₹ Crores	193.27	214.02	214.02	214.02	214.02
Equity	₹ Crores	75.16	83.23	83.23	83.23	83.23
Debt	%	72%	72%	72%	72%	72%
Equity	%	28%	28%	28%	28%	28%
Debt : Equity Ratio	Ratio	72 : 28	72 : 28	72 : 28	72 : 28	72 : 28

## **A9: Determination of Tariff**

### ***Determination of Final Tariff for FY 12-13 and FY 2013-14***

9.1 The submissions made by the petitioner have been analysed on the basis of audited accounts for the respective years filed by the petitioner and also the provisions under Regulations. The component-wise description of the petitioner's submission and the Commission's analysis thereof is discussed hereunder.

### ***Determination of Tariff for FY 2014-15 and FY 2015-16***

9.2 The Commission has also undertaken the exercise of determination of tariff for Unit No. 1 on projected basis for FY 2014-15 and FY 2015-16. The tariff for FY 2014-15 and FY 2015-16 shall be trued-up based on the audited accounts for the respective years.

### Determination of Annual (fixed) Capacity Charges

9.3 The tariff for supply of electricity from a thermal power generating station comprises of Capacity (fixed) Charges and Energy (variable) Charges to be derived in the manner specified in *Regulations 38 and 39 of “Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2009. {RG-26 (I) of 2009}”* and *Regulations 40 and 41 of “Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012. {RG-26 (II) of 2012}”*

The annual Capacity (fixed) Charges consist of the following:

- (a) Return on Equity;
- (b) Interest and Financing Charges on Loan Capital;
- (c) Depreciation;
- (d) Operation and Maintenance Expenses;
- (e) Interest Charges on Working Capital;
- (f) Cost of Secondary Fuel Oil;
- (g) Lease/Hire Purchase Charges;
- (h) Special allowance in lieu of R&M or separate compensation allowance, wherever applicable.

9.4 In this order, the Commission has approved the total Capital Cost of ₹ 297.26 Crore for Unit # 1 as given below:

(All figures in ₹ Crores)

Particulars	As on 31 <sup>st</sup> March, 2013	As on 31 <sup>st</sup> March, 2014	As on 31 <sup>st</sup> March, 2015	As on 31 <sup>st</sup> March, 2016
<b>Unit operational</b>	<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>
Land and Development cost	4.91	4.91	4.91	4.91
Civil, Foundation & Buildings	72.57	72.57	72.57	72.57
Plant & Machinery(Boiler, Turbine & Generator)	90.42	90.42	90.42	90.42
Balance of Plant Cooling Tower	70.76	70.76	70.76	70.76
Water Intake system	11.40	11.40	11.40	11.40
Power Transmission System	3.44	3.44	3.44	3.44
Others including Pre-Operative Expenses	10.96	10.96	10.96	10.96
Interest During Construction	42.21	42.21	42.21	42.21
Margin money towards working Capital	0.00	0.00	0.00	0.00
Less Income from sale of Infirm Power	(2.44)	(2.44)	(2.44)	(2.44)
Less Capital Cost disallowed	(6.97)	(6.97)	(6.97)	(6.97)
<b>Year-wise Gross block considered in this order</b>	<b>297.26</b>	<b>297.26</b>	<b>297.26</b>	<b>297.26</b>

## Return on Equity

### Provision Under Regulation:

9.5 Regulation 22 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 and Regulation 22 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 provides as under:

*“Return on equity shall be computed in rupee terms, on the paid up equity capital determined in accordance with Regulation 21.*

*Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per Regulation 22.3 of this Regulation:*

*Provided that in case of Projects commissioned on or after 1st April, 2013, an additional return of 0.5% shall be allowed if such Projects are completed within the timeline specified in Appendix-I :*

*Provided further that the additional return of 0.5% shall not be admissible if the Project is not completed within the timeline specified above for reasons whatsoever.*

*The rate of return on equity shall be computed by grossing up the base rate with the normal tax rate for the Year 2012-13 applicable to the Generating Company:*

*Provided that return on equity with respect to the actual tax rate applicable to the Generating Company, in line with the provisions of the relevant Finance Acts of the respective Year during the Tariff period shall be trued up separately.*

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

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

*Where t is the applicable tax rate in accordance with Regulation 22.3 of this Regulation”*

### Petitioner’s Submission

9.6 The petitioner filed the year-wise opening and closing equity and claimed Annual Return on Equity for the respective periods as given below:

**Table 18: Return on Equity (filed by the Petitioner) (₹ Crores)**

Particulars	Unit	As on 31 <sup>st</sup> March, 2013	As on 31 <sup>st</sup> March, 2014	As on 31 <sup>st</sup> March, 2015	As on 31 <sup>st</sup> March, 2016
<b>Units</b>		<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>
Opening Normative Equity	₹ Crores	82.62	91.27	91.27	91.27
Normative Equity addition during the year	₹ Crores	8.65	-	-	-
Closing Normative equity	₹ Crores	91.27	91.27	91.27	91.27
<b>Average equity</b>	<b>₹ Crores</b>	<b>86.95</b>	<b>91.27</b>	<b>91.27</b>	<b>91.27</b>
Base rate of Return on Equity	%	16%	16%	16%	16%
<b>Tax Rate</b>	%	<b>0%</b>	<b>33.99%</b>	<b>33.99%</b>	<b>33.99%</b>
<b>Grossed up Rate of Return on Equity</b>	%	<b>16%</b>	<b>24.24%</b>	<b>24.24%</b>	<b>24.24%</b>
<b>Annual Return on equity</b>	<b>₹ Crores</b>	<b>13.91</b>	<b>22.12</b>	<b>22.12</b>	<b>22.12</b>

9.7 It is observed from the above that the petitioner considered the additional rate of return on equity and filed the base rate of return on equity to be 16.00%. The petitioner has also claimed the income tax rate of 33% for the period FY2013- 14 to FY2015-16 and filed the rate of return on equity by grossing up with the Income Tax Rate with corporate tax.

### Commission's Analysis

9.8 Regulation, 17.1 (a) of Generation Tariff Regulations, 2012 states that,

“the Expenditure Incurred or Projected to be incurred on original scope of work, including interest during construction and financing charges, any gain or loss on account of foreign exchange risk variation during construction on the loan - (i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or (ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed, - up to the Date of Commercial operation of the Project, as admitted by the Commission, after prudent check shall form the basis for determination of Tariff.” *(Emphasis added)*

9.9 By affidavit dated 10<sup>th</sup> January 2015, the Petitioner submitted the actual total drawdown of total loan (Term Loan 1 and Term Loan 2) and total equity for the total capital expenditure till CoD. The ratio of total loan (Term loan 1 and Term Loan 2) to total equity as per the statement is **72:28**.

- 9.10 By affidavit dated 10<sup>th</sup> January 2015, the petitioner also submitted the drawdown of loan and equity used specifically for Unit # 1. The ratio of loan to equity for Unit # 1 is **70:30** as per the statement.
- 9.11 From the above it is observed that the petitioner's loan has not been sanctioned Unit- wise and there is no clarity on the amount of loan which has been deployed specifically for Unit # 1. Besides, the above ratio of debt and equity is not as per actual and appearing as derived for arriving at the normative ratio which is not the intent of prescribing the norms for debt-equity ratio.
- 9.12 The Commission has considered the ratio of the total drawdown and total equity as on CoD as per the Board Resolution for the capital expenditure dated 21<sup>st</sup> August 2012 as filed by the Petitioner.
- 9.13 In the subject petition, the petitioner has considered the normal income tax rate for grossing up the Return on Equity.
- 9.14 However as per Audited financial statement for FY2012- 13 and FY2013- 14 filed by the petitioner, it is observed that the books of accounts represent a book loss of ₹ 12.70 Cr. and ₹ 22.92 Cr. respectively.
- 9.15 In view of the above, the Commission has not considered the grossing up the base rate of return with Income Tax in this order. The base rate of return on equity of **15.50%** is applied for calculation of return on equity in this order.

- **Additional ROE**

- 9.16 The petitioner in its submission has filed the additional equity of 0.5% as per the Regulation, 22.2 of Generation Tariff Regulations, 2012 which states that:

*Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per Regulation 22.3 of this Regulation:*

***Provided that*** in case of Projects commissioned on or after 1st April, 2013, an additional return of 0.5% shall be allowed if such Projects are completed within the timeline specified in **Appendix-I** :

***Provided further that*** the additional return of 0.5% shall not be admissible if the Project is not completed within the timeline specified above for reasons whatsoever.

9.17 The Commission has observed that no timeline was specified for 45 MW project in Appendix 1 of the MPERC (Terms and Conditions for determination of generation tariff) Regulations'2009 and its amendment with regard to its entitlement for additional ROE.

9.18 Moreover, the Board's resolution dated 27.07.2009 for the project submitted by the petitioner for evaluating the date of investment approval is also not appearing appropriate for the purpose of additional RoE since it is evident that the equity infusion as per the drawdown schedule is prior to the aforesaid date of Board's Resolution.

9.19 MPPMCL vide submission dated 23<sup>rd</sup> January' 2015 highlighted that

*“That, in para 22 at page no. 15, by perusing the explanations provided by the Petitioner, it can be clearly seen that “Approval of Loan” is being confused with “Investment Approval for Project” which would necessarily be much prior to Bank’s Sanction Letter dated 10-07-2009. Therefore, the averments of the Petitioner deserve to be rejected.”*

9.20 In view of above facts, the petitioner is not entitled for additional RoE as per the applicable Tariff Regulations for its generating unit and therefore, the claim for additional RoE of 0.5% is not considered in this order..

9.21 The Return on Equity is determined as given below:

**Table 19: Return on Equity (₹ Crores)**

Particulars	Unit	As on 31 <sup>st</sup> March, 2013	As on 31 <sup>st</sup> March, 2014	As on 31 <sup>st</sup> March, 2015	As on 31 <sup>st</sup> March, 2016
<b>Units</b>		<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>
Opening Normative Equity	₹ Crores	75.16	83.23	83.23	83.23
Normative Equity addition during the year	₹ Crores	8.07	0.00	0.00	0.00
Closing Normative equity	₹ Crores	83.23	83.23	83.23	83.23
<b>Average normative equity</b>	<b>₹ Crores</b>	<b>79.20</b>	<b>83.23</b>	<b>83.23</b>	<b>83.23</b>
Base rate of Return on Equity	%	15.50%	15.50%	15.50%	15.50%
Applicable Tax considered (MAT)	%	-	-	-	-
<b>Applicable rate of Return on Equity</b>	<b>%</b>	<b>15.50%</b>	<b>15.50%</b>	<b>15.50%</b>	<b>15.50%</b>
<b>Annual Return on equity</b>	<b>₹ Crores</b>	<b>12.28</b>	<b>12.90</b>	<b>12.90</b>	<b>12.90</b>

## **Interest and Finance Charges on Loan Capital**

### **Provision under the Regulation:**

9.22 Regulation 23 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 and Regulation 23 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 provides as under:

*“The loans arrived at in the manner indicated in Regulation 21 shall be considered as gross normative loan for calculation of interest on loan.*

*The normative loan outstanding as on 1.4.2013 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2013 from the gross normative loan.*

*The repayment for the Year of the Tariff period 2013-16 shall be deemed to be equal to the depreciation allowed for that Year.*

*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 annual depreciation allowed.*

*The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio at the beginning of each Year applicable to the Project:*

*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.*

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

*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”*

### **Petitioner’s Submission**

9.23 The petitioner has submitted that the aforementioned capital cost as on CoD has been funded through ₹192.78 Crores (70%) debt from consortium of five banks with an additional funding of ₹20.18 Crores (30%) in FY 2013.

9.24 The petitioner has considered opening and closing loan and the Weighted average rate of interest for the respective periods as below:

**Table 20: Interest on Loan (filed by the petitioner) (₹ Crores)**

Particulars	Unit	As on 31 <sup>st</sup> March, 2013	As on 31 <sup>st</sup> March, 2014	As on 31 <sup>st</sup> March, 2015	As on 31 <sup>st</sup> March, 2016
<b>Units</b>		<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>
Opening Loan	₹ Crores	192.78	198.33	183.69	169.06
Loan addition during the year	₹ Crores	20.18	-	-	-
Repayment during the year considered	₹ Crores	14.63	14.63	14.63	14.63
Closing Loan	₹ Crores	198.33	183.69	169.06	154.43
<b>Average Loan</b>	<b>₹ Crores</b>	<b>195.55</b>	<b>191.01</b>	<b>176.38</b>	<b>161.74</b>
Weighted average rate of interest	%	14.75%	14.75%	14.75%	14.75%
<b>Annual Interest amount</b>	<b>₹ Crores</b>	<b>28.84</b>	<b>28.17</b>	<b>26.02</b>	<b>23.86</b>

### **Commission’s Analysis**

9.25 MPPMCL offered the following comments on this issue :

*“That, the Interest charges are indicated as ₹ 28.84 Crores, calculations are shown at Page 50 and 51. Also, the Rate of Interest is shown as 14.75 % PA which is very high for a Thermal Power Project.*

*That, in response to the information sought by the Hon’ble Commission the Petitioner vide Point No. 16. (b) On Page No. 07 of Additional Affidavit Dated 29-09-2014, it has been state that “Certificate for Interest Rates payable since CoD”*

is requested from Banks and expected to be received shortly. In such a situation the figure provided by the Petitioner cannot be verified till the said Certificate is filed.

That, the Regulation 2009 (and also Regulations 2012) provide that the Generating Company is required to make all possible efforts for “re-finance” of loan. The relevant portion of the Regulation is reproduced below :

“ .....

23. Interest and Finance charges on Loan Capital

23.1 .....

.....

23.7. 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 refinancing 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.

..... ”

*It is humbly requested that the Petitioner may kindly be directed to give details of efforts made in this regard.”*

9.26 In response to the various queries raised to the petitioner, the Commission observed the following from the submissions made by the petitioner:

- In the additional affidavit, the petitioner has provided that;

*“The Petitioner humbly submits to this Commission that the interest rate on CoD of Unit # 1 for both the term loans was 15% p.a. Since Unit # 1 has achieved its CoD, the Banks have reduced the interest rate to 12.75% on first loan as the construction risk of Unit # 1 is over whereas the interest rate on second loan will be reduced after CoD of Unit # 2. It is clarified that the categorization of loan in infrastructure and large scale industries has no relevance for charging the interest rate.*

*It is further submitted that the bank statements of Allahabad Bank reflect the actual loan drawn and interest on loan paid to the bank. Further, the Petitioner has also submitted to this Commission with the Certificate of Bank certifying the interest rate charged by the Banks on the term loans. The Petitioner has no right on deciding the interest rate and banks have*

*the sole right to charge the interest rate based on their assessment of various projects in power sector.*

9.27 From the above submission, the Commission has observed that there is no unit-wise sanction of loan and amount used in Unit # 1 has been taken from both the loans and that the rate of interest is dependent on the construction risk of the project, and thus, as and when the construction risk of project is over, the rate of interest is reduced. The interest rate on COD of Unit # 1 for both the term loans was 15% p.a. Since the Unit # 1 has achieved its COD, the Banks have reduced the interest rate to 12.70% on first loan as the construction risk of Unit # 1 is over whereas the interest rate on second loan will be reduced after the COD of Unit # 2. It is clarified that the categorization of loan in infrastructure and large scale industries has no relevance for charging the interest rate.

9.28 By its additional affidavit, the petitioner submitted the following:

*It is further submitted that as per the Certificate of the Statutory Auditor filed as Annexure II of this filing the actual weighted average interest rate in FY 2012-13 was 14.27% and in FY 2013-14 it was 13.60%. Thus it is humbly submitted to this Commission that the Petitioner has been able to make a saving of 0.67% on interest rate due to re-financing of the loan in FY 2013-14.”*

9.29 From the above, the Commission observed that the petitioner has done re-financing of the term loan no 1 having the reduced rate of interest of 12.70%.

9.30 The petitioner was also asked to file the weighted average rate of interest for the period FY 2012-13 and FY 2013-14 duly tallied with the audited books of accounts.

9.31 Accordingly, the weighted average rate of interest on loan @ 14.27% for FY 2012-13 and 13.59% for FY 2013-14 is considered for calculation of interest amount for the respective periods in this order.

9.32 Repayment equivalent to depreciation determined for the year is considered on pro-rata basis as per the provision under Regulations, 2012.

9.33 For FY 2014-15 and FY 2015-16 also, the rate of interest is provisionally

considered @ 13.59% in this order.

9.34 Based on the above, the interest and finance charges on loan is determined as given below:

**Table 21: Interest on Loan (₹ Crores)**

Particulars	Unit	As on 31 <sup>st</sup> March, 2013	As on 31 <sup>st</sup> March, 2014	As on 31 <sup>st</sup> March, 2015	As on 31 <sup>st</sup> March, 2016
<b>Units</b>		<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>
Opening Loan	₹ Crores	193.27	199.81	185.51	171.21
Loan addition during the year	₹ Crores	20.76	0.00	0.00	0.00
Repayment during the year considered	₹ Crores	14.22*	14.30	14.30	14.30
Closing Loan	₹ Crores	199.81	185.51	171.21	156.91
<b>Average Loan</b>	<b>₹ Crores</b>	<b>196.54</b>	<b>192.66</b>	<b>178.36</b>	<b>164.06</b>
Weighted average rate of interest	%	14.27	13.59	13.59	13.59
<b>Annual Interest amount</b>	<b>₹ Crores</b>	<b>28.05</b>	<b>26.18</b>	<b>24.24</b>	<b>22.30</b>

\* pro-rata basis for 363 days.

9.35 The provisional rate of interest considered by the Commission for FY2014- 15 and FY2015-16 shall be reviewed at the time of true up of FY2014- 15 and FY2015-16.

## Depreciation

### Provision under Regulation

9.36 Regulation 24 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 and Regulation 24 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 provides as under:

*“For the purpose of Tariff, depreciation shall be computed in the following manner:*

- (a) *The value base for the purpose of depreciation shall be the capital cost of the assets as admitted by the Commission*
- (b) *The approved/accepted cost shall include foreign currency funding converted to equivalent rupee at the exchange rate prevalent on the date of foreign currency actually availed.*

- (c) *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 stations, the salvage value shall be as provided in the agreement signed by the developers with the State Government for creation of the site:*

*Provided further that the capital cost of the assets of the hydro generating station for the purpose of computation of depreciable value shall correspond to the percentage of sale of electricity under Long-term power purchase agreement at regulated Tariff.*

- (d) *Land other than 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.*

- (e) *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 Date of Commercial operation shall be spread over the balance Useful life of the assets.*

- (f) *In case of the existing Projects, the balance depreciable value as on 1.4.2013 shall be worked out by deducting the cumulative depreciation including Advance against Depreciation if any as admitted by the Commission up to 31.3.2013 from the gross depreciable value of the assets. 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%.*

- (g) *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."*

## Petitioner's Submission

9.37 The petitioner in its petition has computed depreciation as below:

Particulars	Unit	As on 31 <sup>st</sup> March, 2013	As on 31 <sup>st</sup> March, 2014	As on 31 <sup>st</sup> March, 2015	As on 31 <sup>st</sup> March, 2016
<b>Units</b>		<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>
Opening Gross Block	₹ Crores	304.23	304.23	304.23	304.23
Gross Block addition during the year	₹ Crores	-	-	-	-
Closing Gross Block	₹ Crores	<b>304.23</b>	<b>304.23</b>	<b>304.23</b>	<b>304.23</b>
<b>Average Gross Block</b>	<b>₹ Crores</b>	<b>304.23</b>	<b>304.23</b>	<b>304.23</b>	<b>304.23</b>
Weighted average rate of depreciation	%	4.78%*	4.81%	4.81%	4.81%
<b>Annual Depreciation amount</b>	<b>₹ Crores</b>	<b>14.55</b>	<b>14.63</b>	<b>14.63</b>	<b>14.63</b>

- *On pro-rata basis*

9.38 For computation of depreciation, the petitioner has considered depreciation rates as per MPERC depreciation rate schedule.

## Commission's Analysis

9.39 Regarding the depreciation, the Commission has considered the Gross fixed assets (GFA) capitalised as on CoD for FY 2013 and FY 2014. No additional capitalisation is claimed by the petitioner hence, for FY 2014-15 and FY 2015-16 the same GFA as on 31<sup>st</sup> March' 2014 is considered for determination of Tariff for FY 2014-15 and FY 2015-16.

9.40 For the purpose of depreciation, the petitioner apportioned the soft cost (IDC and IEDC) of the project in the ratio of directly attributable hard cost components of the project.

9.41 The weighted average rate of depreciation is worked out by the petitioner @ 4.78% for FY2012-13 and 4.81% for FY2013-14 to FY 2 015-16 based on the rate of depreciation for different capital cost components as per Regulations, 2012 and the detailed break-up of cost components filed in the petition.

9.42 The weighted average rate of Depreciation as claimed and worked out by the petitioner is found in order and thus considered in this order.

9.43 Based on the above, the depreciation on assets is determined in this order as given below:

**Table 22: Computation of Depreciation (₹ Crores)**

Particulars	Unit	As on 31 <sup>st</sup> March, 2013	As on 31 <sup>st</sup> March, 2014	As on 31 <sup>st</sup> March, 2015	As on 31 <sup>st</sup> March, 2016
<b>Units</b>		<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>
Opening Gross Block	₹ Crores	297.26	297.26	297.26	297.26
Gross Block addition during the year	₹ Crores	0	0	0	0
Closing Gross Block	₹ Crores	297.26	297.26	297.26	297.26
<b>Average Gross Block</b>	<b>₹ Crores</b>	<b>297.26</b>	<b>297.26</b>	<b>297.26</b>	<b>297.26</b>
Weighted average rate of depreciation	%	4.81%	4.81%	4.81%	4.81%
<b>Annual Depreciation amount</b>	<b>₹ Crores</b>	<b>14.30</b>	<b>14.30</b>	<b>14.30</b>	<b>14.30</b>
<b>Cumulative Depreciation amount</b>	<b>₹ Crores</b>	<b>14.22</b>	<b>28.52</b>	<b>42.82</b>	<b>57.11</b>

## Operation and Maintenance Expenses

### Commission's Analysis

9.44 Operation & Maintenance expenses considered by the petitioner are not in line with the norms specified in Regulation 34.1 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2009 for FY 2012-13 and 36.1 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012 for FY 2013-14 to FY 2015-16.

9.45 Operation & Maintenance expenses are considered by the Commission as per norms and provisions under Regulation 34.1 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2009 and its amendments for FY 2012-13 and 36.1 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012 for FY 2013-14 to FY 2015-16. The norms for O&M as per regulations for the period from FY2012-13 to FY2015-16 are mentioned in below table. Based on this, the Operation and Maintenance Expenses are also determined as given below:

**Table 23: Computation of O&M Expenses (₹ Crores)**

Particulars	Unit	As on 31 <sup>st</sup> March, 2013	As on 31 <sup>st</sup> March, 2014	As on 31 <sup>st</sup> March, 2015	As on 31 <sup>st</sup> March, 2016
<b>Units</b>		<b>Unit l</b>	<b>Unit l</b>	<b>Unit l</b>	<b>Unit l</b>
Installed Capacity	MW	45	45	45	45
Per MW O&M expenses	₹ Crore / MW	0.24	0.26	0.28	0.30
<b>Annual O&amp;M expenses</b>	<b>₹ Crores</b>	<b>10.80</b>	<b>11.66</b>	<b>12.58</b>	<b>13.58</b>

### Cost of Secondary Fuel Oil

#### Provision under Regulation:

9.46 Regulation 36 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 and Regulation 38 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 provides as under:

*“Expenses on Secondary fuel oil in Rupees shall be computed corresponding to normative Specific Fuel Oil Consumption (SFC) specified in Regulation 35, in accordance with the following formula:*

$$= SFC \times LPSFi \times NAPAF \times 24 \times NDY \times IC \times 10$$

**Where,**

*SFC - Normative Specific Fuel Oil Consumption in ml/kWh*

*LPSFi - Weighted Average Landed Price of Secondary Fuel in ₹/ml considered initially*

*NAPAF - Normative Annual Plant Availability Factor in percentage NDY -  
Number of Days in a Year*

*IC - Installed Capacity in MW*

*With regard to landed cost of oil, Regulation 38.2 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 further provides as under;*

*“Initially, the landed cost incurred by the Generating Company on secondary fuel oil shall be taken based on actuals of the weighted average price of the three preceding months and in the absence of landed costs for the three preceding months, latest procurement price for the*

generating station, before the start of the Year.”

### Petitioner’s Submission

9.47 The petitioner filed the weighted average landed cost of secondary fuel oil of ₹56729 /ML in the petition.

9.48 By affidavit dated 10th January’ 2015, the petitioner filed the copy of latest sample invoices for oil purchased during trial run of the Unit # 1 along with monthly statement regarding secondary fuel.

9.49 Vide affidavit dated 20th February 2015, the petitioner filed the statement showing the weighted average landed price of secondary fuel oil received.

9.50 The cost of secondary fuel oil as filed by the petitioner for the respective periods in the petition is as below:

**Table 24: Secondary Fuel Oil Expenses (filed by the Petitioner) (₹ Crores)**

Particulars	Unit	As on 31 <sup>st</sup> March, 2013	As on 31 <sup>st</sup> March, 2014	As on 31 <sup>st</sup> March, 2015	As on 31 <sup>st</sup> March, 2016
<b>Units</b>		<b>Unit l</b>	<b>Unit l</b>	<b>Unit l</b>	<b>Unit l</b>
Installed Capacity	MW	45	45	45	45
NAPAF	%	85.00	85.00	85.00	85.00
Annual Gross Generation	MU's	335.07	335.07	335.07	335.99
Normative Sp. Oil consumption	ml/kWh	1.00	1.00	1.00	1.00
<b>Quantity of Sec. fuel oil</b>	<b>KL</b>	<b>335.07</b>	<b>335.07</b>	<b>335.07</b>	<b>335.99</b>
Rate of secondary fuel oil	₹ / KL	56729	56729	56729	56729
<b>Annual Cost of secondary fuel oil</b>	<b>₹ Crores</b>	<b>1.90</b>	<b>1.90</b>	<b>1.90</b>	<b>1.91</b>

### Commission’s Analysis

9.51 Based on the aforesaid details filed by the petitioner, the commission has provided the cost of secondary fuel expenses as per the regulations which states that

*“Initially, the landed cost incurred by the Generating Company on secondary fuel oil shall be taken based on actual of the weighted average price of the three preceding months and in the absence of landed costs for the three preceding*

months, latest procurement price for the generating station, before the start of the Year.”

9.52 The cost of secondary fuel is calculated on the basis of weighted average landed price of secondary fuel received by the petitioner for FY2012-13. For the remaining period also, the commission has considered the same weighted average price of secondary fuel oil in terms of the Regulation mentioned below..

9.53 The cost of secondary fuel oil is determined as below:

**Table 25: Computation of Secondary Fuel Oil Expenses (₹ Crores)**

Particulars	Unit	As on 31 <sup>st</sup> March, 2013	As on 31 <sup>st</sup> March, 2014	As on 31 <sup>st</sup> March, 2015	As on 31 <sup>st</sup> March, 2016
<b>Units</b>		<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>
Installed Capacity	MW	45	45	45	45
NAPAF	%	85.00	85.00	85.00	85.00
Annual Gross Generation	MU's	335.07	335.07	335.07	335.99
Normative Sp. Oil consumption	ml/kWh	1.00	1.00	1.00	1.00
<b>Quantity of Sec. fuel oil</b>	<b>KL</b>	<b>335.07</b>	<b>335.07</b>	<b>335.07</b>	<b>335.99</b>
Rate of secondary fuel oil	₹ / KL	47809	47809	47809	47809
<b>Annual Cost of secondary fuel oil</b>	<b>₹ Crores</b>	<b>1.60</b>	<b>1.60</b>	<b>1.60</b>	<b>1.61</b>

9.54 The cost of secondary fuel oil arrived at as above shall be subject to fuel price adjustment at the end of each year of tariff period in terms of the proviso to Regulation 38.2 as per the following formula:

$$SFC \times NAPAF \times 24 \times NDY \times IC \times 10 \times (LPSF_y - LPSF_i)$$

Where,

*LPSF<sub>y</sub>* = the weighted average landed price of secondary fuel oil for the year  
in ₹ / ml.....

### Interest on Working Capital Loan

#### Provision under Regulation:

9.55 Regarding determination of working capital of thermal power project, Regulation 35.1 of the MPERC (Terms and Conditions for determination of Generation Tariff)

Regulations, 2009 and Regulation 37.1 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 provides as under:

*"The Working Capital for Coal based generating stations shall cover:*

- i. Cost of coal for 45 Days for pit-head generating stations and two months for non-pit-head generating stations, corresponding to the normative availability;*
- ii. Cost of secondary fuel oil for two months corresponding to the normative availability:  
Provided that in case of use of more than one secondary fuel oil, cost of fuel oil stock shall be provided for the main secondary fuel oil.*
- iii. Maintenance spares @ 20% of the normative O&M expenses;*
- iv. Receivables equivalent to two months of capacity charges and energy charges for sale of electricity calculated on the Normative Annual Plant Availability Factor; and*
- v. Operation and Maintenance expenses for one month."*

9.56 Also Regulation 35.2 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 and Regulation 37.2 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 provides as under

*"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 preceding three months and no fuel price escalation shall be provided during the Tariff period."*

9.57 Regarding the cost of secondary fuel oil for calculating the working capital, the cost of main fuel oil (HSD) is taken by considering the weighted average cost per KL filed by the petitioner in its additional submission vide dated 20<sup>th</sup> February 2015.

9.58 However, since the actual figures for FY 13 and FY 14 are available, the weighted average rate for calculating the cost of secondary fuel oil is considered.

9.59 The cost of two months' main oil stock at normative availability is worked out as given below:

**Table 26: Computation of the Cost of Secondary Fuel Oil for 2 months normative availability (₹ Crores)**

Particulars	Unit	As on 31 <sup>st</sup> March, 2013	As on 31 <sup>st</sup> March, 2014	As on 31 <sup>st</sup> March, 2015	As on 31 <sup>st</sup> March, 2016
<b>Units</b>		<b>Unit l</b>	<b>Unit l</b>	<b>Unit l</b>	<b>Unit l</b>
Installed Capacity	MW	45	45	45	45
NAPAF	%	85.00	85.00	85.00	85.00
Two months stock of main fuel oil	KL	55.85	55.85	55.85	56.00
Rate of main secondary fuel oil	₹ / KL	47809	47809	47809	47809
<b>Cost of two months main fuel oil</b>	<b>₹ Crores</b>	<b>0.27</b>	<b>0.27</b>	<b>0.27</b>	<b>0.27</b>

9.60 Based on the norms specified by the Commission, 45 Days cost for coal stock is worked out for working capital on the basis of price and GCV of coal for three preceding months prior to COD of the unit as given below:

**Table 27: Computation of 2 months Cost of Coal (₹ Crores)**

Particulars	Unit	As on 31 <sup>st</sup> March, 2013	As on 31 <sup>st</sup> March, 2014	As on 31 <sup>st</sup> March, 2015	As on 31 <sup>st</sup> March, 2016
<b>Units</b>		<b>Unit l</b>	<b>Unit l</b>	<b>Unit l</b>	<b>Unit l</b>
Station Heat Rate	Kcal/kWh	2792	2792	2792	2792
Gross Calorific Value	Kcal/kg	5200	5200	3922.08	3922.08
Annual Coal Quantity	MT	179621.69	179621.69	238147.05	238147.05
45 Days coal stock	MT	22145.14	22145.14	29360.60	29360.60
Rate of Coal for working capital	₹ / MT	2861	2861	2745.38	2745.38
<b>Amount of 45 Days of coal stock</b>	<b>₹ Crores</b>	<b>6.34</b>	<b>6.34</b>	<b>8.06</b>	<b>8.04</b>

9.61 Receivables for working capital have been worked out on the basis of the fixed and energy charges for two months (based on primary fuel only) on normative plant availability factor as given below:

**Table 28: Receivables for 2 months (₹ Crores)**

Particulars	Unit	As on 31 <sup>st</sup> March, 2013	As on 31 <sup>st</sup> March, 2014	As on 31 <sup>st</sup> March, 2015	As on 31 <sup>st</sup> March, 2016
<b>Units</b>		<b>Unit l</b>	<b>Unit l</b>	<b>Unit l</b>	<b>Unit l</b>
Variable Charges – two months	Kcal / kWh	8.56	8.56	10.90	10.93
Fixed Charges – two months	Kcal / kg	11.87	11.77	11.71	11.56
<b>Receivables – two months</b>	<b>₹ Crores</b>	<b>20.44</b>	<b>20.34</b>	<b>22.61</b>	<b>22.49</b>

9.62 With regard to the rate of interest on working capital, Regulation 27.1 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2012 provides that:

*“Rate of interest on working capital to be computed as provided subsequently in these Regulations shall be on normative basis and shall be equal to the State Bank of India’s Base Rate as on 1st of April of that year plus 3.50%.”*

9.63 The rate of interest on working capital for FY2012-13 has been taken equal to the State Bank of India’s Base Rate as on 1st April of that financial Year plus 4% and for FY 14-16 has been taken equal to the State Bank of India’s Base rate as on 1<sup>st</sup> April of that financial year plus 3.5%.

9.64 Base Rate of SBI effective from 13/08/2011 was 10%. Hence, for the period FY 2012-13, the interest rate of 14.00% (10.00+4.00) is considered.

9.65 Base Rate of SBI effective from 04/02/2013 was 9.70%. Hence for the period FY 2013-14, 2014-15 and 2015-16, the interest rate of 13.20% (9.70+3.50) is considered.

9.66 Based on the above, the interest on working capital is determined as given below:

**Table 29: Interest on Working Capital (₹ Crores)**

Particulars	Unit	As on 31 <sup>st</sup> March, 2013	As on 31 <sup>st</sup> March, 2014	As on 31 <sup>st</sup> March, 2015	As on 31 <sup>st</sup> March, 2016
<b>Units</b>		<b>Unit l</b>	<b>Unit l</b>	<b>Unit l</b>	<b>Unit l</b>
Cost of coal for 45 days	₹ Crores	6.34	6.34	8.06	8.04
Cost of fuel oil for two months	₹ Crores	0.27	0.27	0.27	0.27
O&M Charges for one month	₹ Crores	0.90	0.97	1.05	1.13
Maintenance Spares 20% of the	₹ Crores	2.16	2.33	2.52	2.72

O&M charges					
Receivables for two months	₹ Crores	20.44	20.34	22.61	22.49
<b>Total working capital</b>	<b>₹ Crores</b>	<b>30.10</b>	<b>30.24</b>	<b>34.50</b>	<b>34.64</b>
Applicable rate of interest	%	14.00	13.20	13.50	13.50
<b>Interest on working capital</b>	<b>₹ Crores</b>	<b>4.21</b>	<b>3.99</b>	<b>4.66</b>	<b>4.68</b>

## Non -Tariff Income

9.67 With regard to the non tariff income, Regulation 31 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2012 provides as follows:

*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 de-capitalized/written off assets, income from advertisements, interest on advances to suppliers/contractors, income from sale of ash/rejected coal, and any other miscellaneous receipts other than income from sale of energy shall constitute the non tariff income.*

*The amount of Non-Tariff 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

9.68 The petitioner Submitted that the actual non-tariff income of ₹13,88,721 during FY 2012-13 and ₹31,09,360 for FY 2013-14.

9.69 Accordingly, the Commission has considered the actual other income submitted by the petitioner as Non-Tariff income and as recorded in its books of account. Therefore the same non-tariff income has been deducted from the Annual Capacity (Fixed) Charges for FY2013-14 and for FY 2014-15 to FY2015-16 subject to true-up. .

### Summary of Annual Capacity (Fixed) Charges:

9.70 Normative Annual Plant Availability Factor for recovery of Annual Capacity (fixed) Charges is 85% as per Regulations.

9.71 The Annual Capacity (fixed) Charges for BLA Power Unit # 1 for FY 2012-13 have been pro-rated for 363 days from the date of commercial operation to 31<sup>st</sup> March 2013.

9.72 Considering the above, the following Annual Capacity (fixed) Charges for Unit No. 1 of BLA Power Plant are determined in this order:

**Table 30: Annual Capacity (Fixed) Charges for BLA Power Phase I (45\*1MW) (₹ Crores)**

Particulars	Unit	As on 31 <sup>st</sup>			
		March, 2013	March, 2014	March, 2015	March, 2016
<b>Units</b>		<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>	<b>Unit I</b>
Return on equity	₹ Crores	12.28	12.90	12.90	12.90
Interest charges on loan	₹ Crores	28.05	26.18	24.24	22.30
Depreciation	₹ Crores	14.30	14.30	14.30	14.30
Operation & Maintenance expenses	₹ Crores	10.80	11.66	12.58	13.58
Secondary fuel oil expenses	₹ Crores	1.60	1.60	1.60	1.61
Interest on working capital	₹ Crores	4.21	3.99	4.66	4.68
<b>Annual capacity (fixed) charges</b>	<b>₹ Crores</b>	<b>71.24</b>	<b>70.64</b>	<b>70.28</b>	<b>69.36</b>
Less: Other non-tariff income	₹ Crores	0	0.31	0.31	0.31
<b>Net AFC</b>	<b>₹ Crores</b>	<b>71.24</b>	<b>70.33</b>	<b>69.97</b>	<b>69.05</b>
<b>Operational No. Of Days</b>		<b>363</b>	<b>365</b>	<b>365</b>	<b>366</b>
Annual capacity (Fixed) charges apportioned for actual days of operation	₹ Crores	70.85	70.33	69.97	69.05
<b>Annual capacity (Fixed) charges corresponding to 30% of the installed capacity of the Units</b>	<b>₹ Crores</b>	<b>21.25</b>	<b>21.10</b>	<b>20.99</b>	<b>20.71</b>

9.73 The Annual Capacity (fixed) Charges as determined above for FY 2012-13 and FY 2013-14 are final as these charges are based on Audited Accounts of these years. The Annual Capacity (fixed) Charges as determined above for FY 2014-15 and FY 2015-16 are provisional and shall be tried- up subsequently as per Audited Accounts of FY 2014-15 and 2015-16.

9.74 The recovery of Annual Capacity (fixed) Charges for FY2012-13 shall be made by the petitioner in accordance with the clause 38.2 and clause 38.3 of Regulations 2009 on pro-rata basis with respect to actual annual plant availability factor. The recovery of Annual Capacity (fixed) Charges for FY2013-14 to FY 2015-16 shall be made by the petitioner in accordance with the clause 40.2 and clause 40.3 of Regulations 2012 on pro-rata basis with respect to actual annual plant availability factor.

### **Determination of Energy (variable) Charges Provision under Regulation**

9.75 With regard to Energy Charges (Variable charges) of thermal power station, Regulation 39 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2009 and Regulation 41 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2012 provides that;

*“The energy (variable) charges shall cover main fuel costs and shall be payable for the total energy scheduled to be supplied to such Beneficiary during the calendar month on ex-power plant basis, at the specified variable charge rate (with fuel price adjustment).*

*Energy (variable) Charges in Rupees per kWh on ex-power plant basis shall be determined to three decimal places as per the following formula:*

*For coal fired stations*

*ECR = (GHR – SFC x CVSF) x LPPF x 100 / {CVPF x (100 – AUX)} Where,  
AUX= Normative Auxiliary Energy Consumption in percentage. ECR = Energy Charge Rate, in Rupees per kWh sent out.*

*GHR = Gross Station Heat Rate, in kCal per kWh.*

*SFC = Specific Fuel Oil Consumption, in ml/kWh*

*CVSF = Calorific value of Secondary Fuel, in kCal/ml.*

*LPPF =Weighted average Landed price of Primary Fuel, in Rupees per kg, per litre or per standard cubic meter, as applicable, during the month.*

*CVPF = Gross Calorific Value of Primary Fuel as fired, in kCal per kg, per litre or per standard cubic meter.*

*Variable charge for the month shall be worked out on the basis of ex-bus energy scheduled to be sent out from the generating station in accordance with the following formula:*

*Monthly Energy Charge (₹) =*

*Variable Charge Rate in ₹ / kWh X Scheduled Energy (ex-bus) for the month in kWh corresponding to Scheduled Generation.”*

### **Gross Station Heat Rate**

9.76 While processing the provisional tariff petition for M/s. BLA Power Ltd., the petitioner had filed the certificate of supplier's guaranteed performance parameters for design heat rate of thermal generating unit at 100% MCR and zero percent make up. The petitioner has also filed the same details in Form No. 2 of subject petition. Considering the above, the Gross Station Heat Rate of the 45 MW Unit in its provisional order as given below:

(i)	Guaranteed turbine heat rate	=	2281 Kcal/Kwh
(ii)	Steam generator (Boiler) efficiency	=	87.00%
(iii)	Design Heat Rate:		<u>2281</u>
			87.00%
		=	2621.84 Kcal/ Kwh
(iv)	Gross Station Heat Rate	=	2621.84 x 1.065
		=	2792 Kcal/Kwh

9.77 Based on the above, the Commission has considered the Gross Station Heat Rate of 2792 Kcal/kWh as considered in provisional tariff order for BLA Thermal Power Plant (Unit # 1).

9.78 While calculating the energy (variable) charges, the following has been considered:

- Gross Station Heat rate has been worked out as per clause 33.2 (B) of the Regulations, 2009 considering the Turbine heat rate and Boiler Efficiency as indicated in the supplier certificate submitted by the petitioner.
- Auxiliary Energy consumption and Specific Oil consumption is considered as per norms under third amendment of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 and Principal Regulations respectively.
- 45 MW unit of BLA Power is considered as pit-head and normative transit loss has been considered as per Regulations, 2009.

9.79 The petitioner has claimed relaxation of norms towards Heat Rate and Auxiliary Consumption. The same is discussed in details as below:

### **Petitioner submission**

The Petitioner has requested the Commission for relaxation of norms towards the Auxiliary Consumption and heat rate :

- a) Auxiliary Consumption: From 10.50% to 11.00%
- b) Heat Rate: From 2792 K Cal/k WH to 2835 Kcal/k WH

### **Respondent's comments**

Vide affidavit dated 24<sup>th</sup> January 2015, the respondent offered its comments on the above submission by the petitioner which states that "*The petitioner has tried to justify the proposed relaxation of the normative performance parameters mainly on the ground that they are difficult to achieve .This is strongly opposed as the normative performance parameters being challenged are part of Tariff Regulation 2009 (Third Amendment) (and also Tariff Regulation 2012) framed after due process. The same were never challenged and have, therefore, attained finality. Besides, provision for relaxation of the performance parameters is not there in the tariff Regulation 2009 and Tariff Regulation 2012*".

The respondent also referred to the following decision in judgement pronounced by Hon'ble APTEL in Appeal no. 170 of 2010(MPPGCL vs. MPERC &Ors.) :

*"As regards the regulation 56 dealing with deviation from norms it is submitted by Mr. Sen that regulation 56 and 56.1 of the MYT Regulations , 2009 permit deviation from norms only under specific circumstances which have been elaborated in the said provisions. We are in agreement with Mr. Sen that the deviation from the norms contemplated under the MYT Regulations ,2009 is only in relation to approval of tariff under section 63 of the Act and the MYT Regulations , 2009 does not conceive of deviation on any other ground apart from what have been expressly provided in the said regulations."*

### **Commission's Analysis**

The norms for Auxiliary Consumption and Station Heat Rate are the part of Regulations and these norms have been specified and notified in MPERC (Terms and Conditions for determination of generation tariff) Regulations after following due consultation process and considering all the comments and suggestions offered by the stakeholders during the public hearing while framing these Regulations. The petitioner also had full opportunity to offer its comments before finalising these norms but the petitioner did not offer its comments on the norms proposed by the Commission in its draft Tariff Regulation for the control period of FY 2013-14 to FY 2015-16.

9.80 In view of the above, the contention of the petitioner for relaxation of norms in the subject Tariff petition is not found considerable by the Commission.

### **Gross Calorific Value and landed price of Coal**

9.81 While claiming the Energy Charges, the petitioner considered the Gross Calorific Value as blended GCV of the fired coal based on January 2014 Billing. The petitioner also mentioned that the actual GCV on "As Fired Basis" is used for billing purposes, as provided in the Regulation, 2012.

9.82 Vide Commission's letter dated 09<sup>th</sup> December, 2014, the petitioner was asked to file a summary of monthly transactions regarding purchase of fuel and the computation of the landed cost of fuel.

9.83 By affidavit dated 10<sup>th</sup> January, 2015, The petitioner provided a summary of monthly transactions regarding purchase of fuel and the computation of the landed cost of fuel (GCV). The petitioner also provided the monthly details of weighted average GCV on "As fired basis" pertaining to Unit # 1 since its CoD to Oct 2014. However, the submissions made by the petitioner were found having a different approach from the provisions under Regulations for the cost of coal.

9.84 In view of the above, the Commission asked the respondent to provide the same details to clarify the issue. On the basis of the reply from the respondent, the Commission has considered the cost of coal for the last three months' and weighted average GCV for determination of energy charges in this order for the purpose of working capital. However, the actual billing of energy charges shall be as per the formula and other provisions detailed in Regulation 39 of MPERC

(Terms and Conditions for determination of generation tariff) Regulations, 2009 and Regulation 41 of MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2012.

### Operating Parameters

9.85 The norms for Auxiliary Energy Consumption and Specific Oil Consumption are considered as per Regulation 33.2 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 for FY 2012-13 and Regulation 35.2 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 for FY 2013-14 onwards. BLA (45 \*1 MW) being a pit-head generating unit, the normative transit loss of 0.2% are considered as per Regulation 41.4 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations' 2012. While calculating the energy (variable) charges, following particulars have been considered as per MPERC (Terms and Conditions for determination of Generation tariff), Regulations' 2009 and Regulations' 2012:

Particulars	Norms
Target Availability	85%
Design Station Heat Rate	2792 Kcal/kWh
Aux. Energy Consumption	10.5%
Sp. Oil Consumption	1 ml/kWh
Transit Loss	0.20%

9.86 Based on the above, the energy charges for BLA Power Unit # 1 (45 \* 1 MW) for FY2014-15 is determined as below:

**Table 31: Energy Charges for BLA Unit # 1 (45\*1 MW)**

Particulars	Unit	As on 31 <sup>st</sup> March, 2015
<b>Units</b>		<b>Unit I</b>
Installed Capacity	MW	45
Normative Annual Plant Availability Factor	%	85.00
Gross Generation at generator terminals	MU's	335.07
Net Generation at ex-bus	MU's	299.89
Gross Station Heat Rate	kCal / kWh	2792
Sp. Fuel Oil Consumption	ml / kWh	1.00
Aux. Energy Consumption	%	10.50%
Transit and handling Loss	%	0.20%

Particulars	Unit	As on 31 <sup>st</sup> March, 2015
Weighted average GCV of Oil	kCal / ltr.	10,000.00
Weighted average GCV of Coal	kCal / kg	3922.08
Weighted Average price of Coal	₹ / MT	2745.38
Heat Contributed from HFO	kCal / kWh	10.00
Heat Contributed from Coal	kCal / kWh	2782
Specific Coal Consumption	Kg / kWh	0.7093
Sp. Coal consumption including transit loss	Kg / kWh	0.7107
Rate of Energy Charge from Coal	₹/ kWh	1.95
<b>Rate of Energy Charge from Coal at ex bus</b>	<b>₹ / kWh</b>	<b>2.18</b>

9.87 The base rate of the energy charges shall however, be subject to month to month adjustment of fuel price and GCV of main fuel. The above energy charges have been calculated for the purpose of calculation of two month's billing, which is used for calculation of interest on working capital. However, the actual billing of energy charges shall be as per the formula and other provisions detailed in Regulation 41 of MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2012.

9.88 Vide order dated 24<sup>th</sup> July' 2012 in petition No. 28 of 2012, the Commission had calculated the energy charges as ₹ 1.71 per kWh based on the norms applicable for 45 MW capacity of the generating unit and the information furnished by the petitioner. The aforesaid energy charges were calculated for the purpose of computing the interest on working capital. However, the actual billing of energy charges for FY 2012-13 and FY 2013-14 have been made as per formula and other provisions detailed in Regulation 39 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations' 2009 and Regulations 2012.

9.89 The subject petition has been filed on 1<sup>st</sup> August' 2014 with the Commission for determination of final tariff for FY 2012-13 and FY 2013-14 based on the audited financial statements of the Petitioner's company and the tariff for remaining control period i.e, FY 2014-15 and 2015-16 without audited financial statements. The tariff determined in this order for FY 2014-15 and 2015-16 is subject to true up on availability of audited financial statements. It is further observed by the Commission that the financial years i.e, FY 2012-13 and FY 2013-14 are over when the subject petition was filed with the Commission. Further, the Energy charges must have been billed by the petitioner and paid by the procurer on

month to month basis, in accordance with the formula and provisions prescribed in MPERC (Terms and Conditions for determination of Generation Tariff) Regulations' 2009 and Regulations,2012. Therefore, in terms of the provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations' 2009 and Regulations, 2012, the energy charges are not worked out for these past financial years. Accordingly, the same energy charges as determined in provisional order are considered for computation of working capital for FY 2012-13 and FY 2013-14.

9.90 For the next financial year i.e, FY 2014-15, the billing and payment details were sought from both the parties and the energy charges actually paid by the procurer in terms of the provisions under Regulations are considered in this order for computation of fuel cost for working capital. The same is mentioned in Table No. 31 in para 9.86 of this order.

9.91 For the next financial year i.e, FY 2015-16, the energy charges for FY 2014-15 are considered for FY2015-16 also for the purpose of working capital considered in the Annual Fixed cost for this financial year. The coal block of M/s. BLA Industries who is having Fuel Supply Agreement with the petitioner has been cancelled w.e.f. 31<sup>st</sup> March' 2015 vide order passed on 24<sup>th</sup> September 2014 by the Hon'ble Supreme Court of India in Writ Petition (CRL) No. 120 of 2012. The Commission is determining the tariff pursuant to a long term Power Purchase Agreement entered into by both the parties in PPA and the subject petition also. The aforesaid long term PPA is linked with the long term FSA between the generating company and the coal company (M/s BLA Industries) with reference to the coal mines which are presently out of the scene in the subject petition, PPA and FSA. The Energy (Variable) charges considered in this order of the Commission are based on the variable parameters of coal supplied from the coal mine under FSA which has now been cancelled as per aforesaid Order of the Apex court. Further, the Annual Fixed Cost determined in this order is also having a component which is based on the coal under the provisions of long term FSA. Therefore, the tariff determined in this order is applicable till the coal under the FSA executed between the petitioner and the coal company (M/s BLA Industries) is used for generation and supply of electricity to Respondents in this matter. The petitioner may approach the Commission in terms of relevant provisions under PPA ,as and when there is any change in the present status of coal linkage for its power plant.

### **Determination of other Charges**

9.92 The petitioner is allowed to recover expenses towards filing of subject tariff petition and the expenses incurred on publication of notices in news papers on the subject petition, directly from the beneficiaries, in accordance with the Regulation 30 of MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2012.

In addition to the above, the petitioner is also allowed to recover Electricity duty, cess and water charges from the beneficiaries on pro-rata basis if payable to the State Government for generation of electricity from its generating units in accordance with the Regulation 42 MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2012.

### **Implementation of the order**

9.93 The final generation tariff for FY 2012-13 and FY 2013-14 is determined for Unit No. 1 of BLA Power Ltd. from its CoD. The generation tariff determined in this order for FY 2014-15 and FY 2015-16 is provisional and shall be tried- up subsequently as per Audited Accounts of FY 2014-15 and FY 2015-16.

9.94 The petitioner must take steps to implement the Order after giving seven (7) days' public notice in accordance with Clause 1.30 of MPERC (Details to be furnished and fee payable by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004 and its amendments and recalculate its bills for the energy supplied to Distribution Companies of the State/ M.P. Power Management Company Ltd. since CoD of Unit No. 1

9.95 The petitioner is also directed to provide information to the Commission in support of having complied with this Order. The deficit/surplus amount as a result of this order shall be recovered or passed on to the MP Power Management Company Ltd / three Distribution Companies of the state in terms of applicable Regulation in the ratio of energy supplied to them in equal six monthly instalments during FY 2015-16.

With the above directions, the subject petition is disposed of.

**(Alok Gupta)**  
Member

**(A. B. Bajpai)**  
Member

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

**Date:** 22<sup>nd</sup> May'2015

**Place:** Bhopal

## **ANNEXURE 1**

### **Comments offered by Respondent No. 2, Petitioner's response on respondent comments and reply of Respondent on the rejoinder**

#### **Comment 1**

##### **(a) MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

That, the part of the Prayer regarding relaxation the norms of performance parameters, deserves to be rejected, as it would amount to challenging notified Regulations, viz., 3<sup>rd</sup> Amendment to Regulations 2009 and Regulations 2012, in the garb of "Prayer for Relaxation", without due process. Therefore, it is humbly prayed that the prayer of the petitioner for relaxation of norms of performance parameters contained in the Regulations 2009 and 2012 be rejected.

That, Clause 8.5 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 provides that :

"8.5 .....

*In case, it is found that the filing of true-up is delayed due to the reasons attributable to the Generating Company, the under recovery shall not bear any interest."*

It is, therefore, humbly submitted that interest on under recovery (if any) may not be allowed.

##### **(b) Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

It is humble submitted to this Hon'ble Commission that the Petitioner is entitled to interest from the date of provisional tariff to the date of final tariff in accordance with the Madhya Pradesh Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2009 {RG-26 (I) OF 2009}. The allegations of the Respondent are denied.

##### **(c) MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

The Petitioner has failed to provide satisfactory response on the applicability of Regulation 8.5 of MPERC (Terms and Conditions for determination of Generation Tariff) (Revision-I) (As amended), Regulations, 2009 (the Tariff Regulations 2009).

That, the Provisional Tariff order was passed by this Hon'ble Commission on 24-

07-2012, wherein Petitioner was directed to file the Petition for Final Tariff at the earliest. Also, during proceeding in Appeal No. 188 of 2013 before Hon'ble Appellate Tribunal for Electricity, the Petitioner had informed that a Tariff Petition would be filed by end of June 2013 along with audited financial reports for determination of Final Tariff.

However, as can be seen that the present Petition has been filed only on 31-07-2014, well beyond date prescribed in the Tariff Regulation 2009. Therefore, it is most humbly prayed that the interest may not be allowed for delayed filing of true up Petition.

**(d) Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

The contents of Para's 1 to 5 are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. At the outset it is stated that the Hon'ble Appellate Tribunal in its judgement passed in Appeal No. 188 of 2012 did not contain any stipulation for filing of a Final Tariff Petition, as is being alleged by the Respondent No. 2. In order to substantiate the same, the Petitioner sets out the relevant extract of the said judgement:

"There is no dispute in the fact that the impugned order is a provisional order which was passed on 24th July, 2012. Now, it is pointed out that the proceedings is to be initiated for passing of the final tariff order and we are told that the petition alongwith audited report would be filed by the end of June, 2013."

(Underline Supplied)

From the above it is apparent that one of the parties before the Hon'ble Appellate Tribunal pointed out that a final Petition would be filed by the Petitioner by the end of June 2013. Clearly, this was not in terms of any specific directions of the Hon'ble Tribunal, but was only a suggestion made during the proceedings before it. Hence, it cannot be at all averred that the Petitioner is not entitled to claim any interest on account of the above submissions that there was no direction by the Hon'ble Tribunal to file the Final Tariff Petition. Further, the curtailment of any right to claim money or interest can only be done when there is a specific statutory obligation in terms of any law or order of an appropriate forum. In the

present case, when there was no such direction, as has been made out by the Respondent No. 2, there is no case for any such curtailment of claim of interest of the Petitioner.

(e) **Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, the contents of para 3 at Page 3 of the Affidavit are opposed and the Respondent seeks to rely upon the averments already made in Paras 3 to 5 in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity.

(f) **Petitioner's Response dated 9<sup>th</sup> March' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para's of the Affidavit dated 24.02.2015.

**Comment 2**

(a) **MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

That, in para 10 at Page 3 and at para 4 (and its sub-paras) at Page 23 to 33, the Petitioner has submitted Final Capital cost of the Project and its justifications, which is opposed to the extent it exceeds the estimated cost without proper justification. It is most humbly prayed that prudence check may kindly be applied on the elements of final capital costs as highlighted in subsequent paras.

(b) **Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

The Final Capital Cost of the Project and its justifications in para 10 at page 3 to 4 and its sub-paras at page 23 to 33 of the present petition filed on 01.08.2014 by the Petitioner to this Hon'ble Commission are audited figures duly audited and certified by the Statutory Auditor. The copy of certified has been filed along with the petition. The Petitioner had also submitted the Annual Reports duly audited by the Statutory Auditor of the Petitioner for last 3 preceding years i.e. from FY12 to FY14 for carrying a prudence check of the Final Capital cost by this Hon'ble Commission. Further, on preliminary scrutiny of this subject petition, this Hon'ble Commission vide its letter dated 12.09.2014 had observed gaps and directed the Petitioner to provide additional details/ data/ documents as required for prudence

check. The Petitioner through its additional submissions on affidavit dated 30.09.2014 and 30.10.2014 has been able to provide this Hon'ble Commission with additional details/ data/ details for its prudence check of Final Capital Cost. A copy of these filings has also been provided to all the Respondents on and before 31.10.2014.

**(c) MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

That, in para 7 at page 3 of the Rejoinder, the Petitioner has attempted to justify the Final Capital Cost of the Project by saying that –

*“...are audited figures duly audited and certified by Statutory Auditor.*

.....

*....The Petitioner through its additional submissions on affidavit dated 30-09-2014 and 30-10-2014 has been able to provide this Hon'ble Commission with additional details/ data for its prudence check of Final Capital Cost.”*

Hon'ble Supreme Court in its judgment in West Bengal Electricity Regulatory Commission vs. CESC Ltd. (2002) 8 SCC 715, has laid down law on the issue whether the State Commission is bound by the Report of Statutory Auditor. The relevant portion is quoted below:

*“In this process, the Commission, in our opinion, is not bound by the Auditors' Report..... There may be any number of instances where an amount maybe genuine and may not be questioned, yet the same not reflect good performance of the company or may not be in interest of the consumers. Therefore, there is an obligation on the Commission to examine the accounts of the company which may be genuine and unchallenged on that count still in the light of the above requirements of Section 29(2) (g) to (h). In the said view of the matter admitting that there is no challenge to the genuineness of the accounts, we think on this score also the accounts of the company are not ipso facto binding on the Commission.”*

The Hon'ble Appellate Tribunal of Electricity (APTEL) has also followed the law laid down in above said judgment in KSEB vs KSERC (Appeal No. 177 of 2009). The relevant portion of this judgment is quoted below :

*“20. At the outset, it shall be stated that the State Commission while examining*

*the accounts is not bound by the audited accounts. The accounts may be genuine as per the Auditor's Report. But, it is the State Commission which has to examine the accounts to ascertain the performance of the licensee in relation to the desirability of the expenditure in the interest of the consumers. This point has already decided by the Judgment of this Tribunal in Appeal No. 94 of 2008 as well as the decision of Hon'ble Supreme Court in West Bengal Electricity Regulatory Commission vs. CESC Ltd. (2002) (8)SCC 715."*

**(d) Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. It is submitted that the Petitioner does not dispute the judgments referred to by the Respondent No. 2. This Hon'ble Commission has adequate powers to analyse the auditors reports in accordance with the Tariff Regulations r/w the principles enshrined under Section 61 of the Electricity Act, 2003 which guarantees recovery of reasonable cost of generation by the generators.

**(e) Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, the contents of para 4 at Page 3 to 5 of the Affidavit are denied and disputed and the Respondent seeks to rely upon the averments already made in Paras 6 to 9 in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity.

That, on the explanation offered by the Petitioner in respect of Para 9 of the Reply dated 23-01-2015, the Respondent would only like to point out that –

- (a) It is incorrect to say that the Respondent has picked up just 29 items showing exorbitant increase, out of total out of 275 items of BoQ, "so as to *create bias*". It may kindly be seen that the billed quantities of these 29 items were 200% to 20000% higher than the estimated quantities, therefore, they stand out starkly. There are nearly 56 other items for which the billed quantity has gone up by more than 20% to 200%. Therefore, billed quantities have gone up for approximately 85 items which is a very high percentage (52%) of total items actually procured (163 items).
- (b) The Petitioner has admitted that there was no requirement for approximately 112 items of BoQ (having total value of ₹10.33 Cr.),

therefore, they were not procured. Obviously, all these items were not necessary for the project at all. Therefore, any amount not spent on account of this cannot be termed as “saving” as being claimed by the Petitioner.

From both above facts, the stand of the Respondent that there has been a gross “mis-assessment” of quantities, leading to higher per-unit rates of individual items and therefore higher contract value, stands vindicated. Therefore, the Hon’ble Commission is prayed to apply suitable prudence check and allow only reasonable costs.

**(f) Petitioner’s Response dated 9<sup>th</sup> March’ 2015 on rejoinder filed by MPPMCL:**

The contents in Para 5 are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The civil contract was awarded to M/s GDCL in Feb 2011. The BOQ’s mentioned in the contract were prepared based on the preliminary drawings submitted by the technical consultant M/s Fitchner. Subsequently technical consultant revised all the drawings based on the actual site conditions and various inputs received from different vendors of the power plant. This revision of drawings has direct bearing on the BOQ of different items which has been reflected in our cost as filed in this final tariff petition. The Petitioner further submits that this Hon’ble Commission can put the Petitioner to another prudence check by way of appointing an Independent Auditor.

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para’s of the Affidavit dated 24.02.2015.

**Comment 3**

**(a) MPPMCL Comments dated 10<sup>th</sup> November’ 2014:**

That, at para 4.1.7 at Page 25, the Capital Cost incurred against “Civil, Foundation and Building” is shown to have increased by ₹ 14.65 Cr., which is a substantial 25.3% increase on a recent (post COD) cost estimate (dated 08-06-2012) of ₹ 57.92 Cr. The item wise details of increase have also not been

provided. Besides, the reasons offered for the increase might have been worth consideration, had the “revised estimate (post COD)” not been available and, therefore, they deserve to be rejected. Therefore, it is humbly prayed that this increase may not be allowed.

**(b) Petitioner’ rejoinder dated 5<sup>th</sup> December’ 2014:**

It is humbly submitted to this Hon’ble Commission that ₹ 57.92 Crs was estimated towards Civil, Foundation & Building cost in the earlier filing on 08.06.2012. In comparison to the same the overall civil cost for Unit # 1 has gone up by ₹ 14.65 Crs. Below is the table explaining the reasons of increase in final cost,

Particulars	Amount (₹)	Crore
<b>GDCL (pro rata in Unit # 1)</b>		9.76
<b>Re-categorization of Civil cost</b>		
<b>DM Water Plant</b>		2.65
<b>Fuel Handling &amp; Storage System</b>		1.74
<b>Coal Handling Plant</b>		2.9
<b>Ash Handling System</b>		2.62
<b>Non-Plant Building</b>		-4.79
<b>Total increase in Civil cost</b>		<b>14.87</b>

It is submitted that the total increase in plant civil cost is around ₹ 19.66 Crs due to increase in cost of work done by the civil contractor (M/s GDCL). A detailed item-wise description showing the work completed and billing done by M/s GDCL is enclosed in ANNEXURE I. From the annexed statement it can be observed that ₹ 12.87 Crs is the total increase in the cost of work completed by M/s GDCL, however the Petitioner has considered ₹ 9.76 Crs in the above table which is pro rata increase in the ratio of plant civil works of all 3 units.

Further, in the earlier estimation filed on 08.06.2012 the cost of civil work was not bifurcated separately and shown in civil cost. It reflected as a part of the individual EPC. However, while capitalization of the cost it has been re-categorized and shown as a part of plant civil cost. The capitalized figures are part of the books of accounts which are duly audited by the Statutory Auditor of the Petitioner Company.

(c) **MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

That, in para 8 at page 3 of the Rejoinder, the Petitioner has submitted that there is an increase of ₹ 14.65 Cr. against earlier estimated Civil, Foundation and building cost of ₹57.92 Cr. in respect of Unit # 1. The Petitioner has further submitted that the total increase in plant civil cost is around ₹19.66 Cr. due to increase in cost of work done by the Civil Contractor M/s GDCL.

That, the Petitioner has also furnished a detailed item-wise description showing the work completed and billing done by M/s GDCL and filed it as Annexure-I (at Page 18 to 35 of the Rejoinder). The Petitioner goes on to clarify that ₹ 12.87 Cr. is the total increase and ₹ 9.76 Cr has been considered in ratio of plant civil work of all 3 units. Since this explanation does not seem to be clear enough as to how the cost allocated to Unit # 1 is arrived at, the Petitioner may kindly be directed to clarify the same adequately.

That, upon a cursory scrutiny of the Annexure 1 showing amount as per BOQ and Billing done by M/s GDCL reveals that the estimates of quantum/ quantities of several items have gone way off the mark. The final quantum/ quantities billed are 200 % to 20000 % higher than BOQ. Some of the examples are given below:

Sl. No.	Page No. of Rejoinder	Item No.	Description	Increase in Billed quantity over tender/ order BOQ
1	18	C-1-1.01	Earth work in execution depth upto 2.0 mtr., lead of 100 mtr.	300 %
2	18	C-1-1.30	For depth beyond 2.0 m and up to 4.0 m	4000 %
3	18	C-1-1.17	230 mm thk rubber soling	800 %
4	19	C-2-2.5-b	P & L in foundation , substructure, plinth work excl shuttering M-20	800 %
5	19	C-2-2.5-c	P & L in foundation , substructure, plinth work excl shuttering M-25	1100 %
6	20	C-2-2.13	P/L RCC M-25 for water retaining structure	2000 %
7	20	C-2-2.19	S/ Installing 150 mm wide 8 to 10 mm wide Ribbed PVC water stops	500 %
8	20	C-2-2.27	Providing and mixing approved waterproofing compound	20000 %
9	21	C-2-2.30a	Providing pockets in concrete floor, beams foundations etc. Upto 400 sq cm in plan area and 500 mm deep	300 %
10	21	C-2-2.30b	Providing pockets in concrete floor, beams foundations etc. Upto 400 sq cm in plan area and 600 mm deep	600 %

Sl. No.	Page No. of Rejoinder	Item No.	Description	Increase in Billed quantity over tender/ order BOQ
11	22	C-3-3.9	Supplying, mixing, grouting with non shrink grout SHRINKKOMP-30, thickness more than 25, including hacking, cleaning wetting, shuttering the edges etc.	400 %
12	23	C-4-4.9	Supply, plastering 15 mm thk cement mortar 1:4 in internal surface of wall as per specification	230 %
13	23	C-4-4.10	Supply, plastering 12 mm thk plastering in cement mortar 1:3 for approved compound CICO	1650 %
14	23	C-5-5-2	Stru. Steel Painting	4500 %
15	23	C-5-7	P/A White wash painting	400 %
16	25	C-7.7.9	Providing & Fixing MS rolling shutters (With Electric Motor)	1100 %
17	25	C-7.7.10	Providing & Fixing MS rolling shutters Gear Operated)	1400 %
18	27	C-32A-32.3	WBM Grade II 130 mm thk in two layers of 75 mm thk	320%
19	28	Piling 6-i	Testing the Board Cast Bin Site conc. Pile for 500 mm dia. i) Vertical compression load test on pile	1100 %
20	28	Piling 6-ii	Testing the Board Cast Bin Site conc. Pile for 500 mm dia. i) Pull out test on pile	900 %
21	28	Piling 6-iii	Testing the Board Cast Bin Site conc. Pile for 500 mm dia. i) Lateral load test on pile	800 %
22	28	B-1-3	Carting away surplus earth beyond the initial lead of 250 m to areas designated by the engineer up to a lead of 3 Km	1470 %
23	28	B-1-5	Sand Filling	2800 %
24	30	B-7-1	Medium Intensity Aviation Obstruction Lights complete with fixing accessories	210 %
25	32	C-4-2	Supplying and laying 1000 micron HDPE Lining (Reservoir)	280 %
26	32	C-4-3	Supplying and laying 50 mm thk. Plastering in CM (1:6) Reservoir	5600 %
27	32	C-5-1	P/L in position PCC (M-7.5)	500 %
28	32	C-5-2	P & L RCC (M-25) for Reservoir	292 %
29	32	C-5-4-b	Fixing TOR Steel Reinforcement (For Reservoir)	230 %

It is a well known fact that the quotes (unit rates) for smaller quantities is substantially higher than for larger quantity. Therefore, inaccurate/ poor estimation of quantities most certainly results in higher than actual rates for individual items thus leading to inherently higher overall cost. It is, therefore, most humbly prayed that the higher cost due to inaccurate estimation may not

be allowed.

(d) **Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

It is humbly submitted that the Respondent No. 2 in its reply has desired to get clarity on the allocation of cost of civil contractor M/s GDCL. It is hereby submitted by the Petitioner that the basis of apportionment of cost of civil contractor M/s GDCL is given in the below table,

Particulars	Total	Unit # 1	Unit 2	Unit 3
<b>Plant Civil Works cost – as filed in Annexure VIII page 38 on 12.01.2015</b>	87.59	66.41	20.82	0.37
<b>GDCL contract value (as per BOQ) – as filed in Annexure I on 05.12.2014</b>	24.00	18.20	5.70	0.10
<b>GDCL contract value (as billed by GDCL) – as filed in Annexure I on 05.12.2014</b>	36.87	27.95	8.76	0.15
<b>Increase in cost</b>	12.87	<b>9.76</b>	3.06	0.05

It may be noted from the above table that the GDCL contract value as per BoQ and as Billed are pro rated in the ratio of plant civil cost.

With respect to the contents of Para 9, it is submitted that the increase in plant Civil cost is based on the actuals that have been incurred by the Petitioner. The Petitioner further submits that this Hon'ble Commission can put the Petitioner to another prudence check by way of appointing an Independent Auditor to verify the same. It is further submitted that the Petitioner disputes the percentages given by the Respondent No. 2 with respect to the alleged increase in the billed quantity *qua* the tender orders. It is further submitted that the Petitioner had around 275 items which were a part of the Bill of Quantities (hereinafter referred to as "BoQ"), out of which the Respondent No. 2 has picked up 29 items so as to create a bias against the Petitioner by alleging that the Petitioner has incurred more expenditure on the said 29 items than what was estimated in the BoQ. The Petitioner submits that the long and short of the argument of the Respondent No. 2 is that the Petitioner has incurred a cost of ₹ 9.09 Crores (as calculated by the Petitioner), which is the alleged increase in cost as per the Respondent No. 2.

It is further submitted that approximately 112 items of the BoQ were not ordered by the Petitioner on account of the fact that there was no requirement of the

same. On account of such non-order of the said 112 items of the BoQ, the Petitioner saved approximately ₹ 10.33 Crores. Hence it is apparent that the Petitioner acted in a diligent manner and in accordance with prudent business activities, and as such the claim of the Petitioner has to be allowed.

**(e) Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, the contents of para 4 at Page 3 to 5 of the Affidavit are denied and disputed and the Respondent seeks to rely upon the averments already made in Paras 6 to 9 in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity.

That, on the explanation offered by the Petitioner in respect of Para 9 of the Reply dated 23-01-2015, the Respondent would only like to point out that –

- (a) It is incorrect to say that the Respondent has picked up just 29 items showing exorbitant increase, out of total out of 275 items of BoQ, “so as to create bias”. It may kindly be seen that the billed quantities of these 29 items were 200% to 20000% higher than the estimated quantities, therefore, they stand out starkly. There are nearly 56 other items for which the billed quantity has gone up by more than 20% to 200%. Therefore, billed quantities have gone up for approximately 85 items which is a very high percentage (52%) of total items actually procured (163 items).
- (b) The Petitioner has admitted that there was no requirement for approximately 112 items of BoQ (having total value of ₹ 10.33 Cr.), therefore, they were not procured. Obviously, all these items were not necessary for the project at all. Therefore, any amount not spent on account of this cannot be termed as “saving” as being claimed by the Petitioner.

From both above facts, the stand of the Respondent that there has been a gross “mis-assessment” of quantities, leading to higher per-unit rates of individual items and therefore higher contract value, stands vindicated. Therefore, the Hon’ble Commission is prayed to apply suitable prudence check and allow only reasonable costs.

**(f) Petitioner’s Response dated 9<sup>th</sup> March’ 2015 on rejoinder filed by MPPMCL:**

The contents in Para 5 are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The civil contract was awarded to M/s GDCL in Feb 2011. The BOQ's mentioned in the contract were prepared based on the preliminary drawings submitted by the technical consultant M/s Fitchner. Subsequently technical consultant revised all the drawings based on the actual site conditions and various inputs received from different vendors of the power plant. This revision of drawings has direct bearing on the BOQ of different items which has been reflected in our cost as filed in this final tariff petition. The Petitioner further submits that this Hon'ble Commission can put the Petitioner to another prudence check by way of appointing an Independent Auditor.

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para's of the Affidavit dated 24.02.2015.

#### **Comment 4**

(a) **MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

That, on the same Page, an increase of ₹ 1.58 Cr. under the head "Plant and Machinery (Boiler, Turbine and Generator)" also needs to be substantiated properly. The reason for increase of only ₹ 0.89 Cr. has been provided and no clear explanation has been offered for the balance amount.

(b) **Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

It is humbly submitted to this Hon'ble Commission that due to increase erection of sky climber the cost of boiler has increased by ₹ 0.13 Crs. Sky climber was essential for maintenance activities in the Boiler by mechanised lifting of man, materials and machines inside the furnace. Further, increase of length of main steam piping by 139.40 m the cost has increase by ₹ 1.67 Crs. Increase of main steam pipe was envisaged after finalisation of isometric drawing of Boiler. A copy of the orders placed is enclosed as ANNEXURE II & ANNEXURE III to this filing. The However the net impact of increase in cost of Boiler is ₹0.69 Crs. This is due to the Petitioner being able to save other cost by ₹1.11 Crs during the commissioning & erection of the Boiler.

The contract of EOT crane was be grouped to the Turbine & Generator package as was shown separate in earlier filings, thus due to which ₹ 0.65 lacs has been increased which is only due to presentation of the cost. A copy of EOT crane agreement is enclosed as ANNEXURE IV to this filing. In addition to above ₹0.30 lacs has been paid towards additional work of extra busduct length of 32mts and EOP Pump supplied by M/s Siemens Ltd.

**(c) MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

In Para 9 at page no. 4 of the Rejoinder, it has been stated that due to supply and erection of Sky Climber, the cost of boiler has increased by ₹ 0.13 Cr. It is apparent that Sky Climber was not under Original Scope of work, as the Order for the same was placed only on 21-12-2012 (i.e., after COD). Therefore, by virtue of Regulation 17 and 20 of the Tariff Regulation 2009, the expenditure in this head may not be admissible.

Also in the same para, it is stated that the length of the main steam piping has been shown to increase by 139.40 m (from original 50 m) resulting in increase of the cost by ₹ 1.67 Cr. It may kindly be seen that, there has been gross mis-assessment of the required length of the main steam pipe line. It is obvious that the rates for only 50 m originally ordered would have been quoted on higher side and the cost of "additional quantity" would certainly be on the higher side, thus increasing overall cost significantly. Therefore, it is requested to apply prudence check and allow only reasonable cost for steam pipe line.

**(d) Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. With respect to Para 10 it is stated that the Sky-Climber was erected before the COD of Unit I on 03.04.2012, however, the amendment in the Order contract was made only on 21.12.2012. The actual photograph of the work done is annexed hereto and marked as ANNEXURE I. Therefore, when the expenditure was incurred before the COD, the Petitioner cannot be denied the set cost in its tariff. With respect to the contents of Para 11, it is stated that the increase in the main steam piping was done as per the requirement. Even though in the original scope

of work it was mentioned that the main steam piping would be around 50 meters, however, the same increased to 139.40 meters. The same can be analysed as to prudence of the Petitioner, however merely because a scope of work was not part of the original scope the same cannot be a reason for denial of costs when the said additional work was essential for the development of the project.

**(e) Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, in the context of para 5 at Page 5 and 6 of the Affidavit, the Respondent seeks to rely upon the averments already made in Paras 10 to 13 in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity. It is humbly prayed that the capital expenditure and IDC claimed may be allowed after keeping in view the observations by the Respondent in the said paras.

**(f) Petitioner's Response dated 9<sup>nd</sup> March' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para's of the Affidavit dated 24.02.2015.

**Comment 5**

**(a) MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

That, on the same Page, under the head "Balance of Plant including Cooling Tower", an increase of ₹ 16.28 Cr. has been shown, whereas breakup of increase in costs shown at para 4.1.8.4 on page nos. 27 and 28 adds up to ₹23.95 Cr. The Hon'ble Commission is humbly requested to direct the petitioner to explain this anomaly.

**(b) Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

It is humbly submitted to this Hon'ble Commission that the Respondent No. 2 has wrongly added the reduction of cost towards coal handling plant, switchyard & transformers, fire fighting equipment's and crane & hoist respectively with the increase in cost towards other balance of plant items. Thus, the figure ₹ 23.95 Crs is an erroneously calculated figure and there exists no anomaly in the figures as filed by the Petitioner in the present petition.

(c) **MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

That, in regard to the explanation given in Para 10 at page no. 5 of the Rejoinder, for mismatch of total increase in cost, Balance of Plant including Cooling Tower, it may kindly be seen that even after applying the correction pointed out by the Petitioner, the figures still do not add up to 16.28 Cr. The sum of the item wise increase is only ₹ 15.21 Cr. The same needs further clarification or disallowance of unexplained/ unreasonable cost, if any.

(d) **Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

It is stated that the Hon'ble Commission may kindly refer to the table comparing the cost with respect to Balance of Plant including Cooling Tower filed in the Provisional Tariff Petition dated 08.06.2012 as against the cost filed in the present Petition:

No.	List of works in Balance of Plant including Cooling Power	Cost filed as on 8th June 2012 (in Cr Rs)	Cost filed as on 1st Aug 2014 (in Cr Rs)	Increase / (Reduction) in Cost (in Cr Rs)
1	Coal Handling Plant	10.53	10.21	(0.32)
2	Fly Ash Handling Plant	1.03	2.10	1.07
3	Switch Yard, Transformers	15.00	11.45	(3.55)
4	6.6 KV & LT Panels	0.92	1.82	0.90
5	Ventilation & A/C	0.47	0.92	0.45
6	Compressed Air System & Piping	0.88	5.89	5.01
7	Fire Fighting Equipment's	1.31	1.14	(0.17)
8	D. M. Plant & Water Treatment Plant	2.51	5.08	2.57
9	Instrumentation	1.88	3.92	2.04
10	Cranes & Hoist	0.33	-	(0.33)
11	Cooling Towers, Cooling Water System	4.94	6.72	1.78
12	Non-IBR & Butterfly Valves, MBOP, Misc. Equipment's, Spares & Services	8.34	15.17	6.83
13	<b>Total</b>	<b>48.14</b>	<b>64.42</b>	<b>16.28</b>

It is submitted that upon a perusal of the above reproduced table, the amount of ₹ 16.28 Crs. has been arrived in the manner apparent.

(e) **Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, in the context of para 5 at Page 5 and 6 of the Affidavit, the Respondent

seeks to rely upon the averments already made in Paras 10 to 13 in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity. It is humbly prayed that the capital expenditure and IDC claimed may be allowed after keeping in view the observations by the Respondent in the said paras.

**(f) Petitioner's Response dated 9<sup>nd</sup> March' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para's of the Affidavit dated 24.02.2015.

**Comment 6**

**(a) MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

That, on Page 26, an increase of ₹ 7.5 Cr. has been shown under the head "Interest During Construction". The reason for this increase has been shown as "Increased requirement of fund and increase in interest rate". However, the calculations clarifying the increase are not provided.

**(b) Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

The Respondent No. 2 has asked for clarification on calculations for increase in 'Interest During Construction' by ₹ 7.5 Crs. The Petitioner hereby humbly submits to this Hon'ble Commission that the basis of IDC has been duly explained in para 19 and para 20 of the submission made on affidavit filed on 30.09.2014 with this Hon'ble Commission. A copy of the said affidavit is attached hereto as ANNEXURE V and may be read as a part of the present reply.

**(c) MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

That, in Para 11 at page no. 5 of the Rejoinder, the Petitioner has not been able to clarify increase in IDC by 7.5 Cr. and clear explanation has not been provided for disproportionate increase in IDC.

**(d) Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

It is submitted that the Petitioner has already given explanation as to the increase in IDC in para's 19 and 20 of the Affidavit filed by the Petitioner dated

30.09.2014. The contents of para's 19 and 20 of the Affidavit filed by the Petitioner dated 30.09.2014 are not being reproduced hereinbelow for the sake of brevity and to avoid prolixity and as such the Petitioner does not want to add anything further.

**(e) Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, in the context of para 5 at Page 5 and 6 of the Affidavit, the Respondent seeks to rely upon the averments already made in Paras 10 to 13 in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity. It is humbly prayed that the capital expenditure and IDC claimed may be allowed after keeping in view the observations by the Respondent in the said paras.

**(f) Petitioner's Response dated 9<sup>th</sup> March' 2015 on rejoinder filed MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para's of the Affidavit dated 24.02.2015.

**Comment 7**

**(a) MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

That, at para 11 at Page 4, amounts of Debt and Equity are shown on the basis of normative Debt:Equity ratio, which may change if the Capital Cost changes.

**(b) Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

The Petitioner has maintained the Debt : Equity ratio as per the Madhya Pradesh Electricity Regulatory Commission (Terms & Conditions for Determination of Generation Tariff) Regulations, 2009 {RG-26 (I) OF 2009}. Since the capital cost has increased from ₹ 283.62 Crs as filed on 08.06.2012 in provisional tariff petition to ₹ 304.23 Crs as filed in the present petition dated 01.08.2014, the Debt : Equity ratio has changed because the base has changed. The clause 21.1 of the said Regulation states as follows:

*"In case of the generating station declared under commercial operation prior to 1.4.2013, debt-equity ratio allowed by the Commission for determination of Tariff for the period ending 31.3.2013 shall be*

*considered. For the purpose of determination of Tariff of new generating station Commissioned or capacity expanded on or after 01.04.2013, debt equity ratio as on the Date of Commercial operation shall be 70:30. The debt-equity amount arrived in accordance with this clause shall be used for calculation of interest on loan, return on equity and foreign exchange rate variation.”*

**(c) MPPMCL’s Response dated 23<sup>rd</sup> January’ 2015 on rejoinder:**

That, in Para 12 at page no. 5 of the Rejoinder, while responding to the averments made in Para 13 of the Reply filed by the Respondent, the Petitioner has quoted the provisions of the Tariff Regulation 2009. However, in the said Para 13 of the Reply the Respondent had only said that as the Capital Cost itself has been challenged on various grounds, the Debt : Equity ratio be applied only on basis of justified/ finally allowed Capital Cost.

**(d) Petitioner’s Response dated 23<sup>rd</sup> February’ 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The contents of the corresponding paragraphs 12 and 13 of the Rejoinder Affidavit dated 05.12.2014 are reiterated and reaffirmed herein and are not being reproduced herein for the sake of brevity and to avoid prolixity.

**(e) Counter Response by MPPMCL dated 2<sup>nd</sup> March’ 2015:**

That, in the context of para 6 at Page 6 of the Affidavit, the Respondent seeks to rely upon the averments already made in Paras 14 to 15 in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity. It is humbly prayed that the Debt:Equity ratio and Final Capital Cost be allowed keeping in view the observations made by the Respondent in the said paras.

**(f) Petitioner’s Response dated 9<sup>th</sup> March’ 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para’s of the Affidavit dated 24.02.2015.

## **Comment 8**

**(a) MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

That, at para 12, the Petitioner has prayed for permitting Capital Cost of the Project as proposed. However, the Respondent has opposed the amount of Capital cost.

**(b) Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

It is humbly submitted before the Hon'ble Commission to kindly permit the Final Capital Cost as filed in the present petition dated 01.08.2014.

**(c) MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

That, in para 13 at page no. 6 of the Rejoinder, the Petitioner has prayed for allowing Final Capital cost as filed by them. However, the Respondent has opposed the Final Capital Cost filed on various grounds and it is prayed that the objections raised be kindly considered before allowing the Final Capital Cost.

**(d) Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The contents of the corresponding paragraphs 12 and 13 of the Rejoinder Affidavit dated 05.12.2014 are reiterated and reaffirmed herein and are not being reproduced herein for the sake of brevity and to avoid prolixity.

**(e) Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, in the context of para 6 at Page 6 of the Affidavit, the Respondent seeks to rely upon the averments already made in Paras 14 to 15 in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity. It is humbly prayed that the Debt:Equity ratio and Final Capital Cost be allowed keeping in view the observations made by the Respondent in the said paras.

**(f) Petitioner's Response dated 9<sup>th</sup> March' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para's of the Affidavit dated 24.02.2015.

## **Comment 9**

### **(a) MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

That, in Para 13 on Page No. 4, it has been averred that :

*"In the Provisional Tariff Order, Hon'ble Commission has permitted tariff on provisional basis. In this energy charges were recoverable based on rate of coal and through the mechanism permitted in the Regulations. The same is being duly recovered by the petitioner and no separate true up on account of the energy charges is necessary on normative basis."*

That, in above context, it is respectfully submitted that the coal is being purchased from a group company, i.e., M/s BLA Industries Ltd. (the Coal Supplier) on the basis of a Fuel Supply Agreement (FSA) having terms and conditions which appear to be greatly disadvantageous/ detrimental to the Petitioner company. Also, the price of coal is substantially higher than the price charged by Western Coalfields Limited (WCL) under long term FSA for similar grade coal.

### **(b) Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

It is humbly submitted to this Hon'ble Commission that B L A Industries Pvt. Ltd. and B L A Power Pvt. Ltd. (Petitioner) proposed to execute a detailed Fuel Supply Agreement (the transaction being between two group companies) BLA Industries and the Petitioner Company had to approach the Ministry for Corporate Affairs, Government of India, for approval of FSA between two group companies in terms of section 297 of the Companies Act, 1956. The Central Government on 02.02.2012, while approving the contract for supply of coal by BLA Industries to the Petitioner Company for a period of three years has, inter alia, placed the following conditions:

- "ii.) The total value of the contract from the contractee party/ parties mentioned herein above shall not exceed the limit mentioned in para 2 above, exclusive of taxes.*
- iii.) The prices to be paid/ received to/ from the contractee party/ parties shall be reasonable and shall not be higher/ lower, as the case may be, than the prevailing market rates.*

*iv.) Company shall ensure that the contract with the contractee party is competitive and is not less advantageous to it as compared to similar contracts with other party/ parties.”*

A copy of the said approval is annexed as ANNEXURE VI. From the aforesaid approval it is quite clear that BLA Industries is required to charge prices, which is reasonable and not higher or lower than the prevailing market rates. Further, the approval expressly provides that BLA Industries shall ensure that the contract with the contractee party is competitive and is not less advantageous to it as compared to similar contracts with other party/ parties.

It is further submitted to this Hon'ble Commission that once the transaction has been approved by the Central Government and in otherwise in compliance with the existing laws, there is no jurisdiction for the electricity regulator to interfere with the fuel supply agreement. It is necessary to appreciate that BLA Industries is an independent company authorised to sell coal in the open market, and as such, is not dependent on the Petitioner for selling coal. Coal is a commodity in short supply and as such, has a ready market. The Petitioner keeping in view the overall viability issue has been able to negotiate a competitive delivered rate for washed coal having GCV of 5200 (ADB) Kcal/ Kg along with other terms and conditions of the Fuel Supply Agreement. It is submitted that keeping in view assured supply of quality washed coal of very high grade, the Petitioner believes that the same is competitive and aligned to market rates, when compared to the delivered cost of imported coal and e-auction coal at any given point of time.

Further, the Respondent No. 2 has pointed out in its reply that the price of coal is substantially higher than the price charged by Western Coalfields Limited (WCL) under long term FSA for similar grade coal. It is submitted that the Respondent No. 2 has completely ignored the aforesaid market rates and has relied on a notional/ fictional rate, which rate is a concessional rate prevalent only for certain eligible consumers under the National Coal Distribution Policy, 2007. The Petitioner in view of the said existing policy is not eligible for linkage/ concessional rate of coal from CIL. Hence, the allegation made by the Respondent No. 2 is entirely misplaced.

It is further submitted that once the transaction between the group companies is held to be at arm's length, there is no provision under which the Electricity

Regulatory Commission can enquire and/ or interfere with the cost of coal. Had the Respondent No. 2 established that there is a cheaper source of coal which is not being availed off by the Petitioner, the Petitioner would be guilty of loading an unfair burden on the consumers. However, going forward there is an uncertainty qua coal cost from 1<sup>st</sup> April, 2015, which has to be suitably addressed at an appropriate stage.

**(c) MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

That, in para 14 at page no. 6 the Petitioner has offered response to the comments/ observations made by the Respondent in Paras 15 and 16 of the Reply filed in response to the Petition, wherein the Respondent has pointed out to the factum of Fuel Supply Agreement (FSA) having been entered with a group company, i.e, M/s BLA Industries Ltd. The Petitioner has stated that it has complied with the provisions of Proviso to Sub-section (1) of Section 297 of Companies Act 1956 by approaching Ministry of Corporate Affairs, Govt. of India for approval of FSA between two group companies and the same has been approved subject to certain conditions, some of which have been quoted. The Petitioner has also filed a copy of the said approval as Annexure-VI (at Page 83-83 of the Rejoinder).

That, it may kindly be seen that the approval granted by the MOC, GOI was for entering into the said contract for a period of three (3) years from 15-07-2008, the said period has expired on 14-07-2011, resultantly the said approval also stands expired/ ineffective, much before the COD (02-04-2012), when actual transactions under the said contract began. The Petitioner may kindly be directed to explain the current position on this aspect.

That, without prejudice to above factual position, kind attention is drawn to the condition nos. (iii) and (iv) of the approval of MOC, GOI dated 14-07-2012, which are again reproduced below :

- “ .....
- iii.) *The price to be paid / received to/ from the contractee party/ parties shall be reasonable and shall not be higher/ lower, as the case may be, than the prevailing market rates.*
  - iv.) *Company shall ensure that the contract with contractee party is competitive and is not less advantageous to it as compared to similar*

*contracts with other party/ parties.*

*.....”*

That, above generic conditions were usually imposed by the MOC, GOI while granting approval under Proviso to Sub-section (1) of Section 297 of Companies Act 1956 for transactions/ contracts between related parties. The objective of imposing the said conditions was to ensure fair business practices for safeguarding the interests of the Companies and the stake holders. The provisions of the above two conditions are aimed to ensure that:

- a. Firstly the prices are prevailing market prices, and
- b. Secondly, the contract is on competitive terms vis-a-vis similar contracts with other party/ parties.

In the present case both these conditions seem to be violated. Firstly, the prices are substantially higher than the prices prevailing in market for coal of same grade under long term contracts. The comparison of prices would obviously be done on the basis of prices available under similar contracts (Long Term) and not with those available under e-auction or imported coal prices. Secondly, the terms and conditions of the contract (FSA) also put the Company under disadvantage. Under the existing Fuel Supply Agreement (FSA), the Coal Supplier gets the escalation in price on two contingent events, i.e., when WCL revises the price upwards and also when WPI/CPI rise. Therefore the explanation/ justification given by the Petitioner deserves to be rejected. Also, the per MT Base price (₹ 2516.07/MT for coal of 5200 GCV) at which M/s BLA Industries is supplying coal to M/s BLA Power Pvt Ltd. is much higher than the base price at which MPSMCL is supplying coal to STPP of M/s Jaypee Power Ventures Ltd. at Nigrie.

That, in the same para 14 at page no. 6 & 7, the following has been stated by the Petitioner :

*“.....It is necessary to appreciate that BLA Industries is an independent company authorized to sell coal in the open market and as such, is not dependent on the Petitioner for selling coal. Coal is a commodity in short supply and as such, has a ready market. The Petitioner keeping in view the overall viability issue has been able to negotiate a competitive*

*delivered rate for washed coal having GCV of 5200 (ADB) Kcal/ Kg along with other terms and conditions of Fuel Supply Agreement . It is submitted that keeping in view assured supply of quality washed coal of very high grade, the rates when compared to the delivered cost of imported coal and e-auction coal at any given point of time.”*

Admittedly, the price agreed in FSA with BLA Industries is a “negotiated” price ostensibly based on “prevailing market prices” for e-auction or imported coal. It is evident that no transparent process like Open Tendering was carried out to discover a true market price for supply of Coal on Long Term basis. Also, it may be brought out that ‘Schedule I – Main Parameters’ of FSA mentions ‘Gross Calorific Value - 5200 Kcal/Kg’ and not GCV of 5200 (ADB) Kcal/Kg as has been claimed. The FSA, in its entirety, talks of GCV (As Received) and not GCV (Air Dried Basis) or GCV (ADB).

Also, no evidence has been provided as to how the “arms length” principle has been observed and the price of coal has been discovered through a transparent process. There is just a “self declaration” to that effect and nothing more. There is no clarity on how the Base price of 5200 GCV coal was calculated as ₹2211/MT (Clause 7.1.1 and 7.1.2 of FSA) while linking to notified price on signature date of ₹ 1435/MT for D-Grade RoM coal supplied by WCL as per Price Notification No. CIL:S&M:GM(F):Pricing 1181 dated 15/10/2009. Neither any reason of using of ‘Washed Coal’ for power generation have been given by the petitioner nor any Cost-benefit analysis of using Washed Coal has been given. That, also in the same para it is said that :

*“.... The Respondent No. 2 has completely ignored the aforesaid market rates and has relied on a notional/ fictional rate, which is a concessional rate, prevalent only for certain eligible consumers under the National Coal Distribution Policy 2007.”*

In the understanding of the humble Respondent, the National Coal Distribution Policy 2007 does not put any bar on the entities like the Petitioner here, an Independent Power Producer (IPP). IPPs are eligible for getting 100 % of the Coal quantity as per the normative requirement through Fuel Supply Agreement (FSA) under Clause 2.2 of the said policy. Clause 5, 6, 7 and 8 of the said Policy

elaborate the features/ requirements for the New Consumers including the process of issue of Letter of Assurance (LOA) and its culmination to Fuel Supply Agreement (FSA).

That, therefore, the relevant questions here are – Has the Petitioner ever taken steps mandated in the said Policy for getting a Long Term Coal Linkage from Coal India Limited and was ever denied Letter of Assurance (LOA)? Or the Petitioner ever contemplated getting such a cheaper source of Coal? What were the impediments in this?

**(d) Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. With respect to Para's 16 to 18, the Petitioner reiterates and reaffirms the contentions made in paragraph number 9 of the Affidavit dated 20.02.2015 filed by the Petitioner.

With respect to the contents of para 19, it is submitted that the Respondent No. 2 ought to consider the landed price of coal for comparing the price at which the Petitioner is procuring coal. As regards the averments of the Respondent No. 2 with respect to E-auction/imported coal, it is stated that the Respondent No. 2 has to consider the price of coal from the coal procurement options available to the Petitioner. In the present case neither linkage price nor the price out of an allocated coal block can be considered, on account of the fact that both the said options are not available keeping in mind the size of the Units of the power plant of the Petitioner. Further, the Petitioner craves leave of this Hon'ble Commission to produce an affidavit filed by Respondent No. 2 in a separate matter, currently sub-judice, on this issue wherein the Respondent No. 2 has taken a stand contrary to its reply dated 23.01.2015.

It is further stated that the WPI/ CPI formula is only considered when WCL notified price is not changed on the first date of the appropriate financial year. It is also stated that in the event WCL notifies the change in price in the future, then the Petitioner has to accordingly account for the same from 1<sup>st</sup> April of that financial year. In any event, the Petitioner has not till date revised its base price of coal with respect to the WPI/CPI formula.

With respect to the contents of para 20, it is stated that the same is substantially addressed by the submissions made hereinabove. However, the Petitioner takes strong objection to the averment of the Respondent No. 2 with regards to open tendering, since there was no open tendering method available to any entity as has been alleged. The said averments have been made by the Respondent No. 2 only to misguide this Hon'ble Commission and hence the same ought to be rejected out rightly.

With respect to the contents of para 21, it is stated that once the Ministry of Corporate Affairs grants an approval under Section 297(1) of the Companies Act, 1956, the same is a certification of the fact that the transaction/contract has been entered in at 'an arms length', inasmuch as the fact that the contrary would completely defeat the purpose of the relevant Section. Furthermore, with the respect to the Respondent No. 2's averments relating to washing of coal, it is submitted that the BLA Industries can only supply coal pursuant to washing since the coal block was allocated for washing of coal. Irrespective of this fact, the coal procured from BLA Industries is the cheapest out of the available options for the Petitioner, keeping in mind the size of the plant. Hence, the Respondent No. 2 is raising issues which are otherwise non-existent and do not merit any consideration of this Hon'ble Commission.

With respect to the contents of para 22 and 23 it is stated that as per the Office Memorandum bearing number F.No.FU-9/2009-IPC dated 18.03.2011 issued by the Ministry of Power, Government of India wherein an amendment of coal linkage policy for the 12<sup>th</sup> Plan Power Projects, which clearly states that "*Coal linkage will not be available for any projects with unit size less than 200 MW*". This notification has been annexed hereto and marked as ANNEXURE II.

**(e) Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, the contents of para 7 at Page 6 of the Affidavit are denied and disputed except where the extant Notification of Ministry of Power, GOI is quoted. The Respondent seeks to rely upon the averments already made in Paras 16 to 23 in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity.

The Hon'ble Commission is requested to take cognizance of fact that the

Petitioner's has chosen not to respond to/ rebut the contentions raised by the Respondent in paras 16 to 17. The only inference possible to be drawn in this situation is that the Petitioner does not have valid "Previous Approval" from Ministry of Corporate Affairs, GOI (Central Government) as per the Proviso of Section 297(1).

In view of the same the averments made by the Petitioner in Para 21 of the Affidavit also deserve to be rejected. Otherwise also the version of the Petitioner that the said approval under Section 297(1) of the Companies Act 1956 is itself a certificate to the effect that the transaction is at "arms length" is also liable to be rejected. The language of the "Previous Approval" of Central Government required in terms of Proviso to the said Section, which is issued for a definite period, also places the onus of acting at "arms length" in such transactions on concerned related parties.

(f) **Petitioner's Response dated 9<sup>th</sup> March' 2015 on rejoinder filed by MPPMCL:**

The contents in Para 9 were already responded in Para 7 of the Affidavit dated 24.02.2015.

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para's of the Affidavit dated 24.02.2015.

**Comment 10**

(a) **MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

That, it is most humbly brought to the kind notice of the Hon'ble Commission that the Supervision, handling and delivery contract dated 04/07/2011 between M/s BLA Power Ltd. and M/s Prakritik Logistics Pvt Ltd., and especially the clauses pertaining to revision of rates, also appear to be unreasonable and detrimental to the Petitioner Company. It is submitted that the rates are being increased arbitrarily and no clear formula linked with price of diesel has been agreed upon.

(b) **Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

It is humbly submitted to this Hon'ble Commission that the principle for rate

enhancement is largely on account of increase in fuel cost. Below is the table showing the break-up of various cost components of Prakritik Logistics Pvt. Ltd. on dates whenever service charges have changed,

Particulars	Rs/MT w.e.f. 04.07.2011	Rs/MT w.e.f. 01.10.2012	Rs/MT w.e.f. 01.01.2013	Rs/MT w.e.f. 01.11.2013	Rs/MT w.e.f. 01.04.2014
<b>Fixed Cost</b>	38.64	38.64	38.64	38.5	41.5
<b>Driver / Cleaner daily Bhattha</b>	5	6	11	11.55	13.45
<b>Maintenance</b>	3	4	6	6.75	6.75
<b>Operation/ Misc cost</b>	2	2.5	5	5.2	5.3
<b>Diesel (fuel)</b>	25.5	64.76	65.72	72.5	76.5
<b>Tyre</b>	2.5	3.38	7	7.8	10.8
<b>Admin cost (incl. profit margin)</b>	2	3.26	7	7.7	7.7
<b>Total charges to the service provider</b>	78.64	122.54	140.36	150	162
<b>Service Charges revised and billed (excl. Service Tax)</b>	<b>70</b>	<b>110</b>	<b>140</b>	<b>150</b>	<b>162</b>

From the above table it can be noticed that the except for revision of services charges w.e.f. from date 01.01.2013 at all other dates the service charges have been largely increased due to increase in diesel cost. The diesel rates as on the dates are given below for correlating the increase in diesel cost component as a part of service charges.

Particulars	Rs/Ltr w.e.f. 01.10.2012	Rs/Ltr w.e.f. 01.01.2013	Rs/Ltr w.e.f. 01.11.2013	Rs/Ltr w.e.f. 01.04.2014
<b>Diesel Rate in Rs / Ltr</b>	52.55	52.8	59.61	62.3

Had the Respondent No. 2 established that there is a cheaper service provider for Supervision, Handling & Delivery of coal which is not being availed off by the Petitioner, the Petitioner would be guilty of loading an unfair burden on the consumers. The allegations of the Respondent are denied.

**(c) MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

That, in para 15 at page no. 7 & 8, the Petitioner has tried to justify rate enhancement given to the Supervision, handling and delivery Contractor M/s Prakritik Logistics Pvt. Ltd. (the Contractor) on the ground of increase in fuel cost

as provided in Clause 3.1.3 of the Agreement with the Contractor . However, it can be seen that increase has been allowed on other heads also during period from 04-07-2011 to 01-04-2014. The increase during this period has been quite substantial – “Driver/ Cleaner Bhatta” increased by 169%, “Maintenance” expenses increased by 125%, “Operation/ Misc cost” increased by 165%, “Tyre” expenses increased by 330% and “Admin Cost (incl. profit margin)” increased by 285%. All these increases, which are not permissible as per Clause 3.1.3 of the said agreement, have also contributed in overall increase of Service charges by 131% during the period. Therefore, the increase due to other elements besides Diesel (Fuel) may not be allowed.

**(d) Petitioner’s Response dated 23<sup>rd</sup> February’ 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. It is humbly submitted that the increase in cost with respect to Supervision, Handling & Delivery is mainly on account of the substantial hike in the price of diesel. Furthermore, the contents of para 15 of the Affidavit dated 05.12.2014 of the Petitioner are reiterated and reaffirmed herein.

**(e) Counter Response by MPPMCL dated 2<sup>nd</sup> March’ 2015:**

That, the contents of para 8 at Page 7 of the Affidavit are denied and disputed and the Respondent seeks to reaffirm and rely upon the averments already made in Paras 24 in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity.

**(f) Petitioner’s Response dated 9<sup>th</sup> March’ 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para’s of the Affidavit dated 24.02.2015.

**Comment 11**

**(a) MPPMCL Comments dated 10<sup>th</sup> November’ 2014:**

That, the existing FSA with the Coal Supplier prescribes a ratio of price being charged by Coal Supplier to the prevailing prices of similar grade coal of WCL. It envisages proportionate increase in price if WCL prices increase. Besides, the FSA also provides that if in a particular year price of WCL coal does not change, even then Coal Supplier would get increase in prices on the basis of change in WPI/ CPI.

That, in the FSA, this increase, based on WPI/CPI, has not been adjusted in case the price of WCL coal is increased after that particular year. This will result in double impact of increase in price of coal to the Petitioner. In case price escalation on the basis of WPI/CPI has been availed in a particular year by the coal supplier, then it should be adjusted from the next WCL price increase. These provisions are obviously unreasonable and need to be amended.

**(b) Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

It is humbly submitted to this Hon'ble Commission that an index figure of WPI and CPI reflects the change in a set of associated variables over a time period and in a particular direction. Thus, price index is reflective of the total change in price level. The increase / decrease in price based on WPI and CPI is provided to temporarily adjust to the changes in cost of production and sales based on inflation. The prices are ultimately benchmarked to the WCL price upon its next increase or decrease.

It is noteworthy here that pursuant to deregulation of Coal prices after the Colliery Control Order, 2000 was notified with effect from 1st January, 2000, the prices of coal are fixed by the coal companies themselves. Accordingly, Coal India Limited notifies coal prices for WCL and its other subsidiaries based on the following factors:

- i. General increase in price of commodities in the market leading to increase in the cost of input in the production of coal as reflected in WPI and AICPI.
- ii. Demand and supply scenario
- iii. Capacity of the company to absorb the increase in cost.
- iv. Landed cost of imported coal.

- v. Impact of revision in wages of non-executive employees and revision in pay of executives as per Govt. guidelines as and when such revision takes place.
- vi. Requirement of additional resources mobilization for fresh investments in new projects to augment coal production to achieve planned production target.
- vii. Need for capital investment in new projects and modernization of existing mines to augment coal production to bridge the demand supply gap.

This was informed by The Ministry of Coal, Government of India to the Standing Committee on Coal and Steel (2013-14).

Clause 7.1.4 of the FSA with B L A Industries Pvt. Ltd. provides that where there is no change in the coal prices by WCL throughout the financial year, the same shall be escalated / de-escalated based on a combination of the WPI and CPI indices to compensate for a change in the input cost of B L A Industries Pvt. Ltd. due to inflation. This change in price is however valid only till the next change of WCL coal price for power sector. After the change in the notified price of WCL coal the price is again benchmarked to the notified price of WCL coal. As the WCL notified price of coal specifies an effective date which is not retrospective, there is no question of double impact.

**(c) MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

That, in Para 16 and 17 at page no. 9 of the Rejoinder, the Petitioner has explained the significance/ use of WPI and CPI in determining the impact of inflation with respect to the price of coal. The Petitioner has also stated that the current mechanism of the pricing of coal on the basis of proportionate increase in price of same grade coal by WCL as well as due to increase in WPI/ CPI does not suffer from the vice of double inflationary impact. But the questions that still remains unanswered is - How can the Petitioner have benefit of both systems? Whether the percentage increase during the period in question was same as compared to the percentage increase in price of same grade coal provided by WCL?

**(d) Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

With respect to the contents of Para 25, the submissions of the Petitioner made in Para 7 above are being reaffirmed and this Hon'ble Commission may kindly consider the same. Furthermore, with respect to the Respondent No. 2's question pertaining to whether the percentage increase during the period in question was same as compared to the percentage increase in price of same grade coal provided by WCL, it is stated that the increase as well as the decrease in price of same grade coal is governed by the formula provided in Clause 7.1.4(b) of the FSA, a perusal of which makes it evident that the price of same grade coal changes in proportionality.

**(e) Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, the contents of para 9, 10, 11 and 12 at Page 8 of the Affidavit are denied and disputed and the Respondent seeks to reaffirm and rely upon the averments already made in Paras 25, 26, 27 and 28 respectively in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity.

**(f) Petitioner's Response dated 9<sup>th</sup> March' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para's of the Affidavit dated 24.02.2015.

**Comment 12**

**(a) MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

The CPI considered in the formula for Price escalation of coal considers CPI of "current financial year" and "previous financial year". It is submitted that it should be modified by CPI of "preceding financial year" and "year before preceding financial year", as the CPI of current year is known at a later date.

**(b) Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

It is humbly submitted to this Hon'ble Commission that if the Consumer Price Indices (CPI) for preceding financial year and year before preceding financial year are adopted, this would result in using values of inflation of the previous

year and not for the current year. Secondly, the prescribed formula (Equation 7.10) in the FSA uses weights of both WPI and CPI. The weight of WPI indices would be for current year and the weight of CPI indices would be of previous year. The Consumer Price Index (CPI) is published monthly with a lag of less than one fortnight. Subsequently, RBI publishes annual CPI for the financial year based on average of monthly CPI for that financial year. In view of the above and because the pricing is prospective the indices of the current financial year and previous financial year have been used in the prescribed formula (Equation 7.10).

**(c) MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

That, in Para 16 and 17 at page no. 9 of the Rejoinder, the Petitioner has explained the significance/ use of WPI and CPI in determining the impact of inflation with respect to the price of coal. The Petitioner has also stated that the current mechanism of the pricing of coal on the basis of proportionate increase in price of same grade coal by WCL as well as due to increase in WPI/ CPI does not suffer from the vice of double inflationary impact. But the questions that still remains unanswered is - How can the Petitioner have benefit of both systems? Whether the percentage increase during the period in question was same as compared to the percentage increase in price of same grade coal provided by WCL?

**(d) Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

With respect to the contents of Para 25, the submissions of the Petitioner made in Para 7 above are being reaffirmed and this Hon'ble Commission may kindly consider the same. Furthermore, with respect to the Respondent No. 2's question pertaining to whether the percentage increase during the period in question was same as compared to the percentage increase in price of same grade coal provided by WCL, it is stated that the increase as well as the decrease in price of same grade coal is governed by the formula provided in Clause 7.1.4(b) of the FSA, a perusal of which makes it evident that the price of same grade coal changes in proportionality.

**(e) Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, the contents of para 9, 10, 11 and 12 at Page 8 of the Affidavit are denied

and disputed and the Respondent seeks to reaffirm and rely upon the averments already made in Paras 25, 26, 27 and 28 respectively in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity.

(f) **Petitioner's Response dated 9<sup>th</sup> March' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para's of the Affidavit dated 24.02.2015.

**Comment 13**

(a) **MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

Therefore, it respectfully prayed that the Hon'ble Commission be pleased to apply suitable cap on the price of the coal based on that available in prevailing long term FSAs for same/ similar grade coal. It is also prayed that the Hon'ble Commission also be pleased to strike down unfair terms in FSA and Supervision, Handling and Delivery contract.

(b) **Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

The question of capping of supply of coal does not arise for the reason that under the cost plus mechanism both fuel cost and energy cost are a pass through in tariff, subject to prudence check. Further, the suggestion of capping without being violative of sections 61 & 62 of the Electricity Act, 2003 and the Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) (Revision-II) Regulations, 2012 {RG-26 (II) OF 2012} for determination of tariff.

(c) **MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

That, in respect of the averments made by the Petitioner in Para 18 at page no. 9 of the Rejoinder, the Respondent does not dispute the mechanism of pass through of Fuel Cost and Energy cost in tariff. However, it is only requesting prudence check by the Hon'ble Commission and if it is found that unreasonable price is being claimed for fuel/ coal by the Petitioner, then the Hon'ble Commission has to take various measures to safeguard the interest of the consumers and suitably capping the price may be one of the options.

(d) **Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

With respect to the contents of Para 26, the Petitioner reiterates and reaffirms the contents of Para 18 of the affidavit dated 05.12.2014 filed by the Petitioner.

(e) **Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, the contents of para 9, 10, 11 and 12 at Page 8 of the Affidavit are denied and disputed and the Respondent seeks to reaffirm and rely upon the averments already made in Paras 25, 26, 27 and 28 respectively in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity.

(f) **Petitioner's Response dated 9<sup>th</sup> March' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para's of the Affidavit dated 24.02.2015.

**Comment 14**

(a) **MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

That, in Para 14 on Page No. 4 and in para 5 (and its subparagraphs) on Page 34 to 42, the petitioner has sought to relax norms in respect of the performance parameters as below:

- a. Auxiliary Consumption : From 10.50 % to 11.00%
- b. Heat Rate : From 2792 Kcal/ kWh to 2835 Kcal/kWh

It is respectfully submitted that the prayer of the petitioner for relaxation in norms merely on the ground that the notified normative performance parameters are difficult to achieve, may not be entertained. The norms/ benchmarks are provided in the Regulations for encouraging efficiency in operation. Therefore, they need to be enforced strictly. Also, there is no provision for Relaxation of Norms in the Regulations. It is, therefore, most humbly prayed that the prayer for the same may kindly be rejected.

That, the contents of para 15 at Page 4 are strongly opposed. Since there is no occasion for relaxation of Normative Performance Parameters, the prayer for true up of Energy Charges on this account may kindly be rejected. The petitioner has also averred that –

*“.... the unit size is small and the financial capability of the firm (company) is also limited to bear disallowance of above performance benchmarks.....”.*

In this regard, it is most humbly submitted that, it was a conscious decision of the petitioner to choose the size of the Unit, while its own financial capacity and the risk profile of the power generation business in the regulated regime were factors within complete knowledge of the petitioner. Therefore, this plea being advanced now is untenable and liable to be rejected.

That, contents of the para 16 on Page No. 4 & 5 and at para 7 (and its sub paras) at Page No. 62 and 63, are also opposed strongly on the grounds elaborated in the following paras.

(a) Firstly, the Respondent has opposed the relaxation in Normative Performance Parameters, viz., Gross Station Heat Rate and Auxiliary Consumption.

(b) **Petitioner’ rejoinder dated 5<sup>th</sup> December’ 2014:**

The Petitioner has sought relaxation of norms for the reason that the norms specified in the regulations for auxiliary consumption and heat rate are not achievable keeping in view the plant configuration. In this context, it is necessary to take on record the specifications provided by the manufacturer for deriving the station heat rate, which depends on the efficiency of the boiler, generator and the heat rate of the turbine. A copy of performance guarantee schedule of Boiler and PO specifications of Turbine Generator as provided by the respective vendors to the Petitioner Company are enclosed as ANNEXURE VII as part of this filing. In the present case, the following parameters have to be specifically considered:

<b>Computation of Gross Station Heat Rate</b>		
<b>Turbine Heat Rate</b>	kCal/kWh	2281
<b>Generator Efficiency</b>	%	98.50%
<b>Boiler Efficiency</b>	%	87.00%
<b>Design Heat Rate</b>	kCal/kWh	2662
<b>Operating Margin</b>	%	6.50%
<b>Gross Station Heat Rate</b>	kCal/kWh	2835

Applying the aforesaid formula, it will be seen that the station heat rate of 2792 kcal/ KWH prescribed in the Regulation is not achievable. On the contrary the station heat rate is 2835 kcal/ KWH. As a result of an actual higher station heat rate, there is under recovery of costs. The calculation can also be referred in paragraph 5.4.4 of the present petition filed on 01.08.2014 with this Hon'ble Commission.

This Hon'ble Commission in Clause 56.1 of Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) (Revision-II) Regulations, 2009 {RG-26 (II) OF 2009} (equivalent to Clause 60.1 Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) (Revision-II) Regulations, 2012 {RG-26 (II) OF 2012}) specifically provides as follows:

*“Tariff for sale of electricity by the Generating Company may also be determined in deviation of the norms specified in these Regulations subject to the conditions that-*

- a) The levelised Tariff over the Useful life of the Project , calculated based on the discounting factor as notified by the CERC from time to time for the Projects under Section 63 of the Act, on the basis of the norms in deviation does not exceed the levelised Tariff calculated on the basis of the norms specified in these Regulations; and*
- b) Any deviation shall come into effect only after approval by the Commission, for which an application shall be made by the Generating Company.”*

Clearly, from the aforesaid the Hon'ble Commission can permit deviation under justifiable circumstances. In the present case, both in the context of station heat rate and auxiliary consumption it is submitted that the Petitioner is unable to meet the normative parameters due to technical constraints, which is relatable to the size of the machine. It is also a known fact that there are not too many generating stations having unit size of 45 MWs. It is submitted that since the power to deviate from norms is available the Petitioner is fully entitled to invoke such powers. The Respondent in its submission has not questioned and/ or disputed the technical constraints that limit the ability of the Petitioner to achieve normative efficiency parameters. Keeping in view the same the request for

relaxation may be permitted.

As regards the issue of auxiliary consumption the Petitioner in paragraph 5.3.3 of the present petition filed on 01.08.2014 with this Hon'ble Commission has given actual data of auxiliary consumption for the period after commissioning of the plant. From the data it can be derived that the plant has on no occasion achieved the normative auxiliary consumption of 10.5% and has always been in the region between 12.4% to 13.3% in the first year. In the subsequent year, the data which is annexed hereto as ANNEXURE VIII will show that the auxiliary consumption is in the region of 10.7% to 15.2%. This improvement of auxiliary consumption was achieved due to installation of Variable Frequency Drive (VFD) in the month of Oct 2013 for which the Petitioner Company had incurred an additional cost of ₹4.20 Crs. It is clarified that this cost has not been included in the final CAPEX of Unit # 1. Keeping in view the actual performance parameters available on record both pre and post installation of the VFD drive, the Hon'ble Commission may take a pragmatic view of the matter. In this context, apart from the specific power available in Regulation 56.1, the Hon'ble Commission is also guided by the principles contained in section 61 of the Electricity Act, 2003. The Petitioner is entitled to recovery of reasonable cost of generation keeping in view technical and commercial experiences.

**(c) MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

That, in para 19 at page no. 10 of the Rejoinder, the Petitioner has again tried to justify the proposed relaxation of the normative performance parameters mainly on the ground that they are difficult to achieve. This is strongly opposed as the normative performance parameters being challenged are part of Tariff Regulations 2009 (Third Amendment) (and also Tariff Regulation 2012) framed after due process. The same were never challenged and have, therefore, attained finality. Besides, provision for relaxation of the performance parameters is not there in the Tariff Regulations 2009 and Tariff Regulation 2012.

That, the provision of the Tariff Regulation 2009 under Clause 56.1 (analogous to Clause 60.1 of Tariff Regulation 2012) has been quoted claiming that it empowers this Hon'ble Commission to "permit deviations under justifiable circumstances". However, in the opinion of the humble Respondent, this Clause is not at all applicable in the present case. Also this issue has been set to rest by

the Hon'ble APTEL in judgment in Appeal No. 170 of 2010 (MPPGCL vs. MPERC & Ors.). The relevant portion of the judgment is quoted below :

*“59. As regards the regulation 56 dealing with deviation from norms it is submitted by Mr. Sen that regulation 56 and 56.1 of the MYT Regulations, 2009 permit deviation from norms only under certain specific circumstances which have been elaborated in the said provisions. We are in agreement with Mr. Sen that the deviation from the norms contemplated under the MYT Regulations, 2009 is only in relation to approval of Tariff under Section 63 of the Act and the MYT Regulations, 2009 does not conceive of deviation on any other ground apart from what have been expressly provided for in the said regulations. ....”*

*[Emphasis supplied]*

**(d) Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contents of Para 19 of the affidavit dated 05.12.2014 filed by the Petitioner. It is humbly submitted that the Hon'ble Appellate Tribunal in *Appeal No. 86 & 87 of 2007* being *MAHAGENCO vs MERC* had noted that on account of there being a substantial difference between the norms prescribed by the Hon'ble MERC through its Tariff Regulations and those achieved by MAHAGENCO it directed the appointment, either by MERC or MAHAGENCO, of an independent agency to go into the actual operating parameters of the generating station. Subsequently, through a bidding process CPRI was appointed as the independent agency by MERC and based on CPRI's report, the operating norms were considered by the MERC.

It is stated that in the present petition, the Petitioner has apprised this Hon'ble Commission of its inability to meet the norms prescribed by this Hon'ble Commission under its relevant Regulations. Hence, deviations from the same were sought accordingly.

**(e) Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, the contents of para 9, 10, 11 and 12 at Page 8 of the Affidavit are denied and disputed and the Respondent seeks to reaffirm and rely upon the averments

already made in Paras 25, 26, 27 and 28 respectively in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity.

**(f) Petitioner's Response dated 9<sup>th</sup> March' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para's of the Affidavit dated 24.02.2015.

**Comment 15**

**(a) MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

Secondly, on Page Nos. 62, where details and calculations are given for revised Energy Charges for FY 2012-13 for true up, following comments are offered (without prejudice to the prayers made by the Respondent on the issue of reasonability of Coal Price and Terms and Conditions of the Fuel Supply Agreement):

- i. GCV of coal is given as 4240 KCal/Kg –  
It is humbly prayed that the Petitioner may kindly be directed to give basis of this value of GCV.
- ii. Vide Provisional Tariff Order Dated 24-07-2012, the Hon'ble Commission had Provisionally allowed Rate of ₹ 2,861/- per Ton for Coal having 5200 Kcal/Kg GCV.

For 4240 Kcal/Kg GCV coal, the Petitioner is claiming ₹ 2646.74 per Ton as the cost of this coal. The details of this calculation are not provided which may kindly be sought.

- (c) Thirdly, the price of coal and the way the price variation (increase) is allowed in Fuel Supply Agreement (FSA) needs to be examined for reasonableness by the Hon'ble Commission.

**(b) Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

It is submitted that the issue of coal price requires to be revisited since inception i.e. April 2012 on a limited extent relating to the billing for variable (energy) charge. It is submitted that as per the FSA dated 25.04.2011 with B L A

Industries Pvt. Ltd. the coal purchased is on ADB (Equilibrated basis) and not on ARB. In this context, the coal was analysed on ADB in terms prescribed in the standard (BIS-1350 Part (II) 1970) and the price was based on GCV of coal analysed and expressed in ADB in terms of the BIS standards. However, in terms of the Regulations the Petitioner was required to represent the cost of coal based on GCV of coal as fired/ consumed. In this context, reference may be made to Regulation 41.2 of the Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) (Revision-II) Regulations, 2012 {RG-26 (II) OF 2012}. Subsequently, when the anomaly was discovered, BLA rectified its energy bills from August 2014 as per the Regulations. This has now been accepted by the Respondent No. 2.

While the same has been accepted for the period after August 2014, the Respondent No. 2 has not agreed to rectify the past bills so as to enable the recovery of actual coal cost as paid by the Petitioner Company to BLA Industries. In this context, several meetings were held with the Respondent No. 2, in the meeting held on 10.11.2014, the issue was resolved in terms as following:

“MPPMCL stated that the energy bill for the month of Aug 2014 submitted by M/s BLA Power Pvt. Ltd., was scrutinized and found that the Landed Price of Primary Fuel (LPPF) i.e. coal, taken in bill was not corresponding to GCV (As Received) and not in line with clause 8.2.1(a) of the FSA. As per MPERC (Terms & Conditions of Determination of Generation Tariff), Regulation 2009, the energy charges are to be calculated on GCV as fired and accordingly corresponding LPPF shall be considered for the calculation of energy charges. In the bill of Aug 2014, BLA Power had taken LPPF on GCV (ADB), whereas the FSA mentions that the contracted price or applicable price of coal shall be adjusted for any variation in GCV (As Received) from the values as specified in the Schedule I & Clause 7.1.1 of the FSA.

The price notification no. CIL:S&M:GM(F):Pricing:1181 dated 15.10.09 with which the base price of coal from M/s BLA Industries Pvt. Ltd. has been linked, was scrutinized, and it was seen that nowhere was it mentioned that the notified price for D Grade run of mine coal supplied by WCL was based on GCV (ADB). MPPMCL further pointed out if it is so then, Price Adjustment for Quantity &

Quality Variations under article 8.2.1(a) of the FSA may not be possible because, the value of GCV (As Received) cannot be subtracted from the value of GCV (ADB).

BLA Power clarified that as per the FSA:

- i. "Gross Calorific Value" or "GCV" means the total heat in Kilo Calories liberated on burning one Kilogram of Coal as tested in a Bomb Calorimeter in accordance with BIS 1350 (Part II) 1970
- ii. GCV (As Received) is defined in the FSA as Gross Calorific Value of Coal received at the Delivery Point i.e. in our instance when the sampling of the coal is done.

The GCV of coal mentioned in Schedule I & Clause 7.1.1 of the FSA is on Air Dried Basis (Equilibrated) (ADB). All coal purchase under the FSA since inception is done on the same basis. Since the coal mine, from which coal is supplied by the supplier under the FSA produces coal from different seams and the calorific value of coal in the seams varies from time to time, a standard measure was required and appropriately put in the FSA to determine the appropriate basic price for different calorific values of coal. The above basis has been used for determining the calorific value of coal for fixation of basic price of supplies interalia as per clause 8.2.1 of the FSA. Thus, the relevance of ADB is to fix the basic price of coal for a particular consignment. A clarificatory letter confirming the above is being provided by the supplier.

The FSA provides for supply of coal with upto 12% of Total Moisture. Beyond 12% Total Moisture there is a provision for deduction. Had the GCV in Schedule I & Clause 7.1.1 of the FSA been on As Received Basis (ARB) then this clause would not be required in the FSA. However, this clause is there because the GCV in Schedule I & Clause 7.1.1 is on ADB.

The FSA is based and benchmarked on Base Price of ROM coal as notified by CIL, being supplied by Western Coalfields Limited (WCL). The Base Price as notified by CIL is based on the Gross Calorific Value determined on ADB in accordance with BIS:1350 Part II, 1970.

Similarly, the terms of supply of WCL provide for deduction where the Surface Moisture exceeds 7% to 9%.

Based on the above it is evident that the basis of pricing of coal supplied by BLA Industries is identical to that of WCL as the determination in both the cases is on ADB and not on ARB. And therefore in both the cases there is a provision for supply of coal with permissible moisture content, which is in addition to the Inherent Moisture of the supplied coal.

BLA Power submitted that they will provide evidence at the earliest possible (in couple of weeks) that the grades of CIL are based on GCV determined on ADB. BLA Power stated that suitable amendments in the definition of GCV and clause 8.2.1(a) of FSA have been made and they shall provide the copy of amendment. After detailed discussion, it was decided that BLA Power will provide documentary proof showing that grade of coal fixed by the competent authority is based on GCV on Equilibrated Basis (ADB). After submission of requisite documents and scrutiny to satisfaction of both parties, henceforth the bills may be prepared strictly in line with the suitable article of FSA and MPERC tariff regulation 2009.”

From the aforesaid, it is submitted that the total amount due on this account is around ₹ 0.721 Crs, which necessarily has to be allowed at the present true up stage for the FY 2012-13. Additionally ₹ 1.277 Crs be allowed to recover from April 2013 to Oct 2014. It is submitted that at the time of filing the present petition, the petitioner had relied upon the GCV for coal purchased on ADB. However the correct representation has to be GCV as fired (ARB) as per the Regulation. Therefore, the GCV of coal as provided in the table at page 62 of the present petition will change and a new table giving the GCV as fired (ARB) is annexed hereto and marked as ANNEXURE IX. The statement annexed also provides calculation of under recovery of coal cost since inception i.e. April 2012.

**(c) MPPMCL’s Response dated 23<sup>rd</sup> January’ 2015 on rejoinder:**

That, in Para 20 at Page no. 12 to 14 of the Rejoinder, the Petitioner has attempted to raise a very serious issue regarding GCV of the Coal as to - Whether GCV should be “As Delivered” or “Air Dried Basis” in the Fuel Supply Agreement (FSA)? The Petitioner, in the guise of a “minor error correction exercise”, has sought to amend the FSA. The Petitioner has admittedly held meetings/ discussions with the Respondent to understand the issue raised by the

Petitioner. However, nothing has been concluded on this issue as yet.

Importantly, since the FSA is the basis for determining Variable Cost agreed in Power Purchase Agreements (5% PPA at Variable Charge basis and 30% PPA at Regulated Tariff basis) with the Respondent besides other stake holders. These documents have also undergone regulatory scrutiny and approved by this Hon'ble Commission after due process of law. It would, therefore, not be permissible for the Petitioner to modify any terms/ conditions of the said FSA unilaterally, in the guise of "error correction", which admittedly would result in increase in Tariff. The same is strongly opposed and it is prayed that if needed this question may be left open and dealt with in a separate Petition/ Proceedings giving full opportunity to the Respondents/ Stake Holders to suitably respond to the contentions raised.

**(d) Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

The contents of Para 29 and 30 are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contents of Para 20 of the affidavit dated 05.12.2014 filed by the Petitioner. Further, the stand of the Petitioner stands cleared upon a perusal of the Agreement entered into between the Petitioner and BLA Industries. Furthermore, the Petitioner had filed RTI Application with Coal India Limited who in their reply to said RTI have clarified that,

*"... .. Determination of GCV for pricing of coal is done on equilibrated basis (sample equilibrated as 40 degree Celsius and 60 percent relative humidity) as per communication and guideline issued by Coal Controller Office, MoC..... ..".*

It is therefore submitted that in view of the above, the principles of pricing of coal as per the FSA and as per the price notification of Coal India Limited which in itself is based on the GCV of coal on ADB/ Equilibrated basis as notified by the Coal Controller Office, are in consonance with each other.

A copy of the Agreement entered into between the Petitioner and M/s BLA Industries Pvt. Ltd. is annexed hereto and marked as ANNEXURE III

A copy of the RTI Application of the Petitioner to Coal India Limited and its reply thereto is annexed hereto and marked as ANNEXURE IV

**(e) Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, the contents of para 13 at Page 8 and 9 of the Affidavit are strongly opposed and the Respondent seeks to reaffirm and rely upon the averments already made in Paras 29 and 30 in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity. However, the Respondent prays to the Hon'ble Commission to take cognizance of the following:

- a. In compliance with Article 4.1.1 (iii) of Long Term PPA dated 05-01-2011, the Petitioner had furnished a copy of Fuel Supply Agreement (FSA) dated 25-04-2011 along with its 3 (Three) amendments to the Respondent vide Letter No. BLAPPL/JBP/2012-13-164 Dated 17-09-2012. Copies of the said Letter, relevant pages of FSA and 2<sup>nd</sup> Amendment Dated 27-11-2011 are filed herewith and marked as Annexure-I (Colly.).
- b. The above FSA and its said Amendments are the only relevant documents forming the basis for calculation of price of coal under the said PPA.
- c. Without prejudice to the contentions raised by the Respondent in its earlier pleadings, it is to say that the said FSA is absolutely clear in respect of GCV for determination of for price of coal and it is on "As Received" basis. In this context definition of "Gross Calorific Value (GCV)" may kindly be referred in Article 1.1 and the Article 8 elaborating the Price Adjustment for Quality and Quantity Variations may also be referred in the said FSA. The Article 8.2.1 (a) was subsequently amended by 2<sup>nd</sup> Amendment Dated 27-12-2011.
- d. Shockingly, the Petitioner has now filed copy of an Agreement dated 17-11-2014 (alleged to have been executed during the pendency of the this Petition) alleged to have been entered between the Petitioner and M/s BLA Industries Pvt. Ltd. (Annexure –III, Page 13 to 16 of the Affidavit), ostensibly for seeking to clarify/ identify certain practices under said Fuel Supply Agreement (FSA) dated 25-04-2011. However, bare perusal of the said Agreement reveals that the only objective of the said Agreement is to

replace GCV (As received) mentioned in the FSA by GCV (Air Dried Basis). This drastic change, if permitted, shall result in unjust enrichment of the Fuel Supplier through the Petitioner at the cost of the Consumers as it would lead to unjustified increase in Fuel Cost. Therefore, it is prayed that this change in material terms of FSA may not be allowed. The Respondent craves liberty of this Hon'ble Commission to place any further arguments/ case laws during oral submissions to sustain its view.

(f) **Petitioner's Response dated 9<sup>th</sup> March' 2015 on rejoinder filed by MPPMCL:**

The allegations made by Respondent No. 2 in Para 13 are baseless and completely denied. The Respondent No. 2 has filed only certain pages of the FSA which is not the complete FSA of the Petitioner. It is further submitted that the FSA cannot be only judged by the terms and conditions on pricing of coal as pointed out by Respondent No. 2 in its reply rather it needs to be read with other terms and conditions as well which has direct commercial impact on the transaction. For the purpose of better understanding the Petitioner has provided an illustration. The clause 6.3.1 on page 24 of the FSA is reiterated below,

*"The moisture content of delivered Coal shall be measured as per BIS specification no. 1350 (Part I) 1984. The weighted average of the moisture of all Coal delivered during a Day weighted by the weight of Coal to which each sample relates shall be the "Average Total Moisture"(ATM). If the ATM of the Coal delivered to the Purchaser hereunder in a Day, as measured at the point of sampling, exceeds twelve percent (12%), then the actual deliveries for such day shall be deemed to have been reduced by a percentage equal to the difference between ATM and twelve percent (12%). If the ATM of the Coal delivered to the Purchaser hereunder in any day is less than twelve percent (12%), then no correction will be provided. Such reduction in weight shall be reckoned for the purposes of adjustments under Article 9.2 hereof and for determining the quantity of Coal actually supplied by the Seller with respect to any obligation to supply under this Agreement. Moisture shall be determined on a daily basis. The Seller shall be permitted to sprinkle water on the Coal only for the purpose of dust suppression. The Purchaser agrees that no water or any other substance shall be added to the Coal or quality of Coal interfered with until the Coal has been sampled in accordance with the*

*provisions of this Agreement. After sampling of the Coal, the Purchaser shall be free to deal with the Coal, in any manner the Purchaser deems fit.”*

From the above clause it can be clearly understood that if the average total moisture of the coal delivered by the supplier exceeds 12%, then the actual deliveries for that day shall be deemed to have been reduced by a percentage equal the difference between the average total moisture and 12% and in case the average total moisture is less than 12% then no benefit of reduction in moisture shall be passed on to the supplier.

From the above example, the Petitioner would like to bring on record that if the GCV of coal was to be on As Received then the clause 6.3.1 in the FSA would have no meaning. Further, based on this clause the Petitioner has raised debit notes on the supplier for excess total moisture whenever it has delivered. Copies of all such debit notes has been put on record as were annexed to our submission dated 30.09.2014 made to this Hon'ble Commission.

It is further submitted to this Hon'ble Commission that the Agreement dated 17.11.2014 entered into by the Petitioner only brings clarity that the word (As received) with GCV only indicates the point of time of determining the GCV and not the Basis, which is defined and prescribed in the BIS standard (BIS:1350 Part II, 1970) which has been disputed by Respondent No. 2 since long without any grounds. The Petitioner is nowhere burdening the end consumers of electricity but has prayed this Hon'ble Commission in para 20 of its reply dated 05.12.2014 for recovery of the actual variable cost it has already spent for generating the electricity.

### **Comment 16**

**(a) MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

That, the claim of additional 0.5% Return on Equity on account of timely completion of the project is strongly opposed. At paras 6.14 to 6.20 on Page. 46 to 47, the Petitioner has quoted parts of Regulation 2009 and Provisional Tariff Order dated 24-07-2012.

That, no specific provisions on the aspect of additional RoE for 45 MW capacity units is given in the Regulations 2009. However, the Regulation 2009 provides Completion Time of 33 months for 125 MW (CFBC Technology) / 200/ 210 MW

size units for entitlement of benefit of 0.5% additional RoE. Therefore, 33 months completion time would be applicable for 45 MW units also.

That, for reckoning the completion time of the project for the purpose of deciding eligibility for additional 0.5 % RoE, the date of investment approval by Board of the Generating Company has been provided as “start date” and the Date of Commercial Operation (COD) as the “end date”. The relevant provision of the Regulation 2009 is quoted below :

*“Appendix-I  
Timeline for completion of Projects  
(Refer to Regulation 22)*

1. *The completion time schedule shall be reckoned from the date of investment approval by the Board (of the Generating Company), up to the Date of Commercial Operation of the Units or Block of units.*
2. *.....”*

That, on direction of the Hon’ble Commission, the Petitioner has filed a Certified True Copy of the Resolution of the Board passed on 21-08-2012, through Additional Affidavit dated 29-09-2014 as Annexure-I. This Resolution depicts a date subsequent to the date of sanction of the loan by the Banks which is 11-07-2009. Therefore, petitioner has not provided actual “Date of Investment Approval by Board” subsequent to which the whole process of approaching Lending Agencies would have started. It can be reasonably presumed that the Date of Investment approval by Board would obviously have been at least a few months prior to the date of Loan Sanction (11-07-2009). The Date of Commercial (COD) of the Unit is 03-04-2012. This leads to a fair estimation that the completion time would be way beyond 33 months. It is, therefore, humbly prayed that the additional 0.5% Return on Equity may not be allowed.

That, since Base Rate of Return on Equity allowed will now be 15.5%, the calculation of Pre-Tax return on Equity arrived after grossing up will also change. Therefore, the amount of RoE for FY 2012-13 (Without grossing up tax) and the amount of RoE for FY 2013-14, 2014-15 & 2015-16 (after Grossing up applicable tax rate) will also change.

**(b) Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

It is humbly submitted to this Hon'ble Commission that the date of sanction letter of bank was issued on 10.07.2009. The timeline in which the Unit # 1 is commissioned is 32 months and 23 days from the date of sanction letter received from the bank. The issue at hand is to check whether the project proponent had started taking steps towards the implementation of the project. In the present case, the Company had obtained a sanction letter from the bank dated 10.07.2009. Subsequently the Petitioner Company has passed a Board Resolution dated 27.07.2009 approving the investment amount sanctioned for Unit # 1 and loan amount allotted by the consortium of banks for the sanctioned investment amount. Since the Company was termed with main object of setting up a IPP, the requirement of any board resolution for making application for sanction was not required.

**(c) MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

*That, in para 22 at page no. 15, by perusing the explanations provided by the Petitioner, it can be clearly seen that "Approval of Loan" is being confused with "Investment Approval for Project" which would necessarily be much prior to Bank's Sanction Letter dated 10-07-2009. Therefore, the averments of the Petitioner deserve to be rejected.*

**(d) Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

The contents of Para 32 are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. It is submitted that there is nothing wrong or unusual in the approval of loan by the Bank before the Board Resolution of the Petitioner for the amount of Equity to be brought in. In addition the Petitioner reiterates and reaffirms the contents of para 22 of the Affidavit dated 05.12.2014 of the Petitioner.

**(e) Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, the contents of para 15 at Page 9 of the Affidavit are strongly opposed and the Respondent seeks to reaffirm and rely upon the averments already made in Paras 32 in its Reply dated 23-01-2015 and more specifically at para 27 to 30 in its Reply dated 05-11-2014, which are not being reproduced here for the sake

of brevity.

(f) **Petitioner's Response dated 9<sup>th</sup> March' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para's of the Affidavit dated 24.02.2015.

**Comment 17**

(a) **MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

That, the Interest charges are indicated as ₹ 28.84 Cr., calculations are shown at Page 50 and 51. Also, the Rate of Interest is shown as 14.75 % PA which is very high for a Thermal Power Project.

That, in response to the information sought by the Hon'ble Commission the Petitioner vide Point No. 16. (b) on Page No. 07 of Additional Affidavit Dated 29-09-2014, it has been state that "Certificate for Interest Rates payable since CoD" is requested from Banks and expected to be received shortly. In such a situation the figure provided by the Petitioner cannot be verified till the said Certificate is filed.

That, the Regulation 2009 (and also Regulations 2012) provide that the Generating Company is required to make all possible efforts for "re-finance" of loan. The relevant portion of the Regulation is reproduced below :

".....  
23. *Interest and Finance charges on Loan Capital*  
23.1 .....  
.....  
23.7. *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 refinancing 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.*  
....."

It is humbly requested that the Petitioner may kindly be directed to give details of efforts made in this regard.

**(b) Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

The Petitioner has filed the certificate for weighted average interest rate on the basis of actual loan portfolio since CoD as Annexure I to the additional submission on affidavit made on 30.10.2014 with this Hon'ble Commission. A copy of the filing has been provided to the Respondent No. 2 on 31.10.2014 and was duly acknowledged. The Petitioner humbly submits to this Hon'ble Commission that the actual weighted average interest rate as on CoD of Unit # 1 was 15% p.a. on the total term loan as certified by the lead bank.

Further, once the unit attain its CoD, interest and finance charges are to be considered based on provisions of the regulation of Hon'ble Commission as reiterated in para 6.29 on page 50 of the present petition as filed by the Petitioner on 01.08.2014. Thus, from the documentary evidence (certificate from bank) it is obvious that the actual weighted average interest rate as on CoD of Unit # 1 was 15% and not 14.75%. The Petitioner humbly submits to this Hon'ble Commission to kindly refer to the revised interest cost admissible for FY13 as elaborated in the table below, viz a viz interest & finance charges as proposed in tariff petition for provisional tariff and as approved by Hon'ble Commission.

**INTEREST ON LOAN FOR FY 13 TRUE UP**

Particulars	Unit	Proposed in Petition of Mar12	Approved vide order dated 24.07.2012	True Up		Actual	
				[Norms]	[Proposed]		
1	Opening Loan balance	Cr. ₹	157.47	188.5	192.78	192.78	192.78
2	Addition during year	Cr. ₹	54.93	0	20.18	20.18	20.18
3	Repayment During year	Cr. ₹	12.29	11.9	14.63	14.63	14.63
4	Closing Loan balance	Cr. ₹	200.11	176.6	198.33	198.33	198.33
5	Avg. Loan during year	Cr. ₹	178.79	182.55	195.55	195.55	195.55
6	Interest Rate on Loan	%	14.75%	14.75%	15.00%	15.00%	15.00%
7	Interest Liability	Cr. ₹	26.37	26.93	29.33	29.33	29.33
8	Net Sales	MU	280.67	299.89	279.56	278	272.31
9	Impact on Sales Rate	p/unit	94	90	105	106	108

The Respondent No. 2 in its para 34 has further stated that the Regulation 2009 (and also Regulation 2012) provide that the Generating Company is required to make all possible efforts for 're-finance' of loan and has reproduced the relevant

portion of the Regulation in its reply filed. In this matter it is humbly submitted to this Hon'ble Commission that the Petitioner has made all possible efforts to reduce the interest rates on the term loan and has succeeded in getting the interest rates down on the total term loan. The certificate given by the lead bank (filed as Annexure I on 30.10.2014) it can be clearly seen that the Petitioner has been able to get the weighted average interest rate on total term loan down from 15% p.a. on the dated of CoD of Unit # 1 to 13.48% p.a. applicable as on 01.04.2014.

**(c) MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

That, in para 23 at page no. 15 of the Rejoinder, the Petitioner has submitted its reply to the contentions raised by the Respondent in paras 27 to 31 of the Reply dated 05-11-2014. It may be observed that the Petitioner has now stated that the actual weighted average rate of interest was still higher at 15% per annum rather than 14.75% shown earlier. As already submitted by the Respondent that for a Thermal Power Project this is a very high rate of interest (probably reflecting on abnormally high risk profile of the project proponent).

That, the Petitioner has also failed to show any serious efforts (as mandated in Regulation 23.7 of Tariff Regulations 2009) undertaken by the Petitioner in the years 2011, 2012 and 2013 (as the Project was progressing) yielding significant result in renegotiating/ refinancing the interest to lower rates of interest. It is, therefore, prayed that such high interest may not be allowed.

**(d) Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

The contents of Para 33 and 34 are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contents of para 6 of the Affidavit dated 20.01.2015 of the Petitioner.

**(e) Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, the contents of para 16 at Page 9 of the Affidavit are strongly opposed and the Respondent seeks to reaffirm and rely upon the averments already made in Paras 33 and 34 in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity.

**(f) Petitioner's Response dated 9<sup>th</sup> March' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para's of the Affidavit dated 24.02.2015.

**Comment 18**

**(a) MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

That, at Para 21 the petitioner has given calculations of Final Tariff (Energy Charges and Fixed Charges) for FY 2013-14, 2014-15 and 2015-16 based on Normative Performance Parameters notified in Regulation 2012. It is seen that GCV of coal is shown as 4396 Kcal/ Kg and the rate (price) is shown as ₹3,359.72 per Ton. It is humbly requested that the petitioner may kindly be directed to clarify the basis on which this value of GCV of coal was arrived and how the price was calculated. Also it is most humbly prayed that such high price of coal may not be allowed as it has huge inflationary impact on Energy Charges.

**(b) Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

GCV 4396 kCal/kg is weighted average GCV of coal fired in 3 preceding months as filed in Form No. 15 on page 128 of the petition filed on 01.08.2014. The rate (price) of ₹3,359.72/- per MT is weighted average rate of coal in 3 preceding months as filed in Form No. 15 on page 128 of the petition filed on 01.08.2014. It is humbly submitted to this Hon'ble Commission that the tariff has to be determined in terms of the provisions of the Electricity Act, 2003 and the application regulations. All allegations to the contrary are denied.

**(c) MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

That, in para 25 at page no. 16 of the Rejoinder, the Petitioner has furnished explanation to the query raised by the Petitioner. Without prejudice to the contentions raised by the Respondent in its other submissions in respect of GCV and the rate of Coal, the said explanation appears to be based on information provided in Regulatory Formats.

(d) **Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

With respect to the contentions raised in para 36 it is stated that the same is vague and incomprehensible and therefore same does not merit any reply on the part of the Petitioner.

(e) **Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, para 17 and 18 at Page 9 of the Affidavit does not require comments.

(f) **Petitioner's Response dated 9<sup>th</sup> March' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para's of the Affidavit dated 24.02.2015.

**Comment 19**

(a) **MPPMCL Comments dated 10<sup>th</sup> November' 2014:**

That, in para 19 at Page 10 of the Additional Affidavit Dated 29-09-2014, the Petitioner, while explaining the reason given for increase in IDC amount, has stated that :

*".....Thus the loan amount in comparison to earlier filing as on 08-06-2014 has increased due to which IDC for Unit # 1 has gone up proportionately."*

In the same para, the values of IDC corresponding to the Loan utilized up to COD are given. The amount of IDC is much higher now and has not increased proportionately as claimed by the Petitioner, as evident from the Table reproduced below showing IDC as Percentage of Loan:

No.	Head-wise Description	As filed on 08.06.2012 in Provisional Tariff Petition (Cr. ₹)	As filed on 01.08.2014 in present Petition (Cr. ₹)
1.	Loan utilized upto CoD of Unit # 1	188.50	192.78
2.	IDC & Financing Charges upto CoD of Unit # 1	34.71	42.21
3.	IDC & Financing Charges upto CoD of Unit # 1 as % of Loan	18.41 %	21.90 %

It is therefore prayed that the clarification in this regard may kindly be sought.

**(b) Petitioner' rejoinder dated 5<sup>th</sup> December' 2014:**

The Respondent No. 2 based on para 19 at page 10 of the Additional Affidavit dated 29.09.2014 in its reply has pointed out that,

“... The amount of IDC is much higher now and has not increased proportionately as claimed by the Petitioner,...”

In this regard it is humbly clarified to the Hon'ble Commission that the proportion of IDC towards Unit # 1 is worked out in the ratio of bank-wise loan disbursed for Unit # 1 against total bank loan disbursed in each quarter.

**(c) MPPMCL's Response dated 23<sup>rd</sup> January' 2015 on rejoinder:**

That, in para 26 at page no. 17 of the Rejoinder, the clarification offered by the Petitioner in respect of increase in IDC being proportionate to the Loan utilized up to COD, is unclear and deserves to be rejected.

**(d) Petitioner's Response dated 23<sup>rd</sup> February' 2015 on rejoinder filed by MPPMCL:**

The contents of Para 37 are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contents of para 26 of the Affidavit dated 05.12.2014 of the Petitioner and the same being self-explanatory does not merit further explanations.

**(e) Counter Response by MPPMCL dated 2<sup>nd</sup> March' 2015:**

That, the contents of para 19 at Page 10 of the Affidavit are opposed and the Respondent seeks to reaffirm and rely upon the averments already made in Paras 37 in its Reply dated 23-01-2015, which are not being reproduced here for the sake of brevity.

**(f) Petitioner's Response dated 9<sup>th</sup> March' 2015 on rejoinder filed by MPPMCL:**

The contents are denied and disputed to the extent the same are inconsistent with the considered stand of the Petitioner in the present proceedings. The Petitioner reiterates and reaffirms the contentions and averments made in the corresponding Para's of the Affidavit dated 24.02.2015.