

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

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



Petition No. 44 of 2019

PRESENT:

S.P.S Parihar, Chairman

Mukul Dhariwal, Member

Shashi Bhushan Pathak, Member

IN THE MATTER OF:

True-up of Generation Tariff of 2 x 660 MW Super Critical Coal based Thermal Power Station at Nigrie, District Singrauli (M.P.) for FY 2018-19 determined by MP Electricity Regulatory Commission vide MYT Order dated 29th November' 2018 in Petition No. 07 of 2018.

AND IN THE MATTER OF:

M/s Jaiprakash Power Ventures Ltd.,
JA House, 63, Basant Lok, Vasant Vihar,
New Delhi - 110057 -

Petitioner

//Versus//

1. **The Managing Director**
M.P. Power Management Company Ltd.,
Block No. 2, Shakti Bhawan, Rampur, Jabalpur – 482008
2. **The Managing Director**
M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd.
Shakti Bhawan, Rampur, Jabalpur – 482008.
3. **The Managing Director**
M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd.
Nishtha Parisar, Govindpura, Bhopal – 462023
4. **The Managing Director**
M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd.
GPH Compound, Pologround, Indore - 452003

Respondents

ORDER

(Passed on this day of 26th November' 2020)

1. M/s Jaiprakash Power Ventures Limited (hereinafter called "the petitioner" or JPVL) filed the subject petition on the 13th November' 2019 for true-up of Generation Tariff for FY 2018-19 in respect of its 2 x 660 MW super critical coal based Thermal Power Station at Nigrie, District Singrauli, Madhya Pradesh, determined by the Madhya Pradesh Electricity Regulatory Commission (hereinafter called "the Commission or MPERC") vide Multi Year Tariff (MYT) order dated 29th November' 2018 in Petition No. 07 of 2018.
2. The subject true-up petition has been filed under Section 62 and 86(1)(a) of the Electricity Act, 2003 and the provisions under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 (herein after called "the Regulations' 2015").
3. The Nigrie Thermal Power Station in the subject petition comprises of two generating Units of 660 MW each. Date of Commercial Operation (CoD) of both the Units of petitioner's power plant are as given below:

Table 1: CoD of Unit No.1&2

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

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

Table 2: Annual Capacity (fixed) Charges determined in MYT Order dated 29.11.2018

Sr. No.	Particulars	Unit	AFC for FY 2018-19
1	Return on Equity	Rs. Crore	364.25
2	Interest on Loan	Rs. Crore	682.02
3	Depreciation	Rs. Crore	536.69
4	Interest on Working Capital	Rs. Crore	68.00

5	O & M Expenses	Rs. Crore	242.62
6	Lease rent payable for Land (yearly)	Rs. Crore	0.44
7	Annual Capacity (fixed) Charges	Rs. Crore	1,894.01
8	Less: Non-Tariff Income	Rs. Crore	(2.90)
9	Net AFC (after adjusting Non-tariff Income)	Rs. Crore	1,891.11
10	AFC corresponding to 30% of the installed capacity of the power station	Rs. Crore	567.33

6. Aggrieved with the Commission's aforesaid order dated 29th November' 2018, the petitioner filed an Appeal No. 96 of 2019 before the Hon'ble Appellate Tribunal for Electricity on the following issues:
- Disallowance of Operation and Maintenance expenses of the dedicated transmission line and cost of spares in respect of O&M of transmission line in computation of interest on working capital.
 - Disallowance of ROM price, additional premium and incidence of the taxes thereon while computing the cost of coal for control period from FY 2016-17 to FY 2018-19 for the purpose of working out interest on working capital.
 - Disallowance of inadequate capacity charges on 7.5% of the contracted energy under the power purchase agreement dated 06.09.2011.

The aforesaid Appeal is sub-judice with the Hon'ble Appellate Tribunal for Electricity.

7. The petitioner filed the subject petition for true-up of generation tariff for FY 2018-19 based on the Annual Audited Accounts. In the subject true-up Petition, the petitioner has sought true-up of FY 2018-19 based on the additional capital expenditure incurred during FY 2018-19 in accordance with Regulation 8.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 which provides as under:

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

8. The petitioner broadly submitted the following in the subject petition:
- Pursuant to the allocation of Amelia (North) mine and Dongri Tal- II mine under the government dispensation route in October 2005, the Madhya Pradesh State Mining Corporation ("MPSMCL") invited tenders to identify the Mines Developer and Operator (MDO) to develop the coal mines and*

establish a link with power plants in Madhya Pradesh. Subsequently, JAL was selected as MDO for both the mines and the letter of intent was issued by MPSMCL on November 11, 2005 and May 1, 2007 with a condition that the coal would be utilized in a thermal power plant required to be set up by JAL in the State of Madhya Pradesh. Accordingly, the Project was envisaged on the basis that entire coal requirement will be sourced from two captive coal blocks of Amelia (North) and Dongri Tal- II.

- b. Thereafter, a Memorandum of Understanding ("MoU") dated 16.01.2007 was entered into between the GoMP and JAL for setting up a 500 MW thermal power station. The said MoU dated 16.01.2007 was subsequently amended from time to time on 08.12.2007 and 27.03.2008 for setting up a plant of 1,320 MW. The said project under the MoU was to be setup by the Petitioner.*
- c. GoMP and the Petitioner thereafter signed and executed an Implementation Agreement dated 12.12.2007 which was subsequently amended on 27.03.2008 ("IA"). As per the IA, GoMP or its nominated agency has the first right to purchase power from the Project, up to 30% of the installed capacity over a period of 20 years at a tariff to be determined by the Commission, and a further 7.5% of the net power at a price equivalent to the variable charge / cost to be determined by the Commission provided that the Petitioner is allocated a dedicated coal block in the State for supply of coal to the Project.*
- d. GoMP and the Petitioner thereafter signed and executed an Implementation Agreement dated 12.12.2007 which was subsequently amended on 27.03.2008 (hereinafter referred to as "IA"). As per the IA, GoMP or its nominated agency has the first right to purchase power from the Project, up to 30% of the installed capacity over a period of 20 years at a tariff to be determined by this Commission, and a further 7.5% of the net power at a price equivalent to the variable charge / cost to be determined by this Commission provided that the Petitioner is allocated a dedicated coal block in the State for supply of coal to the Project.*
- e. Pursuant to the terms of the MoU and IA the Petitioner set up the Project at Nigrie, District Singrauli, Madhya Pradesh.*
- f. Consequently, the Petitioner entered into a long-term Power Purchase Agreement with Respondent No. 1 on 05.01.2011. Under the Power Purchase Agreement dated 05.01.2011, the Petitioner is required to supply 30% of the installed capacity of the Project to the Respondent No. 1 at a tariff determined by the Commission.*
- g. The Petitioner and Respondent No. 1 further entered into a second Power*

Purchase Agreement on 06.09.2011 for supply of 7.5% of the net power from the Project to the Respondent No. 1 at variable charges. The power supplied by the Petitioner to the Respondent No. 1 under the PPAs ensures the benefit of Respondent No. 2 to Respondent No. 4 (distribution licensees) engaged in the business of distribution and supply of electricity in the state of MP.

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

the basis of the highest 'Additional Premium' quoted by it on the basis of the quantum of coal extracted.

- l. The Petitioner, in dire need of the Amelia (North) coal block since its power plant was premised on the supply from the said block and investment of Rs. 11,700 Crores was jeopardized on account of its cancellation, bid a price of 'zero' at the auction with the aim to get the Amelia coal block and emerged as the successful bidder as it quoted an Additional Premium of Rs. 612 per tonne.*
- m. It is pertinent to mention that at the time of Bidding for Amelia (North) coal block (17.02.2015), Nigrie Plant was generating and the Mine [Amelia (North)] was also functional. Thus, JPVL was left with no option but to ensure availability of fuel/coal for its Project, which was established on the basis of tender conditions for bidding for Amelia (North) coal block.*
- n. Pursuant to tender and e-auction process conducted in accordance with the Coal Mines (Special Provisions) Rules, 2014, the Petitioner was declared as the successful bidder for Amelia (North) coal mine. Accordingly, the Coal Mine Development and Production (hereinafter referred to as "CMDP") Agreement was executed on 02.03.2015 and subsequently 'Vesting Order' was issued to the Petitioner on 23.03.2015.*
- o. Subsequent to its successful bid, the Petitioner entered into the CMDP Agreement dated 02.03.2015 with the Nominated Authority. The said agreement stipulated the fixed monthly payment of Rs. 100 per tonne alongwith an additional premium of Rs. 612 per tonne with respect to the quantum of coal extracted every month and payment of fixed amount relating to land and mine infrastructure & cost of obtaining permits/approvals.*
- p. Subsequently, the Petitioner filed Petition No. 72 of 2015 on 07.12.2015 before the Commission for determination of tariff for supply of power from the Project from 03.09.2014 to 31.03.2015.*
- q. Pursuant to filing Petition No. 72 of 2015, the Commission on several occasions directed the Petitioner to file additional information pertaining to the submissions in the Petition. The Petitioner in pursuance to the additional information sought by the Commission filed its response to the aforesaid letters of the Commission.*
- r. The Commission after deliberation on its part approved the Final Tariff for FY 2014-15 and Provisional Tariff for FY 2015-16 vide Order dated 24.05.2017*

subject to be Trued Up as per the annual audited accounts of FY 2015-16.

- s. The Petitioner has challenged certain portions of the Order dated 24.05.2017 in Appeal No. 244 of 2017 before the Hon'ble Appellate Tribunal of Electricity on 21.07.2017 (hereinafter referred to as the "Tariff Appeal").*
- t. The Petitioner also filed a True Up petition, bearing Petition No. 41 of 2017, before the Commission along with details of additional capital expenditure incurred by the Petitioner during FY 2015-16 which was also adjudicated upon vide Order dated 20-07-2018 which also challenged by the Petitioner regarding certain issues.*
- u. The Petitioner, meanwhile had also filed Multi Year Tariff Petition for control period FY 2016-17 to FY 2018-19 in Petition No. 07/2018 in accordance with the MPERC Tariff Regulations seeking determination of the Generation Tariff for the said Control Period which was also adjudicated by the Commission vide Order dated 29-11-2018. In the said Order, though the Petitioner had filed actual data for FY 2016-17, the Commission determined the Tariff based on the Capital Cost upto 31-03-2016 as determined by the Commission.*
- v. Subsequent to the MYT Order dated 29-11-2018, the Petitioner filed True Up Petition for FY 2016-17 bearing Petition No. 05/2019 before this Commission for the truing up of the Tariff determined by the Commission for FY 2016-17 vide Order 29-11-2018 which was also adjudicated upon vide Order dated 25-07-2019 which has also been challenged by the Petitioner vide Appeal No.341/2019 regarding certain issues.*
- w. The Petitioner had also filed True Up Petition No. 07/2019 for truing up of the Tariff determined by the Commission for FY 2017-18 vide Order 29-11-2018 which was also adjudicated upon vide Order dated 22-10-2019 against which the Petitioner reserves the right to Appeal.*
- x. The Petitioner is filing the present Petition before the Commission along with details of additional capital expenditure incurred by the Petitioner during FY 2018-19 for the truing up of the Tariff determined by the Commission.*
- y. The Petitioner reserves the right to amend the present petition on the basis of the Judgment passed by the Hon'ble Appellate Tribunal of Electricity in the Appeal No. 95/2016, Appeal No.244/2017, Appeal No. 293/2018 and the Appeal against the Order dated 29-11-2018 in the Petition No. 07/2018 which is yet to be filed.*

9. In the subject true-up petition, the petitioner claimed additional capitalization of Rs. 8.56 Crore in its Nigrie Thermal Power Station. The petitioner also filed write-off/ deletion of assets for Rs. 0.95 Crore. Accordingly, the net additional capitalization of Rs. 7.61 Crore during FY 2018-19 is claimed by the petitioner based on Annual Audited Accounts of its generating station. In addition to above, the petitioner also claimed additional capitalization of Rs. 148.77 Crore towards Amelia Coal Mine during FY 2018-19.
10. Based on the aforesaid additional capitalization and de-capitalization during FY 2018-19, the following Annual Capacity (fixed) charges for Unit No.1&2 of Nigrie Thermal Power Station are claimed for FY 2018-19 in the subject petition:

Table 3: Annual Capacity (Fixed) Charges claimed for FY 2018-19**(Rs in Crore)**

Sr.No.	Particulars	Amount
1	Depreciation	552.72
2	Interest on Loan	747.92
3	Return on Equity	376.58
4	Interest on Working Capital	106.22
5	O & M Expenses	242.62
6	O & M Expenses (400 kV Transmission Line & Bay)	1.33
7	Lease rent payable for Land (yearly)	0.44
8	Total Annual Capacity (fixed) Charges	2,027.82
9	Less:-Non-Tariff Income	29.86
10	Net Annual Capacity Charges	1,997.96
11	32.43% of Annual Capacity (fixed) Charges	647.94

11. The petitioner filed a copy of the Annual Audited Accounts of Jaypee Nigrie Thermal Power Project, Annual Audited Accounts of Amelia Coal Mine and the Consolidated Balance Sheet of Jaiprakash Power Ventures Limited (JPVL) as on the 31st March' 2019 with the petition. The petitioner also filed a copy of Asset-cum-depreciation register containing capitalization of assets as on the 31st March' 2019 for thermal power station and Amelia Coal Mine separately.
12. With the above submission, the petitioner prayed the following:
- True-up of Capacity Charges for FY 2018-19 in terms of Additional Capital Expenditure incurred by the petitioner,*
 - Allow the recovery of the filing fees paid to the Commission and also the publication expenses from the beneficiaries.*

Procedural History

13. Motion hearing in the subject true up petition was held on the 3rd January' 2020 wherein the petition was admitted and the petitioner was directed to serve the

copies of the petition to all the respondents in this matter. The respondents were also asked to file their comments/response on the petition by the 30th January' 2020.

14. Vide Commission's letter dated 21st January' 2020, the information gaps/ requirement of additional details and document on preliminary scrutiny of the subject petition were communicated to the petitioner seeking its comprehensive reply by the 10th February' 2020.
15. By affidavit dated 20th February' 2020, the petitioner filed its reply to the issues communicated to it by the Commission. By affidavit dated 13th March' 2020, Respondent No. 1 (M.P. Power Management Co. Ltd.) filed its response/comments on the subject petition.
16. By affidavit dated 20th March' 2020, the petitioner filed rejoinder on the reply/ comments filed by the Respondent No. 1. The petitioner's response on each comment offered by the Respondent No. 1 is mentioned in Annexure I of this order.
17. The public notice for inviting comments/ suggestions from stakeholders was published on the 16th March' 2020 in the following newspapers:
 - i. Danik Jagran (Hindi), Bhopal,
 - ii. Danik Jagran (Hindi), Rewa,
 - iii. The Times of India (English), Bhopal and
 - iv. The Times of India (English), Indore
18. The last date for filing comments/objections was the 6th April' 2020. No comment from any stakeholder in this matter was received till this date.
19. The public hearing in this matter was initially fixed on the 16th April' 2020. However, due to outbreak of COVID-19 followed by Nationwide lockdown since the 25th March' 2020, the public hearing could not be held on the 16th April' 2020.
20. Subsequently, the public hearing in this matter was fixed on the 21st July' 2020 through a public notice published on the 26th June '2020
21. The last date for filing comments/objections was the 17th July' 2020. The Commission received comment from only one stakeholder, Shri Rajendra Agarwal on 14th July' 2020 in this matter.
22. However, due to corona pandemic effect, the public hearing could not be held on the 21st July. The public hearing in the subject petition was held on the 15th September; 2020 through Video Conferencing wherein the representatives of the

petitioner and Respondent No.1 appeared.

23. The Commission has examined the subject petition in accordance with the provisions under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 and Annual Audited Accounts of Jaypee Nigrie Thermal Power Station for FY 2018-19. The Commission has also examined the subject true up petition in light of the comments/suggestions offered by the Respondent No. 1 (MPPMCL) and other stakeholder and the response of petitioner on the same.

Analysis of the petition:

CAPITAL COST

Petitioner's Submission:

24. The petitioner filed the opening Gross Fixed Asset (GFA) of Rs. 10,771.13 Crore as on 1st April' 2018 for Nigrie thermal power station, as admitted by the Commission in last true-up order for FY 2017-18. The petitioner has broadly submitted the following
- (i) Vide Order dated 20th July' 2018 in petition No. 41 of 2017, the Commission had determined capital cost of Rs 10585.66 Crore as on 31st March' 2016.
 - (ii) Vide true-up Order dated 25th July' 2019 in petition No. 05 of 2019 for FY 2016-17, the Commission approved net additional capitalization of Rs 174.14 Crore.
 - (iii) Further, vide true up order dated 22nd October' 2019 in petition No 07 of 2019 for FY 2017-18, the Commission approved net additional capitalization of Rs 11.42 Crore. Therefore, the total capital cost of Rs 10771.13 Crore has been approved by the Commission as on 31st March' 2018.
 - (iv) Component-wise break-up of the capital cost as on 31st March' 2018 as admitted by the Commission is given as below:

Table 4: Capital Cost approved by the Commission upto 31.03.2018

(Rs in Crore)

S. No.	Particulars	Total Capital Cost upto 31.03.2018 Generating Station
1	Land	37.00
2	BTG	5,017.92
3	BOP	1,603.86
4	Civil	1,522.72
5	Total Hard Cost	8,181.52
6	Establishment Charges	268.13
7	Start Up Fuel	221.82
8	Interest during Constructions (IDC)	2,282.68

9	Interest During Construction (IDC) on Debt Component of Unallocated portion from 03-09-2014 to 20-02-2015	29.69
10	Foreign Exchange Rate Variation	(91.95)
11	Liquidated Damages	(120.77)
12	Total Soft Costs (6 to 11)	2,589.62
13	Total Capital Cost (5+12)	10,771.13

25. In the subject petition, the petitioner has claimed Rs 7.61 Crore net additional capitalisation during FY 2018-19. Therefore, in the subject true-up petition, the closing capital cost of Rs 10778.74 Crore as on 31st March' 2019 is filed by the petitioner.

Provision in Regulations:

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

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

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

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

- The assets forming part of the project, but not in use;*
- De-capitalisation of Asset;*
- In case of hydro generating station any expenditure incurred or committed to be incurred by a project developer -----*
- The proportionate cost of land which is being used for generating power from generating station based on renewable energy:*

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

Commission's Analysis

27. On perusal of the Annual Audited Accounts for FY 2018-19 filed by the petitioner, in Note 1(a), it is mentioned that the Company has adopted accounting policies

that comply with Indian Accounting Standards. Vide letter dated 21st January' 2020, the petitioner was asked to reconcile the various figures under GFA as on 31.03.2019 based on transition from Ind. GAAP to Ind. AS certified by the Auditor. The petitioner was also asked to file a detailed note explaining the difference if any, in the figures and their consequential impact on tariff.

28. By affidavit dated 20th February' 2020, the petitioner submitted that the Ind. AS was applicable from 1st April' 2016. The reconciliation statement due to transition from Ind. GAAP to Ind. AS as on 31st March' 2019 filed by the petitioner with its reply is as given below:.

Table 5: Reconciliation of GFA as on 31.03.2019 due to transition from Ind GAAP to Ind AS (Rs in Crore)

Sr. No.	Particulars	Closing Gross Fixed Assets as on 31-03-2019	GFA not recognized as fixed asset as per New Ind AS applicable w.e.f. 01.04.2016	Closing Gross Fixed Assets as on 31-03-2019 (Note-2 Of Balance Sheet)
		As per Ind GAAP		As per Ind AS
1	Land			
	Freehold Land	33.86	-	33.86
	Lease hold Land	3.52	3.52	
2	Building, Road & Bridges	1192.94	-	1192.94
3	Plant& Machinery	9630.70	-	9630.70
4	Furniture & Fixtures	3.80	-	3.80
5	Office Equipment	4.80	-	4.80
6	Vehicles	3.41	-	3.41
7	Ships & boats	0.0097	-	0.0097
8	400 KV transmission line	516.50	-	516.50
9	Railway Sidings	137.42	-	137.42
	Total	11526.99	3.52	11523.47

29. On perusal of the aforesaid statement filed by the petitioner, it is observed that in "Ind GAAP", the amount towards lease hold land of Rs. 3.52 Crore was part of Gross Fixed Assets, however, the same has not been considered under Gross Fixed Assets in "Ind. AS". There is no change in the amount of other components of Gross Fixed Assets under Ind. GAAP vis-à-vis "Ind. AS". It is also observed that there is no change in the amount of additional capitalization claimed during FY 2018-19 in Ind. GAAP and in Ind. AS.
30. On further scrutiny of the capital cost, it was observed that the petitioner has not mentioned the detailed break-up of original project cost estimate as per investment approval of the project in format TPS 5B enclosed with the subject petition. It was also observed that in the aforesaid form TPS 5B, the petitioner filled up the total actual expenditure as on 31st March' 2019 for thermal power

station including the expenditure towards for Amelia Coal Mine also.

31. In view of the above, vide letter dated 21st January' 2020, the petitioner was asked to file TPS Form 5B with complete break-up of capital cost components as per original estimates (as per investment approval) and liability as on 31st March' 2019 along with detailed reasons for variation if any, in the capital cost components.
32. By affidavit dated 20th February' 2020, the petitioner submitted the following:

"The break-up of original project cost in TPS-5B format along with the component wise variance and explanation thereto is attached herewith as Annexure-2. The Commission may be pleased to note that though there are some minor variations within the sub-groups of the Project Cost, the overall capital expenditure as on 31.03.2019 is well within the estimated cost of completion of Rs 11,700 Crores"
33. In view of the above, it is observed that the petitioner has now filed the revised Form TPS 5B with the detailed break-up of capital cost components as on 31st March' 2019. The petitioner has also filed the detailed break-up of actual expenditure of capital cost components up to 31st March' 2019 for power station.
34. In the subject true-up petition the petitioner has claimed opening capital cost of Rs. 10,771.13 Crore as admitted by the Commission as on 31st March' 2018. Therefore, the same closing GFA of Rs. 10,771.13 Crore based on the last true-up order for FY 2017-18 is considered as opening GFA as on 1st April' 2018 in this order.

ADDITIONAL CAPITALIZATION

Petitioner Submission:

35. In the subject true-up petition, the petitioner claimed additional capitalization of Rs. 8.56 Crore in its Nigrie Thermal Power Station. The petitioner also filed adjustment/ deletion of assets for Rs. 0.95 Crore. Accordingly, the net additional capitalization of Rs. 7.61 Crore during FY 2018-19 has been claimed by the petitioner based on Annual Audited Accounts of generating station in the subject matter. In addition to above, the petitioner also claimed additional capitalization of Rs.148.77 Crore during FY 2018-19 towards Amelia Coal Mine. The details of additional capitalization and de-capitalization filed by the petitioner during FY 2018-19 in the subject petition are as given below:

Table 6: Additional Capitalization and Adjustment

(Rs. In Crores)

Sl. No.	Particulars	Addition in Generating Station during FY 2018-19	Addition in Amelia Mines	Total Addition
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		Addition	Adjustments/ Deletions	Net Addition	during FY 2018-19	during FY 2018-19
1	Land	-	-	-	-	-
2	BTG	-	-	-	-	-
3	BOP	2.03	0.95	1.08	0.62	1.70
4	Civil	6.53	-	6.53	2.55	9.08
5	Total	8.56	0.95	7.61	3.17	10.78
6	Intangible Assets	-	-	-	-	-
7	Cost of ownership of Mining Rights	-	-	-	145.60	145.60
8	Grand Total	8.56	0.95	7.61	148.77	156.37

36. The petitioner has filed the detailed reasons for the aforesaid additional capitalization claimed in thermal power station under Balance of Plant Equipment and Civil works during FY 2018-19 as given below:

“Addition on account of BOP equipment:

It is respectfully submitted that the Petitioner incurred an additional capital cost of Rs. 2.03 Crores attributed to the aforementioned head, details of which can be summarized as under:-

- (i) Ferrocure Low Vacuum Dehydration Unit- Chiller & Ferrocure Electrostatic Liquid Cleaner Machine worth Rs 0.09 Crores were procured during FY 2018-19 by the Petitioner for Boiler.*
- (ii) An amount of Rs 0.05 Crores was incurred towards procurement of Air Dryer-530(A13)400/3/50/CE during FY 2018-19 for the purpose of Fly Ash Handling Purposes. An amount of Rs 0.58 Crores was also incurred towards procurement of 4 nos of KOMATSU make Excavators for Wet Fly Ash Excavation Handling during FY 2018-19.*
- (iii) An expenditure of Rs.0.09 Crore was incurred on account of procurement of 2 nos of KOMATSU make Dozers for Coal Handling purposes during FY 18-19.*
- (iv) The Petitioner, during FY 2018-19 incurred an expenditure of Rs. 0.53 Crores on account of procurement of Scoop Type Tippers, Nobelift Cba25 Pallet Truck 2.5 Ton 200X50 MM, Hand Truck for general material handling.*
- (v) An expenditure of Rs.0.19 Crores was incurred on account of procurement of 2 nos of Concrete Transit Mixture Vehicles & BRIGGS make Concrete Groove Cutting Machine for civil construction works during FY 2018-19.*
- (vi) An expenditure of Rs.0.03 Crore was incurred for procurement of horticultural equipments during FY 2018-19.*
- (vii) Miscellaneous equipments worth 0.005 Crores were procured for Central Workshop & Electrical Department during FY 2018-19.*
- (viii) The Petitioner would humbly like to submit during FY 2018-19 a Toyota-Fortuner (Station Wagon 2145 2.8L) for Rs. 0.32 Crore was procured.*

- (ix) *Rs 0.0053 Crores were incurred for procurement of 2 nos of Single Zone Door Frame Metal Detector for security purpose at the Main Gate.*
It is further respectfully submitted that the Petitioner during FY 2018-19 procured Desert Coolers, Water Coolers, Industrial Vacuum Cleaner, Geyser, Air Conditioner and miscellaneous other items worth Rs 0.09 Crores were purchased.
- (x) *An expenditure of Rs.0.04 Crore was incurred on account of payment made towards procurement of various computers, printers & other IT related items during FY 2018-19.*

Addition on account of Civil Work:

Total additions of Rs 6.52 Crores have been made on account of civil jobs have been made during FY 2018-19. A detailed break up of additions along with the reasons thereof is being provided as under:-

- (i) *Amount of Rs 0.86 Crores was spent during FY 2018-19 towards construction of Fly Ash Complex during FY 2018-19.*
- (ii) *An expenditure of Rs 5.67 Crores was incurred on account of construction of F & G Type quarters to cater to the needs of staff.*
37. Regarding the de-capitalization of assets of Rs. 0.95 Crore during FY 2018-19, the petitioner submitted the following:
- (i) *"Many old items such as Air Coolers, Fans, Telephone instruments, Tables, Chairs, wooden bed, storage boxes & other misc items worth Rs 0.88 Crores were discarded & scrapped during FY 2018-19 and duly removed from Depreciation-Cum-Asset Register as on 31-03-2019.*
- (ii) *It is further submitted that a Scorpio valuing Rs 0.08 Crores was sold off on 31-03-2019 i.e. during FY 2018-19 and duly removed from Depreciation-Cum-Asset Register as on 31-03-2019.*

Additional Capitalization in Amelia Coal Mine:

38. Regarding the addition in capital cost in Amelia Coal Mines, the petitioner broadly submitted the following:
39. In para 7.3 of the petition, the petitioner claimed additional capitalization in Amelia Coal Mine during FY 2018-19 with the following submission:

a) Addition on account of Tangible Assets:

It is respectfully submitted that the Petitioner incurred an additional capital cost of Rs.3.17 Crores for procuring tangible assets pertaining to Amelia mines which include:

(i) Addition on account of BOP

It is respectfully submitted that the Petitioner incurred an additional capital cost of Rs 0.62 Crore attributed to the aforementioned head.

(ii) Addition on account of Civil Work

It is respectfully submitted that the Petitioner incurred an additional capital cost of Rs2.55 Crores attributed to the aforementioned head.

b) Addition on account of Ownership of Mining Rights:

(i) It is respectfully submitted that an amount of Rs. 145.60Crores is attributed to the aforementioned head towards payment of 'Additional Premium'@ Rs. 612 per tonne of coal on 23,79,042 MT of coal received during FY 2018-19from Amelia mines for the purpose of power generation. A brief background as to why the petitioner had to acquire tangible and intangible assets for Amelia mines and had to pay the Additional Premium is already mentioned in Paras 4.1(h) to (o) and is not repeated here for sake of brevity.

(ii) It is respectfully submitted that the Additional Premium is in the nature of an upfront commitment, payable on a monthly basis on the quantum of extracted coal. The true nature of the payment is to discharge the liability undertaken at the time of bidding and acquire mining rights of Amelia (North) coal mine. Therefore, the same cannot be a revenue expenditure being unrelated to the daily operations of mining.

(iii) The Hon'ble Supreme Court of India in Challapalli Sugar Ltd. vs. The Commissioner of Income Tax, A.P., (1975) 3 SCC 572, has observed as follows:

"it would appear from the above that the accepted accountancy rule for determining the cost of the fixed assets is to include all expenditure necessary to bring such assets into existence and to put them in working condition. In case money is borrowed by a newly started company which is in the process of constructing and erecting its plant, the interest incurred before the commencement of production on such borrowed money can be capitalized and added to the cost of the fixed assets which have been created as a result of such expenditure. The above rule of accountancy should, in our view, be adopted for determining the actual cost of the assets in the absence of any statutory definition or other indication to the contrary."

- (iii) *It is respectfully submitted that the Additional Premium, being in the nature of an expenditure towards acquiring or bringing into existence an asset of an enduring benefit (coal mine) for the generation business, is to be allowed for the computation of fixed charges.*

It is further submitted that the fixed amount paid for procurement of assets such as land and mine infrastructure along-with the cost of obtaining statutory permits/approvals is in nature of capital expenditure being incurred on procurement of assets necessary for providing coal to the power plant. The same ought to be allowed as part of the project cost of the Project and should be considered for computation of fixed charges.

40. With the above submission, the breakup of opening capital cost, additions during the year and closing capital cost filed by the petitioner for Nigrie thermal power station are as follows:

Table 7: Capital Cost and Additions filed for FY 2018-19 (Rs in Crore)

Sl. No.	Particulars	Total Capital Cost upto 31.03.2018 as approved by the Commission	Net Addition during FY 2018-19	Total Capital Cost upto 31.03.2019
		Generating Station	Generating Station	Generating Station
1	Land	37.00	-	37.00
2	BTG	5,017.92	-	5,017.92
3	BOP	1,603.86	1.08	1604.94
4	Civil	1,522.72	6.53	1529.25
5	Total Hard Cost	8,181.52	7.61	8,189.11
6	Establishment Charges	268.13	-	268.13
7	Start Up Fuel	221.82	-	221.82
8	Interest during Constructions (IDC)	2,282.68	-	2,282.68
9	IDC on Debt Component of Unallocated portion from 03.09.2014 to 20.02.2015	29.69	-	29.69
10	Foreign Exchange Rate Variation	(91.95)	-	(91.95)
11	Liquidated Damages	(120.77)	-	(120.77)
12	Total Soft Costs (6 to 11)	2,589.62	-	2,589.62
13	Total Capital Cost (5+12)	10,771.13	7.61	10,778.74

Provision in Regulations:

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

20.3 The capital expenditure, in respect of existing generating station incurred or

projected to be incurred on the following counts after the cut-off date, may be admitted by the Commission, subject to prudence check:

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

Provided that any expenditure on acquiring the minor items or the assets including tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, computers, fans, washing machines,

heat convectors, mattresses, carpets etc. brought after the cut-off date shall not be considered for additional capitalization for determination of tariff w.e.f. 1.4.2016:

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

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

Commission's Analysis:

42. In the subject true-up petition, the petitioner filed the additional capitalization of Rs.8.56 Crore and de-capitalization of Rs. 0.95 Crore for Nigrie Thermal Power Plant, therefore, the net additional capitalization of Rs. 7.61 Crore is claimed based on the Annual Audited Accounts. The petitioner also claimed additional capitalization of Rs. 148.77 Crore for FY 2018-19 in respect of Amelia Coal Mines. The petitioner has filed the Annual Audited Accounts for FY 2018-19 for Nigrie Thermal Power Station and Amelia Coal mines separately.
43. In para 6.1 of the subject petition it is mentioned that out of the total additional capitalization of Rs. 8.56 Crore, the assets of Rs. 2.03 Crore pertains to BOP equipment and Rs. 6.52 Crore pertain to Civil Works.

Response filed by Respondent No. 1 on additional capitalization:

44. By affidavit dated 13th March' 2020, the Respondent No. 1 (MPPMCL) submitted the following on additional capitalization:
- (i) *"The admitted project Capital Cost as on 31.03.2018 is Rs. 10771.13 Crs. which is approx. Rs. 6.2 Cr./MW and very high in comparison to CERC notified Bench Mark Hard Capital Cost of Rs. 5.00 Cr. Therefore, no additional capital cost may kindly be allowed and the Commission ought to keep the capital cost less than Rs. 5 crores per MW as per the CERC norms.*
 - (ii) *it is humbly submitted that in the present Petition, out of total claim of Additional Capital Expenditure of Rs. 156.37 Crore, an amount of Rs.148.77 Crore has been claimed by the Petitioner towards expenditure on Amelia Coal Mine and Cost of Ownership of Amelia Coal Mine during FY 2018-19, which is not admissible under any provision of 2015 Tariff Regulations.*
 - (iii) *The petitioner has claimed expenditure towards addition on account of BOP*

equipment's which does not appears to be within the Original scope of work and also not admissible under provisions of Regulation 2015 and therefore denied. It is respectfully prayed to the Commission that may prudently check it and pass appropriate orders and disallow the same.

- (iv) It is submitted that none of the Additional capital expenditure claimed in para 7.1(a) (i) to (ix) of the Petition meet the criteria laid down in Regulation 20.3. Also, no techno-economic analysis/study justifying the need for the said equipment/systems have been furnished. Therefore, the Commission may graciously pleased to reject the said claim of additional capital expenditure.\
- (v) In para 7.1(b), the petitioner has given details Additional Capital Expenditure on account of Civil Work. It is prayed that suitable prudence check may kindly be applied on these expenditures.

45. Vide Commission's letter dated 21st January '2020, the petitioner was asked to file a comprehensive reply on various issues related to additional capitalization with all relevant supporting documents in light of the Regulation 20.3 of the Regulations, 2015. By affidavit dated 20th February' 2020, the petitioner filed response on each issue related to additional capitalization raised by the Commission. The issue-wise reply filled by the petitioner is as given below:

Issue:

- i. **Whether the addition of assets is on account of the reasons mentioned in Regulation 20.3 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulation, 2015. The petitioner is required to furnish the information in following format:**

Details of Additional Capitalization:

Sl. N.	Particulars	Asset Additions (Rs Cr.)	Detailed reasons of Asset Additions	Provision of Regulations under which Add. Cap. Filed	Reference supporting doc. Enclosed

Petitioner's Response:

The Petitioner humbly submits that the net additional capitalization of Rs 7.61 Crores in Generating Station (net of de-capitalization of Rs 0.95 Crores) and Rs. 148.77 Crores during FY 2018-19 in Amelia (North) Coal Mines fall within the norms specified under Regulation 20.3 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015.

Issue:

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

Petitioner's Response:

The Petitioner very humbly submits that any additional capitalization under Regulation 20.3 may not necessarily fall under the ambit of "Original Scope of Work". However, Petitioner humbly submits before the Commission that the said additional capitalization is within the original scope of the work of Rs 12,400/- Crores authorized by the Resolution of Board of Directors dated May 30th, 2015 approving Final Project Cost attached herewith as Annexure-6.

Issue:

- iii. **The reasons for delay in capitalization of all such assets under additional capitalization. The reply should be filed in light of prevailing Financial Accounting Principles.**

Petitioner's Response:

In view of the complexities involved in the execution of such a project, numerous works and sub works and the high value of contracts, finishing works take time and contract closing negotiations and final account / work reconciliation spills over. The main quantum involved in the spill over is on account of negotiations and claims and counter claims on the issue of price variation claims, which was part of the works contract. However, it is again reiterated that the Capitalization of every asset has been done in accordance of Financial Accounting Principles.

Issue:

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

Petitioner's Response:

List of the orders placed to different vendors for additional capitalization claimed in the Petition along with order details & amount of capitalization is attached herewith as Annexure-7. Further this is to inform that during FY 2018-19, no penalties have been recovered from any contractors/ vendors.

Issue:

- v. **Copy of bills/invoices of all such assets under additional capitalization with a statement indicating all such details of work/assets, bill amount, invoice/bill No., date of invoice/bill etc be also filed.**

Petitioner's Response:

All the bills/invoices for the amounts capitalized during FY 2018-19 are attached in Annexure to Reply to Para 5 (i) above:-

Issue:

- vi. **Whether the petitioner has taken due care in writing off the assets from the original cost in case of any expenditure on replacement of old asset.**

Petitioner's Response:

The Petitioner hereby confirms that all due care has been taken to reduce the amount of decapitalization from the original cost. This fact can be confirmed from the TPS-5B, TPS-11 & TPS-12, wherein it can be seen that the amount of decapitalization during FY 2018-19 have been taken into account while preparing all details.

46. The Commission has observed the following from the petitioner's aforesaid response on additional capitalization claimed in the subject petition in light of the provisions under Regulation 20.3 of MPERC Tariff Regulations, 2015:
- i. The petitioner submitted that the assets claimed under additional capitalization during FY 2018-19 are within the norms specified under Regulation 20.3 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015.
 - ii. The petitioner filed the details of assets/works under additional capitalization in the format prescribed by the Commission. In the aforesaid statement, the petitioner filed the details of all payments made to different vendors/suppliers. The petitioner also submitted the detailed reasons for asset additions and confirmed that all the asset additions are as per provisions under Regulations, 2015. The petitioner filed the documents like copy of bills raised by the contractors in support of the payment made towards assets/works under additional capitalization in this regard.
 - iii. The petitioner filed a list of order placed on different vendors for the assets/works under additional capitalization indicating name of assets, name of the supplier/contractor, order reference number, date of the order issued and amount capitalized during FY 2018-19.

- iv. The petitioner submitted that the assets addition claimed during FY 2018-19 is as per Annual Audited Accounts and the same has been recorded in the Asset-cum-depreciation register of thermal power station. The petitioner has also filed statement for reconciliation of assets under additional capitalization with the asset-cum-depreciation register and Annual Audited Accounts of FY 2018-19 for the thermal power station in subject matter.
47. The Commission has examined the additional capitalization claimed by the petitioner in the subject petition in light of the Annual Audited Accounts, Asset-cum-Depreciation Register for the project, original scope of work of the project, project cost approved by BoD of the petitioner's company, cut-off date of the project and provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015. The Commission has also considered the response filed by Respondent No. 1 and other details and documents submitted by the petitioner.

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

48. With regard to the additional capitalization claimed during FY 2018-19, the petitioner submitted that these assets have been capitalised in Annual Audited Accounts for FY 2018-19. Vide Commission's letter dated 21st January '2020, the petitioner was asked to file the detailed break-up of asset additions claimed in the petition and reconcile the same with the figures recorded in the Annual Audited Accounts and Asset-cum-depreciation register for FY 2018-19.
49. By affidavit dated 20th February '2020, the petitioner submitted the following:

"The detailed break-up of the asset additions claimed in the petition is attached as Annexure-4.

Reconciliation between Asset Addition claimed during FY 2018-19 claimed in the Petition and Figures recorded in the Annual Audited Accounts vis-à-vis Asset-cum-Depreciation Register is furnished as under:-

Asset Addition during FY 2018-19 as per Annual Audited Accounts vis-à-vis Asset-cum-Depreciation Register

Sl. No.	Particulars	Amount	Remarks
1	Asset addition during FY 2018-19 as per Note-2 of Annual Audited Accounts as on 31-03-2019 in Generating Station	8,55,76,862	PI refer Appendix-1 to TPS Form (Page-S-54 of Separate Paperback) &
2	Less:- Asset deletion during FY 2018-19 as per Note-2 of Annual Audited Accounts as on 31-03-2019 in Generating Station	95,09,698	

A	Net Asset addition during FY 2018-19 as per Note-2 of Annual Audited Accounts as on 31-03-2019 in Generating Station	7,60,67,164	<i>Note-2 of Annual Audited Accounts</i>
B	<i>As per Detailed Break up of Net Asset Addition in Generating Station claimed in the Petition</i>	7,60,67,164	<i>Annexure-4 of this Reply</i>

It is further submitted that above details do not include details relating Asset Addition made in Amelia Coal Mines during FY 2018-19”.

50. In view of the above, it is observed that the additional capitalization claimed by the petitioner has been capitalized in Note-2 of the Annual Audited Accounts for FY 2018-19. It is further observed that the additional capitalization has recorded in Asset-cum-depreciation register of Nigrie thermal power station filed by the petitioner with the subject petition.

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

51. The petitioner submitted that the additional capitalization of Rs. 8.56 Crore is within the original scope of work of Rs. 12,400 Crore of the project as per the Resolution of Board of Directors dated 30th May’ 2015, approving final project cost. Component-wise break-up of aforesaid original capital cost filed by the petitioner in petition No. 72 of 2015 for determination of final tariff are as given below:

Table 8: Original Scope of Work of the project (Rs. in Crore)

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

52. On perusal of the original scope of work approved by the BoD vis-à-vis expenditure actually incurred by the petitioner under additional capitalization, it is observed that the cost of BOP (excluding transmission line) as per revised capital cost approval by the BOD dated 30th May' 2015 is Rs. 1259.00 Crore whereas, the cost of BOP as on 31st March' 2018 approved by the Commission in last true-up order dated 22nd October' 2019 was Rs.1244.07 Crore. Therefore, the additional capitalization of Rs. 2.03 Crore claimed towards BOP during FY 2018-19 is under the original scope of works as approved by the Board of the petitioner's company on 30th May' 2015.
53. With regard to additional capitalization claimed towards civil works, it is observed that the cost of civil and Structural Works as per revised BoD approval is Rs. 1280 Crore whereas, the capital cost towards civil and structural works as on 31st March' 2018 approved by the Commission in last true-up order dated 22nd October' 2019 was Rs 1275.23 Cr. In view of the above, it is observed that out of Rs. 6.53 Crore towards civil works claimed by the petitioner in the subject petition, the cost of Rs. 4.77 Crore is under the original scope of works as approved by the Board of the petitioner's company on 30th May' 2015.

C. Cut-off date of the project:

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

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

55. The Nigrie thermal Power Project in the subject matter achieved CoD on 21st February' 2015, therefore, the cut of date of the project is 31st March 2018 in accordance with the above provision under Regulations 2015. Accordingly, the additional capitalization filed in the subject petition is beyond the cut-off date of the project. Therefore, the additional capitalization claimed by the petitioner are to be examined in light of the Regulation 20.3 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015.

D. Examination of assets addition in light of the provisions under Regulations

56. The petitioner filed additional capitalization during FY 2018-19 under two major heads i.e. Balance of Plant and Civil Works. The additional capitalization under each of the aforesaid heads has been examined separately under Regulation

20.3 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 as given below:

Balance of Plant (BOP):

- (i) The petitioner has claimed additional capitalization of Rs. 2.03 Crore towards Balance of Plant. The details of the assets added and capitalized under BoP as filed by the petitioner are given below:

Table 9: Break-up of assets under BOP (Rs. in Crore)

S. No.	Particulars	Amount
1.	Ferrocure Vacuum	0.09
2.	Air dryer	0.05
3.	Excavators	0.58
4.	Dozers for CHP	0.09
5.	General Material Handling/Tipper Vehicles	0.53
6.	Civil Construction Works	0.19
7.	Horticulture equipments	0.03
8.	Central Workshop & electrical department	0.005
9.	Toyota Fortuner	0.32
10.	Metal Detector	0.0053
11.	Other Equipments	0.13
Total BOP		2.03

- (ii) On perusal of the additional submissions of petitioner dated 20th February' 2020 and 25th September' 2020 and provisions under aforesaid Regulation, it is observed that out of total asset additions of Rs. 2.03 Crore, the assets of Rs. 0.05 Crore incurred towards procurement of Air Dryer in order to increase efficiency of operations. The Air Dryer has been installed for removing moisture in the instrument air and to resolve the issues pertaining to frequent pressurization of fly ash silo and bursting of bag filters and release of fly ash in atmosphere.
- (iii) Hence, the procurement of Air Dryer for the purpose of Fly Ash Handling purpose is covered under Regulation 20.3 (d) of Regulations, 2015 i.e. deferred works relating to ash pond or ash handling system in the original scope of work. Accordingly, **the Commission has considered additional capitalization towards procurement of Air Dryer of Rs 0.05 Crore in this order.**
- (iv) With regard to additional capitalization of Rs 0.53 Crore towards tipper vehicles, the petitioner submitted that such expenditure has been incurred for enhancing efficiency in ash handling system. The said equipment were required to be procured / purchased for material handling and transportation of wet fly ash from ash pond to the area where it is required to be disposed.

- (v) Therefore, the additional capitalization of Rs 0.53 Crores towards procurement of tipper vehicles for enhancing efficiency in ash handling system is also covered under provision 20.3 (d) of MPERC Regulations, 2015 i.e. deferred works relating to ash pond or ash handling system in the original scope of work. Accordingly, the Commission has considered the additional capitalization **towards procurement of tipper vehicles for ash handling system of Rs. 0.53 Crore in this order.**
- (vi) Further, the additional capitalization on account of procuring excavators, the petitioner by affidavit dated 25th September' 2020 submitted that *"The Excavators are used for excavation of wet fly ash from fly ash pond. It is important to note that due to limited capacity of the fly ash pond, wet fly ash is required to be excavated every year with the help of Excavators, and the same is then transported with the help of hydras / tippers to the dumping area. Further, in compliance of the MoEF & CC guidelines, the Excavators, tippers and dozers are used for top soil covering. On this account it is respectfully submitted that the said expenditure is required to be incurred for improving ash handling at the Project site"*
- (vii) In view of the above, the additional capitalization of Rs. 0.58 Crore claimed on account of procurement of 4 nos of KOMATSU make excavators for wet fly ash excavation is covered under provision 20.3 (d) of MPERC Regulations 2015 i.e. deferred works relating to ash pond or ash handling system in the original scope of work. Accordingly, out of additional capitalization of Rs. 2.03 Crore towards BoP works claimed by the petitioner, the Commission has considered the additional capitalization **of Rs. 0.58 Crore towards procurement of 4 nos of KOMATSU make excavators for wet fly ash excavation handling in this order.**
- (viii) The petitioner has also claimed Rs.0.87 Crore on account of minor assets/items. Proviso of Regulations 20.3 (i) of the Regulations, 2015 stated that *"any expenditure on acquiring the minor items or the assets including tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, computers, fans, washing machines, heat convectors, mattresses, carpets etc. brought after the cut-off date shall not be considered for additional capitalization for determination of tariff w.e.f. 1.4.2016."*
- (ix) In view of the above, there is no provision under Tariff Regulations, 2015 for allowing additional capital expenditure of existing power station on works other than those mentioned in the Regulation 20.3 of MPERC Tariff Regulations, 2015. Thus, the balance expenditure of Rs. 0.87 Crore is

beyond the scope of the Regulations, 2015, therefore, not considered in this Order.

Civil Works:

- (i) The petitioner has claimed additional capitalization of Rs. 6.53 Crore towards Civil Works. The petitioner informed that the aforesaid civil works have been completed during FY 2018-19 and the payment for the same was made during FY 2018-19. The petitioner confirmed that these works are covered under original scope of work/project. The petitioner filed copies of bills towards all the payments actually made by the petitioner for the assets/works under additional capitalization during FY 2018-19.
- (ii) The petitioner mentioned that the addition of assets of Rs. 6.53 Crore were made in respect of construction of Fly Ash Complex of Rs. 0.86 Crore and construction of F&G type quarters of Rs. 5.67 Crore to cater the need of the staff.
- (iii) The petitioner submitted that the additional capitalization of Rs 0.86 Crore towards construction of fly ash complex has been incurred for the construction and development of fly ash complex i.e. towards the construction of roads, parking facility for ash transportation vehicles, rest room for drivers and control room for housing fly ash weigh bridge computers. It is also stated by the petitioner that such expenditure was necessary to be incurred for better utilization of fly ash, fast turnaround of ash transportation vehicles and to ensure proper control on movement of vehicles or to avoid accidents. By construction of such complex, pollution due to fly ash also could be mitigated to a great extent. It has further submitted that such work was also necessary to avoid haphazard parking of fly ash vehicles.
- (iv) On perusal of the above submission of petitioner, it is observed that the capitalization of Rs 0.86 Crore towards construction of fly ash complex is covered under Regulation 20.3 (d) of Regulations, 2015 i.e. deferred works relating to ash pond or ash handling system in the original scope of work. Accordingly, out of 6.53 Crore of additional capitalization claimed by the petitioner towards civil works, the Commission has considered **additional capitalization of Rs 0.86 Crore towards construction of fly ash complex in this order.**
- (v) Further, additional capitalization of Rs 5.67 Crore on account of construction of F&G Type quarters for staff capitalized after cut-off date is not covered under the Regulation 20.3 and it is beyond the scope of the Regulations,

2015, hence, not considered in this Order.

57. In view of the above, the Commission has considered the following additional capitalization in the petitioner's Nigrie thermal power station for FY 2018-19 in this order:

Table 10: Additional Capitalization approved in this order

Additional capitalization claimed vs considered during FY 2018-19:			
		Claimed in the petition	Considered in this Order
1.	BOP	Rs. 2.03 Crore	Rs. 1.16 Crore
2.	Civil Works	Rs 6.53 Crore	Rs. 0.86 Crore
Total			Rs. 2.02 Crore

Submission of Respondent No. 1 on Amelia Coal Mine:

58. By affidavit dated, the Respondent No. 1 (MPPMCL) submitted the following on additional capitalization in Amelia Coal Mine:
- In the present petition, out of total claim of Additional capital Expenditure of Rs 156.37 Crore, an amount of Rs 148.77 Crore has been claimed by the petitioner towards expenditure on Amelia Coal Mine and cost of Ownership of Amelia Coal Mine during FY 2018-19, which is not admissible under any provision of 2015 Tariff Regulations, 2015.*
 - All the previous claims of Capital expenditure towards Amelia Coal Mines have already been rejected by this Commission in previous petitions. Despite repeated rejection of the said claim by this Commission and no stay/relief having been granted by Hon'ble APTEL in various appeals filed by the petitioner against ordered rejecting the claim, the petitioner has again claimed an amount of Rs 148.77 Crore towards expenditure on Amelia Coal Mine and cost of ownership of Amelia Coal Mine during FT 2018-19 in the present petition. Therefore, it is prayed that the claim of Additional Capital Cost towards expenditure on Amelia Coal Mine may kindly be rejected.*

Commission's Analysis:

59. In Para 7.3 of the subject petition, the petitioner has claimed asset addition on account of tangible assets of Rs. 3.17 Crore in Amelia Coal Mine. The petitioner also filed addition on account of ownership of mining rights of Rs. 145.60 Crore towards payment of additional premium @ Rs. 612 per tonne of Coal on 23,79,042 MT of coal received during FY 2018-19.
60. With regard to claim of the petitioner towards additional capitalisation on account of Tangible and Intangible assets of Amelia Mine as also the "Additional Premium" @ Rs. 612/- per ton for coal received from Amelia Mine for generation of power under PPA, the petitioner has submitted that the Additional Premium

being in the nature of an expenditure towards acquiring or bringing into existence an asset of an enduring benefit (coal mine) for the generation business, it is to be allowed for the computation of fixed charge. The petitioner has further submitted that the fixed amount paid for procurement of assets such as land and mine infrastructure along-with cost of obtaining statutory permits/approvals is in nature of capital expenditure being incurred on procurement of assets necessary for providing coal to the power plant, ought to be allowed as part of the project cost of the power plant and should be considered for computation of fixed cost.

61. With regard to the above claim of the petitioner, the Commission has observed that the claim of petitioner for additional capitalisation towards the assets of Amelia Coal Mine and also the “Additional Premium” is not in accordance with the provisions under Regulations 2015. The Commission has never allowed the additional capitalization in Amelia Coal Mine in all the MYT/True-up orders till date. The petitioner has filed a number of Appeals before the Hon’ble Appellate Tribunal for Electricity on this issue and the issues in aforesaid claim are *sub-judice* before the Hon’ble Appellate Tribunal for Electricity in the following Appeals filed by the petitioner;
- (i) Appeal No. 95 of 2016 against the order dated 20th January’ 2016 passed by the respondent state Commission in SMP 49 of 2015 regarding “review and determination of energy charges”.
 - (ii) Appeal No.244 of 2017 against Commission’s Order dated 24.05.2017 for determination of final generation tariff for 2X660 MW Unit No. 1&2 of Petitioner’s power plant in the subject petition.
 - (iii) Appeal No.293 of 2018 against Commission’s Order dated 20.07.2018 for determination of true-up of generation tariff for FY 2015-16 for petitioner’s power plant in the subject petition.
 - (iv) Appeal No.96 of 2019 against Commission’s Order dated 29.11.2018 for determination of Multi-year generation tariff for FY 2016-17 to FY 2018-19 for petitioner’s power plant in the subject petition.
 - (v) Appeal No. 341 of 2019 against Commission’s order dated 25.07.2019 for true-up of generation tariff for FY 2016-17 in petition No. 05 of 2019.
 - (vi) Appeal No. 49 of 2020 against Commission’s order dated 22.10.2019 for true-up of generation tariff for FY 2017-18 in petition No. 07 of 2019.
62. In view of the above, the claim towards additional capitalisation on account of assets of Amelia Mine and the “Additional Premium” is not considered by the

Commission in this order also.

Write-off/ Adjustment of Assets:

63. The petitioner submitted that the assets of Rs. 0.95 Crore were de-capitalized in the Generating Station for which suitable downward adjustments have been taken into account while computing the capital cost for FY 2018-19. The petitioner further submitted that though it has de-capitalized assets of Rs. 0.07 Crores in Amelia coal mines during FY 2018-19, but for the purpose of this petition, the de-capitalized amount of Amelia Coal Mine are not deleted since all said deleted Amelia Mines assets pertain to Amelia assets acquired during FY 2015-16 which was not considered by the Commission in the order dated 20.07.2018 in Petition No.41/2017.
64. The petitioner submitted that many old items such as air coolers, fans, telephone instruments, tables, chairs, wooden bed, storage boxes and other miscellaneous items worth Rs 0.88 Crore were discarded & scrapped during FY 2018-19 and duly removed from Asset-cum-Depreciation Register as on 31st March' 2019.
65. The petitioner further submitted that a scorpio of Rs 0.08 Crores was sold during FY 2018-19 and has been duly removed from asset-cum-depreciation register.
66. On scrutiny of the details regarding write-off/ de-capitalization filed by the petitioner, it is observed that the assets of Rs. 0.95 Crore have been adjusted/de-capitalized in the Annual Audited Accounts and recorded in Asset-cum-Depreciation register of Nigrie Thermal Power Station. Therefore, the Commission has considered de-capitalization of Rs. 0.95 Crore during FY 2018-19 in this order. With regard to the funding of write-off/ de-capitalization of assets, the Commission has considered the same Debt : Equity ratio as considered in the final tariff order dated 24.05.2017 in petition No. 72 of 2015. Therefore, the equity and loan component of de-capitalized assets are reduced accordingly.
67. In view of the above, the details of additional capitalization and de-capitalization considered during FY 2018-19 in this order are as given below:

Table 11: Addition and Deletion admitted in the Order (Rs. in Crore)

S. No.	Particular	Addition	Deletion	Net Addition
1.	BOP	1.16	0.95	0.21
2.	Civil	0.86	-	0.86
	Total	2.02	0.95	1.07

68. Considering the above, the opening Gross Fixed Assets, adjustment of assets, addition during the year and closing Gross Fixed Assets considered in this order

are as given below:

Table 12: Gross Fixed Assets admitted during FY 2018-19 (Rs in Crore)

Opening GFA as on 01.04.2018	Adjustment/deletion of assets	Addition during FY 2018-19	Closing GFA as on 31.03.2019
10,771.13	0.95	2.02	10,772.20

69. Component wise break-up of capital cost as on 31st March' 2019 admitted by the Commission in this order are as given below:

Table 13: Capital Cost Considered in the order (Rs in Crore)

S. No.	Particular	Opening Balance as on 01.04.2018	Add. Cap. considered during the year	De-cap. considered during the year	Closing Balance as on 31.03.2019
1.	Land	37.00	-		37.00
2.	BTG	5017.92	-		5017.92
3	BOP	1603.86	1.16	0.95	1604.07
4	Civil	1522.72	0.86		1523.58
5	Hard Cost (1)	8181.52			8182.57
6	Soft Cost(2)	2589.62			2589.62
	Total Capital Cost (1+2)	10771.13	2.02	0.95	10772.20

Debt – Equity Ratio:

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

Provision in Regulation:

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

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

Provided that:

- where equity actually deployed is less than 30% of the capital cost, actual equity shall be considered for determination of tariff:*
- the equity invested in foreign currency shall be designated in Indian rupees on the date of each investment:*

- c. any grant obtained for the execution of the project shall not be considered as a part of capital structure for the purpose of debt : equity ratio.

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

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

Commission's Analysis

72. The petitioner filed the funding of additional capitalization during the year through equity/ internal sources. Vide letter dated 21st February' 2020, the petitioner was asked to inform the actual loan and equity components drawn/infused during FY 2018-19 towards additional capitalization claimed in the subject petition. The petitioner was also asked to file a copy of BoD approval for equity infused in additional capitalization and details of actual loan drawl.
73. By affidavit dated 20th February' 2020, the petitioner submitted that during FY 2018-19, no fresh loan was drawn for funding net additional capitalization of Rs. 7.61 Crore claimed in the generating station. Also, to fund the additional capitalization of Rs. 148.77 Crore in Amelia Coal Mine, no fresh loans were taken. Regarding the BoD approval for the equity incurred in additional

capitalization, the petitioner submitted that the total capital cost incurred up to 31st March' 2019 fall well below the estimated cost of Rs. 12400 Crore as approved by Resolution of Board of Directors dated 30th May' 2015 therefore, no fresh approval was required.

74. Regulation 25.1 provides that “where equity actually employed is in excess of 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance amount shall be considered as loan”. The Commission has considered the debt:equity of 70:30 for additional capitalization admitted in this order and excess equity i.e. over and above 30% of the additional capitalization is considered as normative loans. The Regulation further provides that in case of the generating station declared under commercial operation prior to 1.4.2016, debt- equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2016 shall be considered.
75. In view of the above, the Commission has considered closing figures of GFA, Equity and Loan as considered in last true-up order dated 22nd October' 2019 for FY 2017-18, as opening balance in this order. Further, the impact of write off/deletion of the assets of Rs. 0.95 Crore is also considered with corresponding reduction of Debt and Equity in the ratio of 77.82% and 22.18% respectively as admitted in Commission's order dated 24th May' 2017 to work out the adjusted opening balances.
76. The details of the additional capitalization and corresponding funding considered in this order for FY 2018-19 are as given below:

Table 14: Gross Fixed Assets and Funding admitted (Rs. in Crore)

Sr. No.	Particulars	Asset	Loan	Equity
1.	Closing balance as on 31 st March' 2018 (as per last true-up order)	10771.13	6572.98	2406.02
2.	Write-off/ Adjustment	-0.95	-0.74	-0.21
3.	Addition during FY 2018-19	2.02	1.41	0.61
4.	Closing balance as on 31 st March' 2019	10,772.20	*6573.65	2,406.42

***Before repayment (for current year)**

Annual Capacity (fixed) Charges:

77. The tariff for supply of electricity from a thermal generating station comprise of two parts, namely, capacity charge (for recovery of annual fixed cost consisting of the components as specified in Regulation 27 of Regulations, 2015) and energy charge (for recovery of primary and secondary fuel cost). The Annual Capacity (fixed) Charges consist of:

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

a. Return on Equity:

Petitioner's Submission:

78. The petitioner claimed the Return on Equity as given below:

Table 15: Return on Equity claimed by the Petitioner

Sr. No.	Particular	Unit	FY 2018-19
1	Opening Equity Normative	Rs Crore	2406.02
2	Equity reduced in respect of de-capitalized assets	Rs Crore	0.21
3	Equity Additions in power plant during the year	Rs Crore	2.57
4	Equity Additions in Coal Mine during the year	Rs Crore	44.63
5	Closing Equity Normative	Rs Crore	2453.01
6	Average Equity Normative	Rs Crore	2429.52
7	Base Rate of Return On Equity	%	15.50%
8	Tax rate considered MAT	%	00.00%
9	Rate of Return on Equity	%	15.50%
10	Return on Equity	Rs Crore	376.58

79. While claiming the Return on Equity, the petitioner considered the base rate of 15.50% for Return on Equity

Provision in Regulations:

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

“Return on Equity:

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

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

Provided that:

- (a) in case of projects Commissioned on or after 1st April, 2016, an additional return of 0.5 % shall be allowed, if such projects are completed within the timeline specified in Appendix-I:*
- (b) the additional return of 0.5% shall not be admissible if the project is not completed within the timeline specified above for reasons whatsoever:*
- (c) the rate of return of a new project shall be reduced by 1% for such period as may be decided by the Commission, if the generating station is found to*

be declared under commercial operation without Commissioning of any of the Restricted Governor Mode Operation (RGM)/ Free Governor Mode Operation (FGMO):

- (d) as and when any of the above requirements are found lacking in a generating station based on the report submitted by the respective SLDC/RLDC, ROE shall be reduced by 1% for the period for which the deficiency continues:

31. Tax on Return on Equity:

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

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

For example:- In case of the generating company paying

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

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

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

Commission's Analysis:

81. For the purpose of determining the Return on Equity, the Commission has considered the closing equity as on 31st March' 2018 in Commission's last true-up Order dated 22nd October' 2019 for FY 2017-18 in Petition No 07 of 2019, as the opening equity as on 1st April' 2018 in this order. Further, the normative equity addition of Rs. 0.61 Crore towards additional capitalization during FY 2018-19 is also considered as mentioned in table 14 of para 76 of this order. The reduction of equity of Rs. 0.21 Crore in respect of the assets de-capitalized during FY 2018-19 is also considered as per para 76 of this order. Accordingly, the closing equity of Rs. 2406.42 Crore as on 31st March' 2019 is worked out and considered in this order.
82. In form TPS 1(II) of the petition the petitioner claimed Return on Equity by applying base rate of return @15.50% without grossing up the base rate of return with tax. Accordingly, the Return on Equity for FY 2018-19 is worked out in this order as given below:

Table 16: Return on Equity for FY 2018-19 considered in this Order

Sr. No.	Particular	Unit	FY 2018-19
1	Opening Equity	Rs. Crore	2406.02
2	Equity reduction towards decapitalized assets	Rs. Crore	-0.21
3	Normative Equity addition during the year	Rs. Crore	0.61
4	Closing Equity	Rs. Crore	2406.42
5	Average Equity	Rs. Crore	2406.22
6	Base rate of Return on Equity	%	15.50%
7	Tax rate considered	%	0.00
8	Applicable rate of Return on Equity	%	15.50%
9	Return on Equity	Rs. Crore	372.96

b. Interest and finance charges on loan:

Petitioner's Submission:

83. The petitioner in form TPS 13 A of the petition submitted the following break-up of opening loan balances, net addition, repayment during the year, closing balance of loan, weighted average rate of Interest and Interest on loan:

Table 17: Interest on Loan Claimed for FY 2018-19

Particulars	Unit	FY 2018-19
Gross Normative Loan – Opening	Rs. Crore	8365.10
Cumulative Repayment of Normative Loan upto Previous Year	Rs. Crore	1792.12
Net Normative Loan-Opening	Rs. Crore	6572.98
Loan Additions during the year (including Amelia Coal Mine)	Rs. Crore	110.13
Decrease due to Decapitalization	Rs. Crore	0.74
Repayment During the year (Equal to Depreciation)	Rs. Crore	552.72
Closing Loan	Rs. Crore	6129.65
Average Loan-Normative	Rs. Crore	6351.31
Weighted average Rate of Interest on actual Loans	%	11.78%
Interest on Normative loan	Rs. Crore	747.92

Provision in Regulations:

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

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

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

32.3 The repayment for each of the year of the tariff period 2016-19 shall be deemed to be equal to the depreciation allowed for the corresponding year/period. In case of de- capitalization of assets, the repayment shall be adjusted by taking into account cumulative repayment on a pro rata basis and the adjustment should not exceed cumulative depreciation recovered upto the date of de-capitalisation of such asset.

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

32.5 The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio after providing

appropriate accounting adjustment for interest capitalized:

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

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

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

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

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

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

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

Commission's Analysis:

85. For opening loan balance as on 01.04.2018 on loan, the closing loan balance as on 31st March' 2018 admitted in last true-up order dated 22nd October' 2019 for FY 2017-18, is considered in this order. Further, the loan addition of Rs. 1.41 Crore in respect of additional capitalization during FY 2018-19 is considered as per table 14 of para 76 in this order. The reduction of loan amount of Rs. 0.74 Crore in respect of the assets de-capitalized during the year is also considered as mentioned in table 14 in para 76 of this order.
86. On perusal of the details filed in form TPS 13 regarding weighted average rate of interest on actual loan, vide letter dated 21st January' 2020, the petitioner was asked to inform the following:
- i. ECB loan was originally sanctioned at interest rate @4% whereas the

- petitioner in the subject petition has claimed the rate of interest on ECB during FY 2018-19 @12.20% which is much higher than the rate of interest claimed in previous years. The petitioner was asked to file detailed explanation for above higher rate of interest claimed during FY 2018-19.
- ii. The petitioner was also asked to file the financial benefits and savings to consumers by refurnishing the ECB loan if any, from the loan of higher rate of interest from 4% to 12.21%.
 - iii. The petitioner was asked to file a certificate of all bankers indicating the interest amount paid and applicable rate of interest during FY 2018-19 excluding penal interest and interest on loan amount if any.
 - iv. The petitioner was asked to explain the reasons for increasing the weighted average rate of interest on loan year by year. The petitioner is required to submit loan documents of ICICI Bank, Central Bank of India and Indian Overseas bank.
 - v. The petitioner was asked to confirm that while computing the weighted average interest on loan, interest on interest amount or any penalty amount is not a part of interest on loan amount
87. By affidavit dated 20th February' 2020, the petitioner filed the details as below:
- JPVL has implemented 300 MW Baspa II HEP, 400 MW Vishnuprayag HEP, 1000 MW Karcham Wangtoo HEP, 500 MW BINA TPP and 1320 MW NIGRIE STPP. Nigrie STPP was set up based on the dedicated coal mines namely from Amelia (N) & Dongrital - II coal mines. The operation of the company had been satisfactory till FY 2014-15. However, the operation of the company had been unsatisfactory for FY 2015-16 onwards and had not been able to pay the dues to its lenders in respect of Interest and Principal. The unsatisfactory operations of the Company primarily have been on account of Nigrie STPP:*
- The Company had set up a supercritical thermal power plant with two units of 660 MW each. The first unit commenced operations in September 2014 and the second unit commenced operations in February 2015. These units procured coal and were fuelled from the Amelia (N) and the Dongri Tal (II) coal mines.*
- However, in September 2014, the Hon'ble Supreme Court of India cancelled the allocation of nearly all of the coal blocks allotted during the period between 1993 and 2011, which included the Amelia (N) and the Dongri Tal (II) coal blocks. It would be pertinent to mention that when the Hon'ble Supreme Court took this decision an investment of over Rs.9500 Crs had already been made in JNSTPP, Unit-1 of the Plant was already in operation and Amelia (N) coal block was already in operation supplying coal to Nigrie STPP.*

To keep Nigrie STPP operational, the Company bid for and secured the Amelia (N) coal block against stiff competition at a negative bid of INR 612/- per metric tonne in addition to Fixed Rate of INR 100/- per metric tonne.

Despite competing and having won the Amelia (N) coal block, the viability of Nigrie STPP remained challenging due to:

- (i) No clarity on second coal block/ linkages for supplying coal to JNSTTP, which is required to operate JNSTTP at full capacity;*
- (ii) Long-term PPAs: Nigrie STPP had entered into a long term power purchase agreement (“PPA”) with the Madhya Pradesh Power Management Company Limited (“MPPMCL”) / Government of Madhya Pradesh (“GoMP”) for 37.5 per cent. of the installed capacity including for 7.5 per cent of the power generated at variable tariff;
Since new bids inviting power suppliers to enter into long term PPAs had not been forthcoming in the recent past, the Company has not been able to secure any new long term PPAs with third parties, which could enable Nigrie STPP to utilize the power it produces in excess of what is being supplied to MPPMCL, in order to improve its sustainability;*
- (iii) Under-recovery of variable fuel costs: As mentioned above, the Company bid for and secured the Amelia (N) coal block against stiff competition at a negative bid of INR 712 per metric tonne. Due to the negative bid and certain other bid conditions which were imposed at the time of securing the Amelia (N) coal block, the Company, while continuing to be operating, is being unable to fully recover the cost of coal for Nigrie STPP from the sale of power generated under the PPA with MPPMCL / GoMP; and*
- (iv) Low merchant /un-remunerative power tariff.*

JPVL divested two of its Hydro Project namely Baspa II- 400MW HEP and Karcham Wangtoo HEP-1000MW in 2015. The proceeds were utilised mainly to pay dues of the lenders. However, the operation could not improve mainly due to unsatisfactory operations of Nigrie STPP.

The above situation required re-structuring of debt of JPVL for which JPVL was working with the Lenders for long. Lenders initiated Resolution Plan/Debt Restructuring from July, 2016.

In April 2019, a resolution plan was accepted by the Lenders inter alia including conversion of part debt into CCPS payment of interest @ 9.5% p.a till the operations of JPVL are stabilized and also restating the repayment schedule of outstanding loan inter alia subject to Lenders having right to recompense for

the sacrifice made by them in accordance with the RBI guidelines. The said resolution plan on completion of all CP's have become effective from December, 2019.

The relevant clause of Framework Agreement dtd. 18.04.2019 for Lender's right to recompense is as under:

"11. RIGHT TO RECOMPENSE

11.1 *The Borrower acknowledges and admits that the Lenders have made sacrifices in granting reliefs and concessions to the Borrower by, inter alia, reducing the rate of interest, waiver of default and/or penal interest, and agreeing to convert all or part of the Convertible Debt into CCPS.*

11.2 *The Borrower further acknowledges and agrees that if in the opinion of the Lenders, the profitability and cash flows of the Borrower improves, the Lenders shall have the right to receive recompense for the sacrifices made by them in accordance with the IRAC Norms.*

Provided that the maximum amount of recompense should be limited to the sum of waivers provided by the Lenders and the present value of future economic loss on account of reduction in interest rate.

11.3 *Any determination by the Lenders in this relation shall be binding on the Borrower. "*

Lowering of Interest @ 9.5% p.a. was necessary to ensure the lenders did not have to convert a higher amount into Equity/CCPS. Therefore, to ensure servicing of the debt with the assumption that since this lowering of interest is not resultant of credit up gradation of the Company, JPVL will continue to realize tariff based at documented rate of interest and pay only @ 9.5%p.a. for the time being, subsequently Lenders under the recompense clause will recover the amount foregone by them at this stage.

In view of above the rate of interest for computation of tariff will be on the basis of last available weighted average rate of interest i.e. rate of interest applicable at the time of MYT/ Last True Up Petition for FY 2017-18.

88. In view of the above details and documents filed by the petitioner, it is observed that the petitioner has now revised the weighted average rate of interest from 11.78% to 11.46% for FY 2018-19 based on the last true up petition for FY 2017-18 due to the Resolution Plan/Debt Restructuring Plan which got effective from December' 2019. Therefore, the Commission has considered the weighted average rate of interest as 11.46% for FY 2018-19 in this order based on the petitioner's revised submission. The repayment equivalent to depreciation during

the year is considered as per the provision under the Regulations, 2015

89. In view of the above, the interest on loan is worked out in this order as under:
- Gross normative opening loan of Rs. 6572.98 Crore is considered as per true-up Order dated 22nd October' 2019 for FY 2017-18.
 - Deduction/ Adjustment of opening normative loan of Rs. 0.74 Crore (77.82% of written off approved above) is considered.
 - Addition of normative loan amount of Rs. 1.41 Crore (70% of additional capital expenditure approved above) is considered.
 - Annual repayment of loan equal to annual depreciation is considered as per Regulations, 2015.
 - Revised Weighted average rate of interest @ 11.46% based on the additional submission by the petitioner is considered.
90. Based on the above, the interest on loan is worked out as given below:

Table 18: Interest on Loan admitted

Sr. No.	Particular	Unit	FY 2018-19
1	Opening Loan	Rs. Crore	6572.98
2	Loan Adjustment	Rs. Crore	0.74
3	Loan addition during the year	Rs. Crore	1.41
4	Repayment during the year considered	Rs. Crore	546.71
5	Closing Loan	Rs. Crore	6026.95
6	Average Loan	Rs. Crore	6299.97
7	Weighted average rate of interest	%	11.46%
8	Interest amount	Rs. Crore	721.98

c. Depreciation:

Petitioner's Submission

91. The petitioner claimed the depreciation in form TPS 12 of the petition as given below:

Table 19: Depreciation claimed in the Petition

Sr.No.	Particular	Units.	FY 2018-19
1	Opening Gross Fixed Assets	Rs Crore	10771.12
2	Addition during the year in power station	Rs Crore	8.56
3	Addition during the year in Coal Mine	Rs Crore	148.77
4	Deletion / write-off of Asset	Rs Crore	0.95
5	Closing Gross Fixed Assets	Rs Crore	10927.49
6	Average Gross Fixed Assets	Rs Crore	10849.31
7	Weighted Average Rate of Depreciation	%	5.09%
8	Annual Depreciation	Rs Crore	552.72

Provision in Regulations:

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

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

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

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

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

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

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

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

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

33.5 Depreciation shall be calculated annually based on Straight Line Method and at rates specified in Appendix-II to these Regulations for the assets of the generating station:

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

33.6 In case of the existing projects, the balance depreciable value as on 1.4.2016 shall be worked out by deducting the cumulative depreciation as admitted by the Commission upto 31.3.2016 from the gross depreciable value of the assets.

33.7 The rate of Depreciation shall be continued to be charged at the rate specified in Appendix-II till cumulative depreciation reaches 70%. Thereafter the remaining depreciable value shall be spread over the remaining life of the asset such that the maximum depreciation does not exceed 90%.

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

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

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

Commission’s Analysis:

93. For the purpose of opening Gross Fixed Assets as on 01.04.2018, the closing Gross Fixed Assets as on 31st March’ 2018 admitted for FY 2017-18 in last true up order dated 22nd October’ 2019 has been considered in this order. Further, the write off/ deletion of fixed assets of Rs. 0.95 Crore and additional capitalization of Rs. 2.02 Crore during the FY 2018-19 has also been considered in this order to

work out the closing Gross Fixed Assets of Rs. 10,772.20 Crore.

94. The petitioner has filed the Asset-cum-Depreciation register with the petition based on MPERC Tariff Regulations, 2015. It is observed that the weighted average rate of depreciation of 5.075% for power station is worked out in the aforesaid Asset-cum-Depreciation register. Thus, the Commission has worked out the depreciation during FY 2018-19 based on the weighted average rate of depreciation of 5.075% as per the Asset-cum Depreciation register filed by the petitioner.
95. Considering above, the following depreciation is worked out based on average Gross Fixed Assets duly taking into account the opening Gross Fixed Assets, write off, additions during the year, closing Gross Fixed Assets as considered in this order and weighted average rate of depreciation as considered above in this order:

Table 20: Annual Deprecation determined in this order

Sr. No.	Particular	Unit	2018-19
1	Opening Gross Block	Rs. Crore	10771.13
2	Gross Block Adjustment	Rs. Crore	0.95
3	Asset addition during the year	Rs. Crore	2.02
4	Closing Gross Block	Rs. Crore	10772.20
5	Average GFA	Rs. Crore	10771.67
6	Weighted average rate of depreciation	%	5.075
7	Annual Depreciation amount	Rs. Crore	546.71
8	Cumulative depreciation as on 31.03.2019	Rs. Crore	2338.54

e. Operation and Maintenance Expenses:

Petitioner's Submission:

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

Table 21: O&M Expenses claimed for generating Unit (Rs. in Crore)

Phase – 1	Particulars	FY 2018-19
Unit I & II	O & M Expense	242.62

97. The petitioner also claimed the Operation & Maintenance expenses of dedicated Transmission lines & Bay in the petition as given below:

Table 22: O & M expenses of Transmission Line & Bay claimed in the Petition (Rs in Crore)

Sr. No.	Particulars	FY 2018-19
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1	O&M Expenses of 400 kV Double Circuit Transmission Line	161x2=322 ckt km	1.12
2	O&M Expenses of 400 kV Bay	2 Nos of 400kV Bay	0.21
	Total O & M Expenses		1.33

Provision in Regulations:

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

Table 23: Normative O&M Expenses for FY 2018-19

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

Commission's Analysis:

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

Table 24: Operation & Maintenance Expenses admitted (Rs. in Crore)

Phase – 1	Capacity	Normative O & M Expenses	Annual O&M Expenses as per norms
	MW	Rs. Lack/MW	Rs. In Crore
Unit I & II	2 X 660	18.38	242.62

100. Besides above, the petitioner has also claimed Rs.1.33 Crore for O&M expenses in FY 2018-19 for transmission line and bay while the same has been disallowed vide Commission's MYT order dated 29.11.2018 in petition No.07/2017. No separate norms are provided in MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations' 2015 for operation & maintenance expenses on dedicated Transmission lines & Bay as claimed in the subject petition. Further, while determining the tariff the cost of dedicated transmission lines had been considered in the project capital cost of the petitioner's power plant.
101. In view of above, vide Commission's letter dated 21st January' 2020, the petitioner was asked to clarify its contention for claiming such cost which has been disallowed by the Commission and which is sub judice in various Appeals filed by the petitioner before the Hon'ble APTEL. The petitioner was also asked to justify its claim in this regard in light of the MPERC (Terms and Conditions for

Determination of Generation Tariff) Regulation, 2015.

102. By affidavit dated 20th February' 2020, the petitioner submitted the following response on the O&M expenses for dedicated transmission line claimed in the petition as follows:

"It is humbly submitted that each tariff year gives rise to separate cause of action to the Petitioner and each claim is required to be determined in light of the extant regulatory and statutory framework. The issue is sub-judice before the Hon'ble Appellate Tribunal and as such has not attained finality and the Petitioner is bona-fide in claiming the O&M related to the Transmission lines."

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

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

- (i) There were no norms of separate O&M expenses for dedicated transmission lines in MPERC Tariff Regulations 2009 and 2012. The petitioner had never filed any objection/ comments regarding norms or separate O&M norms for dedicated transmission lines. The petitioner had also not challenged the aforesaid Regulations in any Forum.*
- (ii) In the Petitions for determination of provisional generation tariff for its Unit No. 1 and 2, the petitioner had not claimed any separate O&M expenses for the dedicated transmission lines of its project. The tariff for both units was provisionally determined by the Commission strictly in accordance with the O&M norms provided in MPERC Tariff Regulations 2012 wherein no O&M expenses was considered separately for dedicated transmission lines.*
- (iii) The Commission on 21.12.2015 issued the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 for the next control period of FY 2016-17 to FY 2018-19 and the same was notified in official Gazette on 01.01.2016. The norms of O&M expenses for each year of the control period in respect of generating unit/power plant as a whole are provided in aforesaid Regulations and O&M expenses for dedicated transmission line were not provided separately in the said Regulations. It is pertinent to note that the petitioner had neither challenged these MPERC Tariff Regulations, 2015 also before any forum.*

Hence, the provisions for O&M norms under MPERC Tariff Regulations, 2015 have attained finality.

- (iv) *The Commission has already considered the expenditure incurred on the construction of dedicated transmission line/system as part of the capital cost of Petitioner's power plant and allowed corresponding Return on Equity, interest charges and depreciation in the Annual Fixed Charges determined in final tariff Order. The claim of petitioner seeking separate O&M expenses over and above O&M norms provided in Tariff Regulations, 2015 is against the provisions of the Tariff Regulations, 2015. The petitioner has claimed the O&M expenses for dedicated transmission line in terms of MPERC Transmission Tariff Regulations whereas the subject petition is for determination of generation tariff of petitioner's power project in accordance with MPERC Generation Tariff Regulations in the capacity of petitioner as the generating company.*
- (v) *It is further observed that the dedicated transmission line is neither a transmission line in terms of sub-section (72) of Section 2 of the Electricity Act, 2003 nor it is a distribution system connecting the point of a connection to the installation of consumer in terms of sub-section (19) of Section 2 of the Electricity Act, 2003. The O&M expenses of a transmission line are part of the Annual Fixed Cost (AFC) determined by the Commission under section 62 of the Electricity Act, 2003 for a transmission licensee whereas, the subject petition cannot be considered for determination of AFC for the transmission line under section 62 of the Electricity Act, 2003. The cost of dedicated transmission line has thus been considered in the capital cost of the generating station and the tariff of the said generating station has been determined in terms of the Tariff Regulations which do not provide for any O&M expenses of dedicated transmission line separately.*
- (vi) *On perusal of the O&M expenses recorded in Annual Audited Accounts for FY 2016-17, it is observed that the actual O&M expenses of the Petitioner's power plant are less than the O&M expenses allowed in this Order based on O&M norms provided in the Regulations'2015. The petitioner has actually incurred total O&M expenses of Rs 76.82 Crore in FY 2016-17 whereas, the O&M expenses of Rs 214.76 Crore are allowed in this Order as per norms provided in Regulations'2015.*
- (vii) *In view of all aforesaid and consistently following the approach of this Commission on this issue in all earlier Orders, the claim of petitioner seeking separate O&M expenses of dedicated transmission line over and*

above the norms/provisions in MPERC Tariff Regulations, 2015 is not considered by the Commission in this Order.”

- 76 On this issue of disallowance separate O&M expenses for dedicated transmission line/system, the same petitioner has filed several Appeals before the Hon'ble Tribunal for Electricity in respect of its Nigrie and Bina power plant. All Appeals are pending adjudication before the Hon'ble APTEL.
104. The petitioner has challenged the aforesaid MYT order dated 29.11.2018 on several issues mentioned in Para 7 of this order including this issue regarding disallowance of O&M expenses of dedicated transmission line by an Appeal No. 96 of 2019 before Hon'ble Appellate Tribunal for Electricity. The Commission has disallowed this claim of the petitioner in all previous tariff/true-up orders and the petitioner has challenged the orders before Hon'ble Appellate Tribunal for Electricity. Accordingly, this issue regarding disallowance of O&M expenses of dedicated transmission line is *sub-judice* before the Hon'ble Appellate Tribunal for Electricity in various Appeals filed by the petitioner including Appeal No. 96 of 2019. The Commission has filed its reply written submissions before the Hon'ble Appellate Tribunal for Electricity against the contention of petitioner on this issue in all Appeals hence, the same is not repeated in this order.
105. In view of the above background and facts, the claim of petitioner for O&M expenses of dedicated transmission line is not considered in this order.
- g. Interest on Working Capital:**
- Petitioner Submission:**
106. The petitioner has claimed the interest on working capital for FY 2018-19 in form TPS 13B of the petition as given below:

Table 25: Interest on Working Capital Claimed (Rs in Crore)

Sl. No.	Particulars	Basis	FY 18-19
1	Cost of Coal/Lignite	Cost of coal towards stock for 30 days & Cost of coal for 30 days for generation corresponding to the Normative Annual Plant availability factor.	240.36
2	Cost of Main Secondary Fuel Oil	Cost of Secondary Fuel for two months	1.69
5	O & M expenses	One months' of O&M Expenses	20.22
5A	O & M expenses (Transmission Lines & Bay)	One months' of O&M Expenses	0.11
6	Maintenance Spares	20% of Annual Expenses	48.52
6A	Maintenance Spares (Transmission Lines & Bay)	20% of Annual Expenses	0.27
7	Receivables	Two Months' Receivable	559.51
8	Total Working Capital		870.68

9	Rate of Interest		12.20%
10	Interest on Working Capital		106.22

Provision in Regulations:

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

“34.1 The working capital shall cover:

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

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

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

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

Commission's Analysis:

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

- (i) Two months' coal cost for FY 2018-19 is considered the same as considered in MYT order dated 29th November' 2018.
- (ii) Two month's cost of main secondary fuel oil equivalent to normative plant availability factor is considered same as considered in order Commission's dated 29th November' 2018 as given below:

Particulars	FY 2018-19 (Rs. in Crore)
Cost of Coal for Two Months	84.08
Cost of Secondary Fuel Oil for Two Months	1.69

- (iii) Maintenance spares as considered in Commission's order dated 29th November' 2018 as given below is considered:

Particulars	FY 2018-19 (Rs. in Crore)
Maintenance Spares	48.52

- (iv) O&M expenses for one month for the purpose of working capital as considered in order dated 29th November' 2018 is considered as given below:

Particulars	FY 2018-19 (Rs. in Crore)
O & M Expenses for One Month	20.22

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

Particulars	FY 2018-19 (Rs. in Crore)
Variable Charges- 2 Months (As considered in Commission's Order dated 29.11.2018)	87.19
Annual Fixed Charges- 2 Months (Worked Out in this Order)	320.57
Total	407.76

109. Regarding the rate of interest on working capital, Regulation 34.3 of the Regulations, 2015 provided that the rate of interest on working capital shall be considered as the bank rate as on 01.04.2016 or as on 01st April of the year during the tariff period FY 2016-17 to FY 2018-19. Further, the bank rate means the base rate of interest as specified by the State Bank of India from time to time plus 350 basis points.

110. The State Bank of India Base rate applicable/ prevailing as on 1st April 2018 is 8.70% + 3.50% = 12.20%.

111. Considering the above, the interest on working capital for FY 2018-19 is worked out in this true-up order as given below:

Table 26: Interest on Working Capital Allowed

Sr. No.	Particular	Unit	FY 2018-19
1	Cost of coal for two months	Rs Cr.	84.08
2	Cost of fuel oil for two months	Rs. Cr.	1.69
3	O&M Charges for one month	Rs. Cr.	20.22
4	Maintenance Spares 20% of the O&M charges	Rs. Cr.	48.52
5	Receivables for two months	Rs. Cr.	407.76
6	Total working capital	Rs. Cr.	562.27
7	Applicable rate of interest	%	12.20
8	Interest on working capital	Rs. Cr.	68.60

Lease/Hire Purchase Charges

112. In the subject true up petition, the petitioner claimed Rs. 0.44 Crore as yearly lease rent paid for FY 2018-19.

Commission's Analysis:

113. The petitioner claimed Rs. 0.44 Crore against lease rent payable for land during the year. Vide Commission's letter dated 21st January' 2020, the petitioner was asked to file the document in support of the lease rent paid during the year. The petitioner was also asked to reconcile the same with the amount recorded in its Annual Audited Accounts.
114. By affidavit dated 20th February' 2020, the petitioner filed a statement of land lease rent of Rs. 0.44 Crore paid along with supporting documents. The petitioner also submitted the reconciliation of payment towards lease rent claimed in the petition and amount recorded in Annual Audited Accounts.
115. On perusal of the aforesaid statement, it is observed that the petitioner paid an amount of Rs. 44,44,516/- towards lease rent during FY 2018-19. The lease rent amount has also been recorded in Note-30 of the Annual Audited Accounts. The petitioner filed documents in support of all the payments made towards lease rent.
116. In view of the above, the Commission has considered the lease rent of Rs. 0.44 Crore as claimed by the petitioner for FY 2018-19.

h. Non-Tariff Income:

117. In the subject petition, the petitioner filed non-tariff income of Rs. 29.86 Crore.

Provision in Regulations:

118. Regarding the non-tariff income, Regulation 53 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:

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

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

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

Commission's Analysis:

119. The above provision under the Regulations, 2015 provides that the non-tariff income shall also be trued up based on the Annual Audited Accounts. On perusal of the Annual Audited Accounts and other details filed by the petitioner, it was observed that in Note-24 of the Annual Audited Accounts, the other income is shown as Rs. 86.12 Crore. Vide letter dated 21st January' 2020, the petitioner was asked to explain the reasons for aforesaid discrepancy in non-tariff income filed in the subject petition vis-à-vis recorded in Annual Audited Accounts. The petitioner was also asked to file detailed break-up of non-tariff income including income from sale of fly ash as per Annual Audited Accounts.

120. By affidavit dated 20th February' 2020, the petitioner submitted the following:

It is submitted that Non-Tariff income as submitted with the petition is Rs 29.86 Crores. However, the detailed breakup of Non-Tariff Income along with reconciliation thereof with the figure recorded in Annual Audited Accounts is as under:

Sl. No.	Particulars	Amount	Remarks
1	Sale of Fly Ash	16,93,84,221	As per Note 23 of Audited Accounts
2	Sale of Scrap	6,82,36,251	

3	Rent Received	22,07,933	
4	Interest Earned from Bank Deposits	5,34,13,894	
5	Insurance Claim Received	1,95,808	
6	Income from Restaurant	9,88,398	
7	Miscellaneous Receipt	41,41,642	
8	Profit on Sale of Fixed Assets	65,343	
A	Total Non-Tariff Income	29,86,33,490	As submitted in Petition
B	Add:-Excess Provision Written Back	2,58,418	
C	Add:-Surcharge/ Hedging Bills raised on MPPMCL & others	71,06,32,302	
D	Add:-Exchange Rate Fluctuation on billing made to Bangladesh	2,10,75,788	
E	Total (A+B+C+D)	1,03,05,99,999	Pl refer Note 24 of Audited Accounts & Sale of Fly Ash (Note 23)

Sl. No.	Particulars	Amount	Remarks
1	Other Income As per Annual Audited Accounts	86,12,15,778	Pl refer Note-24 of Audited Accounts
2	Sale of Fly Ash	16,93,84,221	Pl refer Note 23 of Audited Accounts
	Total (1+2)	1,03,05,99,999	

The Petitioner humbly clarifies that in Table 5.1 above, figure appearing at “B” is the writing back of excess provision. Figure appearing at “C” pertains to the billed amount of Surcharge/ Hedging raised on MPPMCL and other customers in respect of sale of energy, hence it is part of the Tariff Income. Similarly, it is also humbly requested to Commission that figures appearing at “D” may also be treated as Tariff Income since it pertains to the Rate Fluctuation on account of billing made to Bangladesh in respect of sales of Energy.”

121. In view of the above, the Commission has considered the non-tariff income of Rs. 29.86 Crore in this order as given below:

Table 27: Non-Tariff Income considered (Rs in Crore)

Sl. No.	Particulars	Amount
1	Sale of Fly Ash	16.94
2	Sale of Scrap	6.82
3	Rent Received	0.22
4	Interest Earned from Bank Deposits	5.34
5	Insurance Claim Received	0.02
6	Income from Restaurant	0.10
7	Miscellaneous Receipt	0.41
8	Profit on Sale of Fixed Assets	0.01

A	Total Non-Tariff Income	29.86
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Other Charges:

122. In the subject true-up petition, the petitioner prayed for recovery of the petition filing fees paid to the Commission and publication expenses from the beneficiaries.
123. Regarding the recovery of publication expenses & MPERC Petition filing fee, Regulation 52 (i) of the Regulations, 2015 provides the following:
“The application filing fee and the expenses incurred on publication of notices in the application for approval of tariff, may in the discretion of the Commission, be allowed to be recovered by the generating company directly from the beneficiaries”.
124. In view of the above, the petitioner is allowed to recover the fee paid to MPERC and publication expenses as per Regulation 52 (i) of MPERC (Terms and Condition for Determination of Generation Tariff) Regulations, 2015.

Summary of Annual Capacity (fixed) charges:

125. The details of the Annual Capacity (fixed) Charges for FY 2018-19 allowed in this true-up order vis-a-vis those determined in the MYT order dated 29th November 2018 at normative Plant Availability Factor are summarized as below:

Table 28: Annual Capacity (fixed) Charges at normative availability: (Rs. in Crore)

Sr. No.	Particular	Allowed in MYT Order dated 29.11.2018 for FY 2018-19	Determined in this True-up order for FY 2018-19	True-up Amount for FY 2018-19
1	Return on equity	364.25	372.96	8.71
2	Interest Charges on Loan	682.02	721.98	39.96
3	Depreciation	536.69	546.71	10.02
4	Operation & Maintenance Expenses	242.62	242.62	0.00
5	Interest on Working Capital	68.00	68.60	0.60
6	Lease Rent	0.44	0.44	0.00
7	Annual Capacity (Fixed) Charges	1894.01	1953.28	59.27
8	Less: Non-Tariff Income	2.90	29.86	26.96
9	Net AFC Recoverable	1891.11	1923.42	32.31
10	AFC for 30% Contracted Cap.	567.33	577.03	9.69

126. The Annual Capacity (fixed) Charges as determined above for FY 2018-19 are at Normative Availability and these charges are based on Annual Audited Accounts of Jaypee Nigrie Thermal Power Plant for FY 2018-19.

127. The above Annual Capacity Charges are determined corresponding to the contracted capacity under PPA. The recovery of Annual Capacity charges shall be made by the petitioner in accordance with Clause 36.2 of the Tariff Regulations, 2015 on pro rata basis with respect to actual Annual Plant Availability Factor.
128. Regarding the truing-up of tariff of generating station based on the controllable operating parameters, Regulation 8.7 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 provides as under:
“The generating company shall carry out truing up of tariff of generating station based on the performance of following Controllable parameters:
i) Station Heat Rate;
ii) Secondary Fuel Oil Consumption; and
iii) Auxiliary Energy Consumption;”
129. In view of the above, vide letter dated 21st January’ 2020, the petitioner was asked to file the monthly details of all the above performance parameters actually achieved vis-à-vis normative parameters under MPERC Tariff Regulations, 2015. The petitioner was also asked to file the details of financial gain, if any, on account of aforesaid controllable parameters and shared with the beneficiaries in light of the Regulation 8.9 of the Regulations, 2015.
130. By affidavit dated 20th February’ 2020, the petitioner submitted the following:
Month wise details of the all the Controllable Parameters in line with the Regulation 8.7 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015, along with the details of financial gain on account of Controllable Parameters is attached as Annexure-10.
131. On perusal of the aforesaid details filed by the petitioner, it is observed that the total energy charges on normative parameters worked out by the petitioner is Rs. 153.36 Crore whereas the energy charges on actual parameter is Rs. 153.79 Crore. Therefore, the petitioner has incurred loss of Rs 0.43 Crore on account of the inferior performance and poor actual operating parameters achieved during FY 2018-19.
132. However, the Regulation 8.9 of the Tariff Regulations, 2015 provides that the financial gains by a generating company on account of controllable parameters shall be shared between generating company and the beneficiaries in the ratio of 2:1 on monthly basis with annual reconciliation. The aforesaid Regulations do not provide for sharing of loss incurred by the generating company. Therefore, the loss incurred by the petitioner on account of inferior operating parameters shall

not be passed on to the beneficiary.

Implementation of the order:

133. 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 1st April' 2018 to 31st March' 2019.
134. The petitioner is also directed to provide information to the Commission in support of having complied with this Order. The deficit/ surplus amount as a result of this order shall be passed on to MP Power Management Company Ltd. / three Distribution Companies of the state in terms of applicable Regulation in six equal monthly instalments during FY 2020-21 and onwards.
135. With the above directions, the subject Petition No. 44 of 2019 is disposed of.

Sd/-

(Shashi Bhushan Pathak)
Member

Sd/-

(Mukul Dhariwal)
Member

Sd/-

(S.P.S Parihar)
Chairman

Date : 26th November' 2020

Place : Bhopal

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

1. The Answering Respondent opposes all claims which are not permissible under 2015 Tariff Regulations and/ or which are claimed again, despite having been previously rejected by this Hon'ble Commission, in earlier Tariff Petitions.

Petitioner's Reply

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

MPPMCL Comment:

2. In Sub Para 4.1 (z) of the Petition, the Petitioner has stated that as it reserves right to amend the present Petition on the basis of the judgment passed Hon'ble Appellate Tribunal of Electricity in several Appeals filed/ proposed to be filed.
3. It is most humbly submitted that in view of the above, major claims of Additional Capital Expenditure made by the Petitioner, in the present True up Petition, are very much uncertain and dependent on the outcome of the Appeals pending before Hon'ble APTEL. Therefore, it is most humbly prayed that the present Petition may kindly be kept pending till the said Appeals are finally decided by the Hon'ble APTEL. Otherwise the True up exercise by this Hon'ble Commission will not be conclusive.
4. In Sub Para 4.1 (z) of the Petition, the Petitioner has stated that as it reserves right to amend the present Petition on the basis of the judgment passed Hon'ble Appellate Tribunal of Electricity in several Appeals filed/ proposed to be filed.
5. It is therefore most humbly submitted that as the claims made by the Petitioner in the present True up Petition are very much uncertain and entirely dependent on the outcome of the Appeals pending before Hon'ble APTEL. Therefore, it is most humbly prayed that the present Petition be kept pending till the Appeals are finally decided by the Hon'ble APTEL and there is certainty about the claims of the Petitioner. Otherwise the true up exercise by this Hon'ble Commission will be rendered redundant.

Petitioner's Response

That the contents of the Paragraphs 6,7, 21 and 22 of the Reply filed by the Respondent No.1 are untenable, vexatious, and repetitive in nature and are

categorically denied. Each and every averment contained in the Paragraphs under Reply are hereby denied. It is submitted that the Respondent No.1 had averred in the Paragraphs under Reply that since the Petitioner has filed multiple Appeals against the orders of the Hon'ble Commission, the present True up Petition should be kept pending till the disposal of the pending Appeals. It is respectfully submitted that each True up Petitionr aises a different cause of action and mere filing of an Appeal before the Hon'ble Appellate Tribunal against a separate and distinct order of the Hon'ble Commission cannot in no way bar/ curtail the jurisdiction to determine the true-up petition. Further, under the extant statutory framework there is no provision to withhold true-up of any year due to pendency of the appeal against an earlier tariff order.

It is submitted that, each issue raised by the Petitioner in the subsequent True up Petition shall be considered different from the previous True Up Petitions and ought to be dealt separately. The True-Up Petition for FY 2018-19 has been filed as per Tariff Regulations and the regulations do not allow keeping the Petition pending on the grounds of pending appeals against other orders.

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

MPPMCL Comment:

6. Without prejudice to above, it is humbly submitted that in the present Petition, out of total claim of Additional Capital Expenditure of Rs. 156.37 Crore, an amount of Rs.148.77 Crore has been claimed by the Petitioner towards expenditure on Amelia Coal Mine and Cost of Ownership of Amelia Coal Mine during FY 2018-19, which is not admissible under any provision of 2015 Tariff Regulations.
7. All the previous claims of Capital expenditure towards Amelia Coal mines have already been rejected by this Hon'ble Commission in following Tariff Petitions filed by the Petitioner.

Sl. No.	Petition No.	Subject Matter of the Petition	Order Dated	Outcome with respect to the claim of Petitioner in respect of Capital Expenditure towards Amelia Coal Mines
1.	72 /2015	Determination of Final Tariff for FY 2014-15 and Provisional Tariff for FY 2015-16	24.05.17	Rejected

2.	41/2017	True up of Tariff for FY 2015-16	20.07.18	Rejected
3.	07/2018	Determination of Multi Year Tariff for the period FY 2016-2019	29.11.18	Rejected
4.	05/2019	True up of Tariff for FY 2016-17	25.07.19	Rejected
5.	07/2019	True up of Tariff for FY 2017-18	22.10.19	Rejected

8. Despite repeated rejection of the said claim by this Hon'ble Commission and no stay/ relief having been granted by Hon'ble APTEL in various appeals filed by the Petitioner against ordered rejecting the claim, the Petitioner has again claimed an amount of Rs.148.77 Crore towards expenditure on Amelia coal Mine and Cost of Ownership of Amelia Coal Mine during FY 2018-19 in the present petition. Therefore, it is most humbly prayed that the claim of Additional Capital Cost towards expenditure on Amelia Coal Mine may kindly be rejected.
9. In Sub Para 6.1, the Petitioner has given details of Additional Capital Expenditure of Rs. 156.37 Crore purportedly incurred during FY 2018-19 in Table 5. The claims are opposed by the Respondent on the basis of submissions made in the following paragraphs.

Petitioner's Response

That the contents of the Paragraphs 8, 9, 10, &26 of the Reply filed by the Respondent No.1 are untenable, vexatious, repetitive in nature and are categorically denied. Each and every averment contained in the Paragraphs under Reply are hereby denied. Moreover, as specifically averred by the Respondent No.1 regarding disallowance of Capital Expenditure on Coal Mines in Petition No. 72/2015, it is respectfully submitted that Capital Cost determined by the Hon'ble Commission in Petition No.72/2015 was only up to 31-03-2015 and Provisional Additional Capitalization (including Amelia Capital cost) during FY 2015-16 was not considered at all at that stage. The Petitioner started including Amelia Capital Cost in Additional Capitalization from FY 2015-16 onwards when the ownership of Amelia Mines was vested with the Petitioner. Hence, the averment of the Respondent that the Hon'ble Commission had disallowed the Amelia Capital Cost in Petition No.72/2015 is misconstrued. It is further submitted that the expenditure incurred towards procurement of assets inter alia land and infrastructure for Amelia (North) Coal Mine (hereinafter referred to as "Amelia Mines") alongwith the cost of obtaining statutory permits/ approvals with respect to the same is in nature of capital expense. Such capital expense had been incurred for procuring assets which are necessary for providing coal to generating station of the project and ought to be allowed by the Ld. Hon'ble commission.

Further, it is respectfully submitted that MPPMCL, has failed to appreciate that the Petitioner has incurred expenditure by way of Additional premium on account of acquiring or bringing into existence an asset of an enduring benefit (coal mine) for the generation business. Therefore, the same ought to be approved by the Hon'ble Commission towards capitalization in Amelia Mine. Further, MPPMCL had stated that the claim regarding capital expenditure been disallowed by this Hon'ble Commission vide Petition No. 41 of 2017, 07/2018, 05/2019 & 07/2019 and no stay/relief has been granted by Hon'ble APTEL and therefore, the claim of the Petitioner regarding the capitalization in Amelia Mines cannot be allowed and ought to be rejected. It is respectfully submitted that the claim regarding capital expenditure in the Amelia Mines is well within the terms of the Tariff Regulations, 2015. Further, it is noteworthy that the issues regarding expenditure on Amelia Mines on account of Additional Premium on coal supplied is pending adjudication vide Appeal No. 95 of 2016 and Appeal No. 244 of 2017 before the Hon'ble Appellate Tribunal of Electricity ("Hon'ble Tribunal"). Further, the Petitioner has also preferred an Appeal against the True Up Orders in aforesaid Petitions wherein the issues regarding additional capitalization of the Amelia Mines is being taken up. It is submitted that the factual basis for the Petitioner's claims have already been detailed in Petition and the same is not repeated herein for the sake of brevity.

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

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

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

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

MPPMCL Comment:

10. It is humbly submitted that, the total Capital Cost approved by this Hon'ble Commission for the Project up to 31.03.2018 is Rs. 10,771.13 Crore, out of which the Hard Cost is Rs. 8,181.52 Crore. Therefore, the Hard Cost approved till 31.03.2018 is approximately Rs. 6.2 Crore per MW, which is 24 % higher than CERC notified Bench Mark Hard Cost of Rs. 5 Crore per MW. Therefore, there is no scope for any further increase in hard cost of the project. Therefore, it is most humbly prayed that the Additional Capital Expenditure claimed in this petition may not be considered.

Petitioner's Response

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

It is respectfully submitted that the Petitioner has already submitted in detail the reason for incurring additional capital expenditure under the various heads in the instant Petition and the Hon'ble Commission may refer to same. However, MPPMCL has declared that the capital cost upto 31.03.2018 is higher than the notified benchmark hard capital cost notified by the Hon'ble Central Electricity Regulatory Commission and on this basis, no additional capitalization may be permitted by this Hon'ble Commission.

It is respectfully submitted that the Hon'ble Commission had admitted the capital cost of the Project as on 31.03.2015 vide order dated 24.05.2017 passed in Petition No. 72 of 2015 only after having carried out prudence check according to the applicable provisions of the Tariff Regulations. It may be noted that the Respondent had not contested such capital cost approved by the Hon'ble Commission. It may further be acknowledged that the Hon'ble Commission determined Capital cost of the Project up to 31.03.2016 vide True Up order dated 20-07-2018 in Petition No. 41/2017 and is noteworthy that the Respondent No 1 did not raise the issues of benchmark cost during True Up Proceedings. In these circumstances the Respondent No. 1 cannot be allowed to agitate the issue in the present proceedings. Later on, though, this issue was raised by the Respondent during the proceedings of the Petition No. 05/2019 & Petition No. 07/2019, the same were set aside by the Hon'ble Commission which were not challenged by the Respondent hence, the same issue has attained the finality. Moreover, it is most respectfully submitted that the aforesaid issue has been adjudicated upon by the Hon'ble Commission in Petition

No. 72 of 2015 after due diligence and therefore, cannot be re-agitated by the Respondent No.1, the same issue has achieved finality.

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

MPPMCL Comment:

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

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

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

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

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

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

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

Where,

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

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

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

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

.....”

12. Therefore, Regulations 8.7 and 8.8 mandate that true up of generation tariff is required to be carried out based on performance of both Controllable and Uncontrollable parameters specified in these Regulations. Also, use the word “shall” make provisions of these Regulations mandatory.
13. Whereas, Regulation 8.9 lays down the method for sharing the benefit on account of Controllable parameters, Regulation 8.10 provides that the financial gains and losses by a generating company on account of uncontrollable parameters shall be passed on to beneficiaries of the generating company.

Petitioner's Response

Contents of the instant Paragraphs filed by the Respondent No. 1 are, untenable, vexatious and are categorically denied. Each and every averment contained in the paragraphs under Reply are hereby denied. It is submitted that the contents of the instant Paragraphs under Reply are solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice. It is submitted that month wise details of all the Controllable Parameters are in line with Regulation 8.7 of the Tariff Regulations along with the details of financial gain on account of Controllable Parameter has already been submitted with Hon'ble Commission in reply to MPERC Letter dated January 21st, 2020.

MPPMCL Comment:

14. Therefore, in accordance with Regulation 8.8 (iii), the Hon'ble Commission is required to carry out True up of Tariff of Generating Station on the performance of Primary Fuel Cost, which forms major part of the electricity Tariff.

15. It is therefore respectfully prayed that this Hon'ble Commission may graciously be pleased to direct Petitioner to submit requisite records for the purpose of true up on the basis of performance of Primary Fuel Cost in the present true-up Petition.

Petitioner's Response

The contents of the Paragraphs 15 & 16 of the Reply filed by the Respondent No. 1 are, untenable, vexatious and are categorically denied. It is submitted that the contents of the instant Paragraph under Reply are solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice. It is submitted that the Petitioner never shied away from giving any additional information including "Primary Fuel Cost" as and when sought by Hon'ble Commission. It is submitted that the Petition has been filed in terms of the Tariff Regulations and all the requisite information has been provided to the Hon'ble Commission.

MPPMCL Comment:

16. In Sub Para 6.2, the Petitioner has given value of decapitalised assets for FY 2018-19. The Petitioner has also indicated value of decapitalised asset in Amelia Coal Mine during 2018-19, but stated that the same has not been considered because of decision of this Hon'ble Commission in P.Nos. 05/2019 and 07/2019 rejecting the Capitalisation of Cost of Amelia Coal Mine

Petitioner's Response

That the contents of the Paragraph 27 of the Reply filed by the Respondent No. 1 are untenable, vexatious and are categorically denied. Each and every averment contained in the instant Paragraph under Reply are hereby denied. It is submitted that the contents of the Paragraph under Reply are solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice. It is submitted that Petitioner herein in Paragraph 6.2 of the True up Petition has stated the relevant facts before the Hon'ble Commission and it is the prerogative of the Hon'ble commission to regard or disregard a particular statement of fact and not of the Respondent No. 1 herein. It is again reiterated by the Petitioner that if in True Up Orders of the earlier years any capitalization in respect of Amelia Mines was not allowed then it is preposterous to consider even the de-capitalization of any asset in the subsequent years.

MPPMCL Comment:

17. In Sub Para 7.1 (a) (i) to (x), the Petitioner has given details Capital Expenditure on following items under heading "Addition on account of BOP Equipment", none of which appear to be part of "Original Scope of Work" :

Sl. No.	Equipment	Amount (Crores)
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1.	Ferrocare Low Vacuum Dehydration Unit-Chiller & Ferrocare Electrostatic Liquid Cleaner Machine	0.09
2.	Air Dryer-530(A13)400/3/50/CE	0.05
3.	Komatsu Make Excavators	0.58
4.	Komatsu Make Dozers (2 Nos)	0.09
5.	Scoop Type Tippers, Noble Lift Cba 25, Pallet Truck 2.5 Ton 200x50 MM, Hand Truck	0.53
6.	Concrete Transit Mixer Vehicles (2Nos)& BRIGGS Make Concrete Groove Cutting Machine	0.19
7.	Horticulture Equipment	0.03
8.	Miscellaneous Equipment for Workshop& Electrical Department	0.005
9.	Toyota Fortuner (Station Wagon 2145 2.8L)	0.32
10.	Single Zone Door Frame Metal Detector (2 Nos)	0.0053
11.	Desert Coolers, Water Coolers, Industrial Vacuum Cleaners, Geysers, Air Conditioners and Miscellaneous other items	0.09

18. It most humbly submitted that the said above systems do not appear to be part of original scope of work of the Project. Regulation 20.3 of 2015 Tariff Regulations provide for criteria for admitting Additional Capital Expenditure in an Existing Project after cut-off date, therefore is applicable to the present claim of the Petitioner. The Regulation 20.3 is extracted below for ready reference:

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

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

claim shall be substantiated with the technical justification duly supported by the documentary evidence like test results carried out by an independent agency in case of deterioration of assets, report of an independent agency in case of damage caused by natural calamities, obsolescence of technology, up-gradation of capacity for the technical reason such as increase in fault level;

- (h) In case of hydro generating stations, any expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company) and due to geological reasons after adjusting the proceeds from any insurance scheme, and expenditure incurred due to any additional work which has become necessary for successful and efficient plant operation;*
- (i) Any capital expenditure found justified after prudence check necessitated on account of modifications required or done in fuel receiving system arising due to non-materialisation of coal supply corresponding to full coal linkage in respect of thermal generating station as result of circumstances not within the control of the generating station:*

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

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

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

Petitioner's Response

That the contents of the Paragraphs 28 to 30 of the Reply filed by the Respondent No. 1 are untenable, vexatious and are categorically denied. Averments contained in the instant Paragraphs under Reply are hereby denied.

It is respectfully submitted that the Respondent No. 1 in Paragraphs 28 to 30, quoting Regulation 20.3 in-between, has categorically opposed the additional

capitalization on the grounds that capital expenditure incurred by the Petitioner on account of BOP equipment do not appear to be part of the “Original Scope of Work”. In this regard, the Petitioner very humbly submits that:-

- (i) the Capital Expenditure or Additional Capital Expenditure incurred by the Generating Station after the cut-off date of the Project, are admissible under Regulation 20.3. Unit - I of JNSTPP achieved its Commercial Operation Date (‘COD’) on 03.09.2014 and Unit – II achieved its COD on 21.02.2015 respectively. Therefore, in terms of the MPERC Tariff Regulation the cut-off date for JNSTPP is 31.03.2018.
- (ii) The Petitioner has claimed Additional Capital Expenditure incurred in FY 2018-2019, which is evidently after the cut-off date of the Project. Hence, the claims made under the present Petition would be covered under the different heads of Regulation 20.3. Regulation 20.3 specifically covers capital Expenditure incurred by the Generating Station beyond its cut-off date.
- (iii) Regulation 20.1 as well as Regulation 20.2 is restricted to works covered under the Original Scope of the Work of the Project, which is evident from the recital of the said Regulations. However, **Regulation 20.3 is not subjected to the phrase “within the Original Scope of Work”** and hence it seeks to allow expenditure/cost related to work, which are not even covered under Original Scope of the Work of the Project. This important aspect of Regulation 20.3 makes it much broader and comprehensive in its scope. A careful recital of the Regulation 20.3 also throws the conclusion that falling within the ambit of **“within the Original Scope of Work” is not pre-requisite** for any asset to be allowed for Additional Capitalization under Regulation 20.3.
- (iv) Regulation 20.3 reads as under:-
 20.3 The capital expenditure, in respect of existing generating station incurred or projected to be incurred on the following counts after the cut-off date, may be admitted by the Commission, subject to prudence check:
 - (a) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law;
 - (b) Change in law or compliance of any existing law;
 - (c) Any expenses to be incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies of statutory authorities responsible for national security/internal security;
 - (d) Deferred works relating to ash pond or ash handling system in the original scope of work;
 - (e) Any liability for works executed prior to the cut-off date, after prudence check of the details of such un-discharged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc.;
 - (f) Any liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments;

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

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

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

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

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

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

The Petitioner humbly submits before the Hon'ble Commission in light of the Tariff Regulation 20.3 that the said additional capitalization under the abovementioned head is within the original budgeted approved Cost of the Project for which Rs.12,400 Crores were authorized by the Board of Directors vide Resolution dated 30th May 2015 approving the Final Project Cost.

MPPMCL Comment:

19. It is most humbly submitted that none of the Additional Capital Expenditures claimed in Para 7.1(a)(i) to (x) of the Petition meet the criteria laid down in Regulation 20.3. Also, no techno-economic analysis/ study justifying the need for the said equipment/ systems have been furnished. Therefore, this Hon'ble

Commission may graciously be pleased to reject the said claim of Additional Capital Expenditure.

Petitioner's Response

The contents of the Paragraph 30 of the Reply filed by the Respondent No. 1 are, untenable, vexatious and are categorically denied. It is submitted that the contents of the instant Paragraph under Reply are solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice. It is vehemently denied that Petitioner has failed to demonstrate that any of the claims for capitalization is in terms of Regulations of this Hon'ble Commission. It is reiterated that all the claims of the Petitioners may be allowed in terms of the Regulation 20.3 of MPERC Tariff Regulations, 2015 subject to prudence check by this Hon'ble Commission. Further, capital expenditure on aforesaid assets has resulted in improving the performance of the plant and benefit of such improved performance goes to the beneficiaries immediately and there is no reason for not allowing such capital expenditure as claimed by MPPMCL. Petitioner reiterates the contents of the Petition and the preliminary submissions hereinabove and states that the averments of the MPPMCL to the contrary are wrong and are denied. It is also submitted that the Petitioner never shied away from giving any additional information as and when sought by Hon'ble Commission. It is submitted that the Petition has been filed in terms of the Tariff Regulations and all the requisite information relating to additional capitalization including Bill Nos, Vendor details along with the justification thereof have been provided to the Hon'ble Commission.

MPPMCL Comment:

20. In Para 7.1(a)(viii), the Petitioner has claimed an amount of Rs. 0.32 Crore said to have been incurred for procurement of Toyota Fortuner (Station Wagon 2145 2.8 L). The Petitioner may be directed to furnish information on the following aspects –
- a. For what purpose this vehicle was procured?
 - b. On what criteria the selection of model/ make was made?
 - c. Whether a cheaper alternative (make/ model) may have served the intended purpose?

It is most humbly prayed that this Hon'ble Commission may graciously be pleased to disallow the said expenditure as it does not appear to be justified

Petitioner's Response

It is vehemently objected to the suggestion of the Respondent that the Additional Capitalization claimed in the Para 7.1(a)(viii) does not appear to be justified. Such a suggestion made by the Respondent is untenable, vexatious and is categorically denied. It is submitted that the contents of the instant Paragraph under Reply are solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice. It is further submitted that given the terrain

and topography of the Petitioner's Plant the choice & procurement of the Toyota Fortuner (Station Wagon 2145 2.8L) is the best considering all the aspects highlighted by the Respondent in the instant Paragraph. It is again reiterated that all the claims of the Petitioners may be allowed in terms of the Regulation 20.3 of MPERC Tariff Regulations, 2015 subject to prudence check by this Hon'ble Commission. It is also submitted that the Petitioner has submitted additional information including as and when sought by Hon'ble Commission. It is submitted that all the requisite information relating to this asset including Bill Nos, Vendor details along with the justification thereof have been provided to the Hon'ble Commission.

MPPMCL Comment:

21. In Sub Para 7.1 (b) (i) and (ii), the Petitioner has given details Additional Capital Expenditure on account of Civil Work. It is most humbly prayed that suitable prudence check may kindly be applied on these expenditures.

Petitioner's Response

It is respectfully submitted that the Additional Capitalization claimed in the Para 7.1(b)(i) and (ii) relate to deferred civil works and they have been forming part of CWIP all the previous years. In this regard, it is further submitted that all the claims of the Petitioners may be allowed in terms of the Regulation 20.3 of MPERC Tariff Regulations, 2015 subject to prudence check by this Hon'ble Commission. It is also submitted that the Petitioner has submitted additional information including as and when sought by Hon'ble Commission. It is submitted that all the requisite information relating to this asset including Bill Nos, Vendor details along with the justification thereof have been provided to the Hon'ble Commission.

MPPMCL Comment:

22. In Sub Para 7.2 (a) (i) & (ii) and (b), the Petitioner has given details of de-capitalisation of certain assets. It is most humbly prayed that appropriate check may kindly be applied on these claims

Petitioner's Response

Regarding decapitalization mentioned in the Para 7.2 of the Petition No. 44 of 2019, it is reiterated that the suitable depreciation adjustments have been made.

MPPMCL Comment:

23. In Sub Paras 7.3 (a) (i) & (ii) and (b) (i) to (iv), the Petitioner has given details of Additional Capital Cost (Tangible Assets and Ownership of Mining Rights) said to have been incurred during FY 2018-19 on Amelia Coal Mine. As this Hon'ble Commission has consistently rejected the claim of the Petitioner in respect of Amelia Coal Mine, because 2015 Tariff Regulations do not permit such capital

expenditure. Therefore it is most humbly prayed that this Hon'ble Commission may graciously be pleased to the ignore/ reject the Additional Capital Cost claimed as incurred in Amelia Coal Mine.

24. Further, the Answering Respondent reiterates its Reply dated 9.2.2018 submitted in Petition No. 41/2017 and Reply dated 6.08.2018 submitted in petition no. 07 of 2018 and denies and opposes the claim of the Additional Capital Cost including claim towards Amelia CoalMine during FY2018-19, as the claim is not maintainable under provisions of 2015 Tariff Regulations and this Hon'ble Commission vide order dated 20.07.2018 & 28.11.2018 respectively has already disallowed the same.
25. The observations of the Hon'ble MPERC in its order Dated 20.07.2018 passed in P. No. 41 of 2017, as regards the claim of the Petitioner as regards capital expenditure incurred on Amelia Coal Mine, are extracted below :

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

(i) Appeal No. 95 of 2016 against the order dated 20th January' 2016 passed by the respondent state Commission in SMP 49 of 2015 regarding "review and determination of energy charges".

(ii) Appeal No. 244 of 2017 against Commission's Order dated 24.05.2017 for determination of final generation tariff for 2X660 MW Unit No. 1&2 of Petitioner's power plant in the subject petition.

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

[Emphasis Added]

26. In Sub Para 8.1 in Table 6, the Petitioner has given details of its claim of Additional Capital Expenditure of Rs 7.61 Crores said to have been incurred during FY 2018-19 and also the Total Capital Cost incurred up to 31.03.2019. The Answering Respondent opposes the above claim on the basis of submissions made in the foregoing paragraphs.

27. In Sub Para 8.2, in Table 7, the petitioner has indicated Additional Capital Expenditure of Rs. 148.77 Crores during FY 2018-19 on Amelia Mines. The Answering Respondent opposes claimed towards Amelia Coal Mine during FY 2018-19 because the said claim is not maintainable under the provisions of 2015 Tariff Regulations and the same has been rejected by this Hon'ble Commission in all previous petitions.
28. In Sub Para 8.3, in Table 8, the petitioner has indicated Total Capital Cost of Rs. 10,927.49 Crores as on 31.03.2019, after considering Additions both in Power Station and Amelia Coal Mines, during FY 2018-19. The Answering Respondent opposes the said claims as the same on the basis of submissions made in the foregoing paragraphs.

Petitioner's Response

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

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

MPPMCL Comment:

29. In Para 9, in Table 9, the Petitioner has given summary of Annual Capacity Charges for FY 2018-19 based on addition of capital cost after adjustment of decapitalisation of assets, wherein at Sl. No. 5A, an amount of Rs. 1.33 Crores has been claimed in respect of O & M Expenses (400 KV Transmission Line and Bay). This claim is strongly opposed by the Answering Respondent as there is no provision in 2015 Tariff Regulations for making such a claim.
30. The claim of O & M Expenses for 400 KV Transmission Line was rejected in P. No. 72 of 2015. The relevant portion of the order dated 24.05.2017 passed in the said petition is extracted below :

"189. The petitioner has also claimed the Operation & Maintenance expenses on Transmission lines as given below –

Table 39 : Operation & Maintenance Expenses on transmission lines & Bays claimed

S.No.	Particulars		FY 2014-15	FY 2015-16
1	O & M Expenses of 161 kms of 400 kV Double Circuit Transmission Line	161x2-322 ckt km	1.17	1.26
2	O & M Expenses of 400 kV Bay	2 Nos of 400kV Bays	0.33	0.36
	Total O & M Expenses		1.50	1.62

Commission's Analysis

192. The Commission has worked out the Annual Operation and Maintenance Expenses as per the norms prescribed under aforesaid Regulations, 2012 for the generating unit of "600 MW and above" as given below:

Table 41: O& M Expenses for Generating Units (Rs. in Crores)

Particular	Units	FY 2014-15		FY 2015-16
		03.09.2014 to 20.02.2015	21.02.2015 to 31.03.2015	01.04.2015 to 31.03.2016
		Unit 1	Unit 1 & 2	Unit 1 & 2
Generating Unit Capacity	MW	660	1320	1320
Per MW O&M Expenses Norms	Rs in Lakh/MW	13.98	13.98	15.09
Annual O&M expenses	Rs in Crore	92.27	184.54	199.19

193. With regard to O&M expenses of Transmission Line, it is observed that the Transmission line in the subject petition is a dedicated line and its cost has been appropriately included in the capital cost considered in this order. Further, the petitioner had not claimed the operation and maintenance (O&M) expenses for the said dedicated transmission line in its petition No. 3 of 2014. For the first time in the subject petition, the O&M expenses of dedicated transmission line are claimed by the petitioner.

194. The dedicated transmission line is neither a transmission line in terms of sub-section (72) of Section 2 of the Electricity Act, 2003 nor it is a distribution system connecting the point of a connection to the installation of consumer in terms of sub-section (19) of Section 2 of the Electricity Act, 2003. The O&M expenses of a transmission line are part of the Annual Fixed Cost determined by the Commission under section 62 of the Electricity Act, 2003 for a transmission licensee whereas, the subject petition can not be considered for determination of AFC for the transmission line under section 62 of the Electricity Act, 2003. The cost of dedicated transmission line has been

considered in the capital cost of the generating station and the tariff of the said generating station has been determined in terms of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations' 2012 which does not provide for any O&M expenses of dedicated transmission line separately. In view of the aforesaid, the claim of petitioner for O&M expenses of dedicated transmission line has no merit hence not considered in this order."

[Emphasis Added]

31. Subsequently, the Petitioner has again claimed O & M Expenses for 400 kV Transmission Line and Bay in P. Nos. 41/2017, 07/2018, 05/2019 and 07/2019. However, the said claim was rejected by this Hon'ble Commission by its orders dated 20.07.2018, 29.11.2018, 25.07.2019 and 22.10.2019 passed in the said petitions.
32. On the issue of O & M Expenses for 400 kV Transmission Line and Bay, several Appeals filed by the Petitioner are pending before the Hon'ble APTEL for adjudication. However, no interim or other relief has been granted by the Hon'ble Tribunal. It is therefore most humbly prayed that this Hon'ble Commission may graciously be pleased to reject the claim of O & M Expenses in respect of 400 kV Transmission Line and Bay.

Petitioner's Response

That the contents of the instant paragraph filed by the Respondent No. 1 is, untenable, vexatious and is categorically denied. In the instant paragraphs, the contention of the Respondent No. 1 is that the claim in respect of O&M on Transmission Line should be rejected merely on the grounds that the same has been rejected in the earlier Petition In this regard, it is humbly submitted that each tariff year gives rise to separate cause of action to the Petitioner and each claim is required to be determined in light of the extant regulatory and statutory framework. The issue is sub-judice before the Hon'ble Appellate Tribunal and as such has not attained finality and the Petitioner is bona-fide in claiming the O&M related to the Transmission lines.

MPPMCL Comment:

33. *Other claims of Capacity Charges are also opposed by the Answering Respondent on the basis of submissions made in foregoing paragraphs.*

Petitioner's Response

In the instant paragraph, the Respondent has made just a sweeping statement to the effect that other claims of the Capacity Charges should be rejected. This averment itself

is solely intended to attempt and overreach this Hon'ble Commission or to otherwise influence the administration of justice.

MPPMCL Comment:

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

Petitioner's Response

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

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

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

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

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