

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
5th Floor, "Metro Plaza", Bittan Market, Bhopal - 462 016



Petition No.28 of 2012

PRESENT:

Rakesh Sahni, Chairman

C.S. Sharma, Member

IN THE MATTER OF:

In the matter of approval of Capital Expenditure and determination of provisional tariff for sale of firm power generated by 45 MW plant of BLA Power Ltd. to M. P. Power Management Co. Ltd. (Formerly known as M. P. Power Trading Co. Ltd.), Jabalpur.

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

PETITIONER

Versus

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

RESPONDENTS

ORDER

(Passed on this day of 24th July, 2012)

1. The petitioner has filed the subject petition on 29th March, 2012 for approval of Capital Expenditure and determination of provisional tariff for sale of firm power generated by its 45 MW, Unit-1 of the plant at Village Niwari, Tehsil Gadawara in Narsinghpur District of Madhya Pradesh.

2. The petitioner has broadly submitted the following in the petition :
 - (i) *“B L A Power Pvt. Ltd., Mumbai, hereinafter referred as the petitioner is a Company incorporated under Companies Act, 1956 and having its registered office at 84, Maker Chamber III, Nariman Point, Mumbai, was incorporated in the month of November 2006 for development of Power Plants in the State of Madhya Pradesh. The petitioner has entered into a Memorandum of Understanding [MoU] with Government of Madhya Pradesh [GoMP], hereinafter referred as Respondent 1, on 10th August, 2007 for setting up of thermal power stations with proposed capacity of 140 MW in the State of Madhya Pradesh. Subsequently, GoMP and the petitioner have also entered into an Implementation Agreement [IA] on 1st September, 2008.*

 - (ii) *In pursuance with the above agreements, the petitioner is envisaging development of power project in the State of Madhya Pradesh and in the process it is constructing a thermal power project having following units, on build, own and operate basis, at Village Niwari, in Tehsil Gadawara, in Narsinghpur District of Madhya Pradesh:*

Unit	Capacity in MW	Commissioning Date (COD)
1	45	September, 2012
2	45	December, 2012
3	45	In 2014
Total	135	

- (iii) *Based on the construction progress the Company expects to achieve the Commissioning Date for 1st Unit of 45 MW on 31st March, 2012, i.e. much before September, 2012.*
- (iv) *In accordance with the terms of Implementation Agreement, GoMP has a right to purchase power from the power stations, at all the times so long the power stations exist including any enhanced, expanded and / or renovated and / or modernized plant, equal to five percent (5%) of the net power (gross power generated less permitted auxiliary consumption) at a price equivalent to Variable Charge / Cost only, which shall be determined by Hon'ble Madhya Pradesh Electricity Regulatory Commission [MPERC]. Accordingly, a Power Purchase Agreement [5% PPA] has been executed on 4th May, 2011 by the petitioner with GoMP and MP Power Trading Company Ltd, Jabalpur [MP Tradeco], a GoMP undertaking, hereinafter referred as Respondent 2. In this agreement GoMP has nominated MP Tradeco, to receive this power on its behalf. Thus, both of them are considered as respondent to the petition.*
- (v) *In addition to the above, the petitioner, in accordance with the provisions of IA has also entered into another Power Purchase Agreement [30% PPA] collectively with GoMP, Madhya Pradesh Poorv Kshetra Vidyut Vitaran Co. Ltd. [Discom 1], hereinafter referred as Respondent 3, Madhya Pradesh Madhya Kshetra Vidyut Vitaran Co.*

Ltd. [Discom 2] , hereinafter referred as Respondent 4 and Madhya Pradesh Paschim Kshetra Vidyut Vitaran Co. Ltd. [Discom 3] , hereinafter referred as Respondent 5, on 5th January, 2011 for sale of thirty percent (30%) power (of installed Capacity of the power station, having 2 units each of 45 MW) for a period of 20 years on the tariff as determined by Hon'ble MPERC. In this Power Purchase Agreement also, GoMP has nominated MP Tradeco, to receive the power on its behalf. The three Discoms have also agreed to receive the aforesaid power through the MP Tradeco, in the proportion as directed by GoMP from time to time. The responsibility of power transmission is vested with Madhya Pradesh Power Transmission Co. Ltd., herewith referred as Respondent 6. As all the three Discoms and the Transmission Company are also affected parties, therefore all of them are considered as respondent to the petition. State Load Despatch Centre is the apex body to ensure integrated operations of the power system in the State of Madhya Pradesh and is responsible for optimum scheduling of electricity within the State in accordance with the contracts entered into with the licensees or the generating companies operating in the state. Hence, it is also considered as respondent to the petition [hereinafter referred as respondent 7].

- (vi) In the 30% PPAs mentioned above, the scheduled Date of Commercial Operation [CoD] have been agreed as 30th September, 2012 for unit 1 and 31st December, 2012 for unit 2.*
- (vii) The petitioner has put its efforts to expedite the completion of work in the shortest possible time and wish to submit that the works of unit 1 (45 MW) are almost towards completion. The unit has been synchronized on 8th March, 2012 and is likely to be commissioned on 31st March, 2012. As the CoD of the unit should be counted from mid*

night (at 00 hour) of the night falling immediately after CoD, the CoD of unit # 1 has been considered 1st April, 2012. However, the works of unit 2 are likely to be completed on its scheduled date. The petitioner is also envisaging for its early commissioning too.

- (viii) Thus, the petitioner humbly prays before the Hon'ble Commission to permit sale of infirm power generated from its unit 1 (45 MW) to MP Tradeco at frequency-linked UI rate.*
- (ix) The UI rates are dependent on the frequency of grid and vary from time to time as per the rate schedule specified by competent authority. At this stage it is not possible to estimate the exact quantum and rate at which the infirm power generated will be sold. Therefore, at this stage, no estimation for the revenue from sale of infirm power has been made. The project cost shall be suitably adjusted on this account at the time of submission of petition for final tariff.*
- (x) The Capital expenditure on the generating plant is one of the main attributes which govern the generation cost. B L A Power Pvt. Ltd., in 2007 got a project report prepared from its consultant and based on this report a proposal was submitted to the Allahabad Bank for funding of the project. The project report prepared by the consultant was based on elementary estimates and has undergone changes at the time of actual implementation of the project. However, based on this project report, Allahabad Bank in consortium with other banks has funded the debt for the project. Details of the project cost estimates and funding have been elaborated in details in the section 4 [Project Cost & Funding] of the enclosure along with this petition. Accordingly estimated capital expenditure on unit #1 is considered as ₹303.43 crores, as elaborated in the table below:*

Particulars		Cr. ₹
1	Land & Development Cost	7.80
2	Civil, Foundation & Buildings	62.33
3	Plant & Machinery (Boiler, Turbine & Generator)	90.32
4	Balance of Plant including Cooling Tower	50.53
5	Water Intake System	15.29
6	Power Transmission System	6.87
7	Others including Pre-Operative Expenses	33.16
8	Interest During Construction	33.74
9	Margin Money towards working capital	3.39
Total		303.43

(xi) Audited expenditure upto September, 2011, Certified expenditure till January, 2012, estimated expenditure in February and March, 2012 [till CoD] and projected expenditure beyond CoD and their funding are elaborated in the table below:

Amount in Cr. ₹

	Particulars	Audited Up to Sept 11	Expenditure on Project			Total
			Upto Jan 12	In Feb-Mar 12	After CoD	
1	Land & Development Cost	7.64	5.80	0.00	2.00	7.80
2	Civil, Foundation & Buildings	43.24	43.37	0.00	18.96	62.33
3	Plant & Machinery (B T & G)	81.99	84.94	0.00	5.38	90.32
4	Balance of Plant including Cooling Tower	17.51	17.51	0.00	33.02	50.53
5	Water Intake System	10.73	10.73	0.00	4.56	15.29
6	Power Transmission System	6.87	6.87	0.00	0.00	6.87
7	Others including Pre Operative Expenses	17.31	19.36	1.00	12.80	33.16
8	Interest During Construction	21.89	29.77	3.96	0.01	33.74
9	Margin Money towards working capital	0.00	0.00	0.00	3.39	3.39
10	Total	207.18	218.35	4.96	80.12	303.43
11	Debt	154.92	156.32	1.15	54.93	212.40
12	Equity	52.26	62.03	3.81	25.19	91.03
13	Total	207.18	218.35	4.96	80.12	303.43
14	Debt	74.78%	71.59%	23.19%	68.56%	70.00%
15	Equity	25.22%	28.41%	76.81%	31.44%	30.00%
	Total	100.00%	100.00%	100.00%	100.00%	100.00%

- (xii) For determination of tariff, following benchmarks have been considered in the petition. The basis of considering the above benchmarks has been elaborated in the respective sections enclosed with this petition.

Particulars		Unit	FY 12-13	FY 13-14	FY 14-15	
1	Target Availability	%	80.00%	80.00%	80.00%	
2	Auxiliary Consumption	%	11.00%	11.00%	11.00%	
3	Station Heat Rate	Design	K Cal / kWHr	2662	2662	2662
4		Margin	%	6.50%	6.50%	6.50%
5		Gross	K Cal / kWHr	2835	2835	2835
6	Sp. Secondary Oil Consumption	ml / kWHr	3.00	3.00	3.00	
7	Transit Loss	%	0.20%	0.20%	0.20%	

- (xiii) In accordance with the Implementation Agreement, the company is intending to sale its 35% power to GoMP, through following agreements:

- 5% power at variable cost to be determined by Hon'ble MPERC.
- 30% power at regulated tariff basis, the rate to be determined by Hon'ble MPERC.

- (xiv) The Company, on 25th April, 2011 has also signed a Fuel Supply Agreement with M/s BLA Industries Private Limited, Mumbai, ("Seller") who is engaged in mining and selling of coal in the State of Madhya Pradesh. The initial term of agreement shall be for a period of 10 years, which can be extended by another term 5 years with consent of both the parties. The Seller will supply the coal from "Dharmasthal Coal Project at Gotitoria in Madhya Pradesh, which is about 30 km away from the power station. The coal supplied by the seller shall be washed coal at delivery point, which shall be at the coal mine end. The base rate of the coal having GCV of 5200 k Cal/kg at delivery

point shall be ₹2,639.50 per metric ton. This shall be linked with the base price of "D" grade coal in CIL notification for WCL in accordance with the Price Variation Clause specified in the FSA. The rate shall be excluding taxes, duties, levies and all applicable charges payable from time to time. As per FSA Supervision, Handling & Delivery of coal from the delivery point to the power plant shall be arranged by the buyer separately.

- (xv) The requirement of water for the plant will be for make-up water for the condenser cooling water, auxiliary cooling water and make up for feed water system, dust suppression system for coal handling plant and for DM water make up to boiler. In addition, some amount of water will also be required for plant service and drinking purposes. Based on the technical estimates, average requirement of raw water (for 1 x 45 MW TPP) is about 160 m³/hr (3840 m³/day). This requirement shall be met from Narmada River.*
- (xvi) The ash handling system has been designed considering 100% of F grade coal with 45% ash content and 3200 kCal/kg gross calorific value. The daily coal requirement of the power plant considering 100% F Grade coal is about 912 tonnes. Considering operation of plant at 100% MCR with a design ash content of about 45%, about 410 tonnes of ash will be generated per day which will have to be disposed. Out of this about 80% will be fly ash and the balance will be bed ash. To handle such ash the plant is designed with two ash silos, one for fly ash and one for bed ash, which together can store about one day generation of ash.*

(xvii) The power from the power plant generated at 11 kV shall be evacuated at 132kV level through 8 km long double circuit transmission lines to MPPTCL substation at Gadarwara.

(xviii) The company has also obtained all necessary clearances required for construction and running of the power station. The status of major Statutory clearances is as under:

Status of clearances

Statutory Clearance	Authority	Status
<i>Environment Clearance</i>	<i>Ministry of Environment and Forests</i>	<i>Clearance received</i>
<i>Water Allocation</i>	<i>Irrigation Department, GoMP</i>	<i>Agreement signed and water allocated</i>
<i>Civil aviation clearance for chimney height</i>	<i>National airport authority/ DGCA</i>	<i>Clearance received</i>
<i>Pollution clearance under water (prevention & control of pollution) Act, 1974 Air (prevention & control of pollution) Act, 1981</i>	<i>Madhya Pradesh State Pollution Control Board</i>	<i>Clearance received</i>
<i>Consent to Operate</i>	<i>Madhya Pradesh State Pollution Control Board</i>	<i>Clearance received</i>

3. The petitioner submitted the following documents as enclosures with the petition :

- a) Certificate of Incorporation of the Company.
- b) Memorandum and Articles of Association of the Company.
- c) Memorandum of Understanding with Government of Madhya Pradesh, on 10th August, 2007 for setting up of thermal power stations with proposed capacity of 140 MW in the State of Madhya Pradesh.
- d) Implementation Agreement dated on 1st September, 2008.
- e) Power Purchase Agreement with GoMP for sale of 5% power dated 4th May, 2011.

- f) Power Purchase Agreement with GoMP for sale of 30% power dated 5th January, 2011.
- g) Fuel Supply Agreement with B L A Industries Pvt. Ltd. dated 25th April, 2011.
- h) Amendment 1 to the Fuel Supply Agreement dated 3rd November, 2011.
- i) Amendment 2 to the Fuel Supply Agreement dated 27th December, 2011.
- j) Amendment 3 to the Fuel Supply Agreement dated 27th February, 2012.
- k) Supervision, Handling & Delivery Agreement for coal with Prakritik Logistics Pvt. Ltd. dated 4th July, 2011.
- l) Detailed Project Report of the project.
- m) Audited Balance Sheet upto September, 2011.
- n) CA Certified Balance sheet upto January, 2012.
- o) CA Certified actual spent amount as on January, 2012 for Unit 1.
- p) CA Certified actual spent amount from 1st February, 2012 to 15th March, 2012 for Unit 1.
- q) Certificate from Fitchner for revised estimated project cost with allocation of common facilities in Unit #1 & Unit #2.
- r) Sanction letter of the Bank dated 10th July, 2009.
- s) Term Loan Agreement for Unit 1 dated 10th December, 2009.
- t) Environment Clearance granted by Ministry of Environment & Forest dated 21st April, 2009.
- u) Amendment to Environment Clearance dated 23rd March, 2011.
- v) Water Allocation Agreement dated 5th March, 2009.
- w) Civil Aviation clearance for chimney height granted by Airport Authority of India dated 16th September, 2010.

- x) Pollution clearance under Water Act, 1974 and Air Act, 1981 granted by Madhya Pradesh State Pollution Control Board dated 1st October, 2009.
- y) Amendment to the Pollution clearance under Water Act, 1974 and Air Act, 1981 dated 1st June, 2011.
- z) Consent to Operate
- aa) Letter to State Load Dispatch Centre intimating about synchronization of Unit I of 45 MW dated 8th March, 2012.
- bb) Joint letter signed between B L A Power and MPPTCL for synchronization of Unit I dated 8th March, 2012.
- cc) Admission of petition for PPA by Madhya Pradesh Electricity Regulatory Commission vide its order 468 dated 16th February, 2012 being for approved sale of 30% power to MP Tradeco.
4. Based on the above, the petitioner as filed the following generation tariff for approval of the Commission :

Particulars		FY 12-13		FY 13-14		FY 14-15	
1	Installed Capacity	45.00	MW	45.00	MW	45.00	MW
2	Availability Factor	80%		80%		80%	
3	Gross Generation	315	MU	315	MU	315	MU
4	Aux Consumption	11%		11%		11%	
5	Net Sales	281	MU	281	MU	281	MU
Fixed Cost		Cr. ₹	p/u	Cr. ₹	p/u	Cr. ₹	p/u
6	RoE Amount	19.01	68	22.06	79	22.06	79
7	Interest Charges	26.37	94	28.47	101	26.38	94
8	Depreciation	12.29	44	14.16	50	14.16	50
9	Lease / Hire Purchase	0.00	0	0.00	0	0.00	0
10	O&M Charges for Months	13.50	48	14.33	51	15.22	54
11	Interest on Working Capital	4.41	16	4.64	17	4.65	17
12	Cost of Sec. Oil	4.29	15	4.29	15	4.29	15
13	Special Allowance in lieu of R&M	0.00	0	0.00	0	0.00	0
14	Total Fixed Cost	79.88	285	87.96	314	86.76	309
15	Variable Cost	44.99	160	44.99	160	44.99	160
16	Impact on Sales Rate	124.87	445	132.95	474	131.75	469

Particulars		Unit	FY 12-13	FY 13-14	FY 14-15
1	5 % Net Sales	MU	14.03	14.03	14.03
2	Rate (Variable Cost)	p/unit	160	160	160
3	Amount	Cr. ₹	2.25	2.25	2.25
4	30 % Net Sales	MU	84.20	84.20	84.20
5	Rate	p/unit	445	474	469
6	Amount	Cr. ₹	37.46	39.88	39.53
7	Total Amount	Cr. ₹	39.71	42.13	41.77
8	Total Sales (35%)	MU	98.23	98.23	98.23
9	Average Rate of Sales	p/unit	404	429	425

5. With the above submissions, the petitioner has requested the following to the Commission :

- (a) *“Approve the Capital Expenditure of ₹303.43 crores incurred by B L A Power Pvt. Ltd. till CoD and estimated thereafter for the purpose of computation of tariff for the power generated from unit #1.*
- (b) *Permit sale of infirm power generated by the 45 MW Unit, till CoD, at UI rates to MP Tradeco, Jabalpur.*
- (c) *Approve proposed benchmarks for performance parameters and O&M charges as proposed in the petition above.*
- (d) *Approve provisional tariff based on these benchmarks and O&M charges.*
- (e) *Approve recovery of expenses understated / not considered in this petition e.g. cost, interest and finance charges, depreciation, balance works to be executed after CoD etc at a later stage, if required.*
- (f) *Approve recovery of fixed / variable charges as proposed above on provisional basis, till issue of final order.”*

6. The case was listed for motion hearing on 10th April, 2012 when the petitioner informed that the 45 MW Unit-1 has been synchronized on 8th March, 2012 and achieved CoD on 3rd April, 2012.
7. The Commission admitted the petition and directed the petitioner to serve copy of the petition on all respondents in the matter.
8. During the hearing held on 8th May, 2012, the representatives from MP Power Management Co. Ltd. (Respondent No.2), M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd., Indore (Respondent No.5), M. P. Power Transmission Co. Ltd., Jabalpur (Respondent No.6) and M. P. State Load Despatch Centre, Jabalpur (Respondent No.7) appeared before the Commission and offered their comments on the petition.
9. The representatives appearing on behalf of MP State Load Despatch Centre (SLDC) placed some sample calculation before the Commission for implementation schedule, schedule under STOA and the total schedule considering Declared Capacity and actual injection under different scenario. The copy of the comments offered by SLDC was served to the petitioner on the same day to obtain their comments and the petitioner in its supplementary submission offered no comments to the aforesaid sample calculation filed by SLDC.
10. The petitioner was asked to serve copy of all additional submission filed by the petitioner with the Commission to the respondents in the matter. The petitioner through an affidavit dated 5th June, 2012 and 8th June, 2012 filed the additional information/documents as sought by the Commission.

11. During the hearing held on 12th June, 2012, Senior Counsel appearing on behalf of the petitioner stated that the project cost of Unit 1 & 2 as on CoD and after CoD has been revised on account of change in assumptions for apportionment of the common facilities amongst all three units of the project in accordance with Regulation 8.3 of MPERC (Terms & Conditions for determination of Generation Tariff) Regulation, 2009 and that these assumptions are subject to regulatory scrutiny.

12. The petitioner was directed to file a written submission in support of his contention in favour of the reasons for increase in project cost on various heads up to and after CoD of the project. The petitioner was also directed to file the details of common items along with apportionment of their cost amongst all units.

13. It was observed by the Commission that the capital cost as on CoD for Unit-1 increased in the submissions made by the petitioner on 8th June, 2012 however, total cost projected to be incurred has come down from ₹303.43 crores (as filed in the original petition) to ₹283.62 crores as filed in the aforesaid supplementary submissions made by the petitioner. The petitioner was directed to segregate the costs as :
 - (a) Those which were exclusively incurred for Unit-1.
 - (b) Those which were incurred for common facilities.

The petitioner was also asked to provide brief details of major cost items and confirmation that they were included in original scope of work. For costs in (b) above, basis of apportionment and reasons as to why they do not relate to third unit was asked. Drawdown schedule for loan and equity for Unit-1 has also undergone change. As such, methodology used to allocate loan

drawn and equity infused to Unit-1 was also asked to be explained. The petitioner was asked to furnish the aforesaid details by 20th June, 2012 to the Commission and respondents.

14. In response, the petitioner filed the following information with the Commission on 20th June, 2012:
- i. Brief details of major cost items incurred for Unit-1 was provided in **Annexure-I** of the affidavit. The petitioner also confirmed that these items were included in the original scope of work of the related EPC contractors, which were awarded in line with the plant specifications.
 - ii. The petitioner submitted that the project cost has been apportioned based on the principal guidelines given in clause 8.3 of MPERC's Regulations on the basis of capacity of units in respect of major cost items and submitted the same in **Annexure-II** of the affidavit.
 - iii. Regarding certain costs incurred for common facilities but which do not relate to third unit, the petitioner explained the reasons for such common facilities, which cannot be apportioned for Unit-3 in **Annexure-III** of the affidavit.
 - iv. In respect of Unit-3, the petitioner submitted that the environment clearance from State Environment Impact Assessment Authority, Bhopal (M.P.) is still under finalization. Engineering, design and consequent estimated costs have yet to be arrived at and therefore only cost of land, site development and road earmarked for Unit-3 have been considered.

However, the contention of the petitioner is given in details at **Para 16 (B)** of this order.

15. The Commission observed during the hearing held on 3rd July, 2012 that the petitioner served the copies of all additional submissions filed with the Commission to all respondents. The Respondent No.1 also filed its response with the Commission on 2nd July, 2012. Since the Commission found further information gaps and the necessity of some more additional information to the clarifications and information filed by the petitioner till 20th June, 2012, the petitioner was asked to file additional information by 6th July, 2012. The response of the petitioner vis-a-vis the information sought by the Commission is given in following part of this order.
16. It is mentioned that the petitioner filed its response to various issues raised by the Commission during several hearings held in the matter. The issue-wise response of the petitioner filed with the Commission on 5th June, 2012, 8th June, 2012, 20th June, 2012 and 6th July, 2012 is given below :

A Issue raised by the Commission vide order-sheet dated 11th May, 2012

- a) "During the course of hearing the representatives appearing on behalf of the petitioner explained the reasons for increase in project cost on various heads up to and after CoD of the project. The petitioner further stated that there are about 4 to 5 items in the project cost, which are common for the subject 45 MW Unit No.1 and other units to be commissioned in future. The petitioner submitted that a list of all such common items along with apportionment of their cost amongst all units shall be submitted to the Commission. The petitioner is directed to file a written submission in support of the aforesaid statement.

- b) The representatives appearing on behalf of Respondent No.7 (SLDC, Jabalpur) placed some sample calculation before the Commission for implementation schedule, schedule under STOA and the total schedule considering Declared Capacity and actual injection under different scenario. The representatives appearing on behalf of Respondent No.7 served a copy of such calculations on the petitioner also. The petitioner shall file its response on the submissions made by SLDC at least seven days before the next date of hearing.

- c) A copy of audited balance sheet with auditor's report, notes on account and complete Schedules be submitted.

- d) Complete details along with the documents regarding relationship if any, and share-holding etc. between M/s BLA Power and the Fuel Supply Company i.e. M/s BLA Industries. If they are related parties, copies of permission obtained for entering into fuel supply agreement be submitted.

- e) Complete break-up of major components along with brief description of such components included in the project cost up to CoD and after CoD as filed under table 4.1.6 of the petition be submitted. It must be specifically mentioned whether the afore-mentioned works are under original scope of works of the detailed project report or not. Details regarding funding of balance works for ₹80.12 crores after CoD, as indicated in the table be also furnished. Component-wise break-up of pre-operative expenses be furnished. It may also be explained as to how pre-operative expenses are also appearing in post-commercial operation data expenses and break-up thereof.

- f) It is observed from the portion of balance sheet (as on 30th September, 2011) filed with the petition that depreciation is shown under fixed assets up to 30th September, 2011 and the depreciation is further shown under pre-operative expenditure in Schedule 6 of the balance sheet. It is also observed that certain assets were already capitalized on 31st March, 2011 and then on 30th September, 2011 whereas the unit was commissioned in March, 2012. In view of the afore-mentioned observations, the petitioner is directed to explain to what use these assets were put to and revenue earned by these assets.
- g) An amount of ₹3.39 crores has been included in the break-up of project cost after CoD under the head “margin money towards working capital”. The reasons along with the details of this amount considered in the project cost be explained to the Commission since this provision appears beyond the scope of the Regulation.”
- h) “It is mentioned in the petition that Allahabad Bank in consortium with other banks has funded debt for the project. It is further observed from the relevant form No.6 & 7 filed with the petition that the financial package of ₹157.47 crores has been approved as on CoD from Allahabad Bank, Bank of India, Andhra Bank, United Bank of India and Corporation Bank while a total loan of ₹212.40 crores is shown in the same table by adding a bridge loan of ₹54.93 crores. The petitioner is required to submit the following :
- (i) The details regarding funding agency and the loan agreement along with terms and conditions of the loan amount in project loan.
 - (ii) The basis of arriving at the weighted average rate of interest at 14.75% filed in the petition.

- (iii) The details of schedule and actual drawal of loan amount from different lending agencies.”
- i) It is observed from Para 6.7.3 of the petition that a common depreciation rate of 4.67% has been applied on different average gross block of ₹263.37 crores and ₹303.43 crores. The reason for applying a common depreciation rate on different average gross block be submitted to the Commission.
- j) The petitioner is also required to file the details of revenue earned from sale of infirm power duly certified by SLDC along with the details of fuel expenses incurred in generation of infirm power duly certified by the Chartered Accountant.
- (k) It is observed that the landed cost of coal having GCV of 5200 kcal/kg is filed as `2639.50 per metric ton in the petition and this cost of coal is compared with landed cost of coal of WCL indicating ROM price besides various other expenses, duties, royalty and cess etc. With reference to the aforesaid submission, the petitioner is directed to submit the basis of landed cost of coal filed in the petition with complete break-up of basic price and other applicable expenses, duties, royalty and cess etc. with full justification.
- (l) The cost of coal for preceding three months be submitted in accordance with Regulation 35.2 of MPERC (Terms & Conditions for determination of Generation Tariff) Regulation, 2009.
- (m) The cost of secondary fuel oil needs to be filed as per the provision under Regulation 36.2 of MPERC (Terms & Conditions for determination of

Generation Tariff) Regulation, 2009. The supporting documents in respect of claiming the cost of secondary fuel oil be also submitted.

(n) The petitioner was also directed to file the following technical details :

- (i) Heat balance diagram for turbine cycle heat rate.
- (ii) Guaranteed unit auxiliary consumption of steam turbine with break-up of boiler auxiliary.
- (iii) List of common auxiliary and their power consumption like
 - Coal handling plant
 - Ash handling plant
 - Cooling water system etc.
- (iv) Schematic Process Instrumentation (PI) diagram
- (v) Characteristics curves of following (along with power curves with operating point duly marked)
 - Boiler Feed Pump (BFP)
 - Condensate Extraction Pump (CEP)
 - Circulating Water (CW) Pumps
 - Induced Draft (ID) Fan
 - Forced Draft (FD) Fan
 - Primary Air (PA) Fan
 - Mills type and design fineness
- (vi) Daily Coal analysis report indicating
 - Ash content
 - Moisture content
 - Gross Calorific Value etc.
- (vii) Whether boiler feed pump is steam driven or electrical driven
- (viii) Whether closed cycle cooling or open cycle cooling is provided for the unit.

- (ix) The petitioner has worked out the gross station heat rate by considering the guaranteed heat rate, generator efficiency and boiler efficiency as per contract with various equipment suppliers. The supporting documents/certificates in this regard be submitted.

Petitioner's response dated 5th June, 2012 on above issues

- a) *"The detailed analysis of the costs has been done and is of the view that some of the costs are attributable entirely to units 1 and 2 while there are other costs which can be apportioned between the three units. It is submitted that since the development activities are taking place simultaneously there is an element of estimation and appropriation to be made at this stage. In this context, the petitioner states that the total capital cost attributable to the first unit of 45 MW is currently being worked out based on Clause 8.3 of the MPERC Regulations. The petitioner undertakes to provide details of such apportionment in the required format within 3 days of submitting the present affidavit. It is submitted that the aforesaid apportionment is based on actual money spent in the project as on 16.05.2012, including certain amounts which are due and payable to contractors upon verification of bills. This has been validated by the internal auditors of the company and has been accepted by the lenders.*
- b) *The petitioner submits that the petitioner accepts the submissions of the SLDC and shall ensure that the directions of the SLDC are complied with by the petitioner. Since the petitioner was operating a new plant and as such, the regulatory practices were under implementation, the petitioner had inadvertently given higher schedules, which practice has now been corrected and the petitioner undertakes to strictly follow the protocol provided under the Grid Code.*

- c) *The unaudited balance sheet upto 31.03.2012 along with complete schedules is filed hereto and marked as **ANNEXURE D**. It is clarified that since this is an unaudited balance sheet the notes on account are not available at this stage. However, the petitioner undertakes to file the audited balance sheet along with complete notes as soon as the same is available. However, as regards audited balance sheet dated 30.09.2011, the petitioner craves leave to file herewith a copy of the notes of account and the auditor's report, which have not been filed earlier. The same is annexed herewith and marked as **ANNEXURE E**.*
- d) *The detailed shareholding pattern and list of Directors of B L A Power Pvt. Ltd. and B L A Industries Pvt. Ltd. along with approval under Section 297 of the Companies Act, 1956 are annexed herewith and marked as **ANNEXURE F**.*
- e) *It is submitted that the petitioner has already undertaken to provide a component-wise break-up of the project cost for unit No. 1. It is clarified that the first unit achieved COD on 03.04.2012.*
- f) *The petitioner has made provisions for depreciation in accordance with the AS 6, as is mandatorily required under the Companies (Accounting Standards) Rules, 2006. A copy of the relevant provisions of the said rules is annexed herewith and marked as **ANNEXURE G**. Since provisions for depreciation is made once the asset is put to use, the petitioner was required to capitalize such pre-operating expenses against which was not set off against any revenue receipts. Therefore, there is no impact on the asset value and that the said accounting entry was only made for purposes of statutory compliance.*

- g) *The petitioner submits that an amount of ₹3.39 crores has been shown as margin money towards working capital as the lender's have considered it as a part of the Project Cost and therefore, requests the Commission to kindly make a provision of considering it as a part of Project Cost.*
- h) *It is clarified that after apportionment of costs relatable to unit no. 1, there is no requirement to avail of any bridge loan at this stage. The requirement of bridge loan is likely to arise for unit no. 2 for which discussions are on with the lenders and a final decision on this will be taken on a later date.*

Further, as regards the details to be submitted by the petitioner, it is clarified that the loan agreements relating to drawl of ₹157.47 crores have already been submitted. The interest rate of 14.75% (base rate of 10.75% plus 4% spread) that has been computed is based on the current rates that the petitioner is liable to pay under the financing agreements to the existing lenders. Therefore, even for bridge loan, the petitioner had taken the said interest rates. The details of the Drawl Schedule for the loan amount for unit no.1 will be submitted by the petitioner along with details apportionment of costs for unit no. 1.

- i) *The petitioner submits that the depreciation rate of 4.67% has been applied in terms of Appendix II of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2009. In any event, the petitioner will comply with the directions of this Hon'ble Commission in relation to calculation of depreciation.*
- j) *The details of revenue earned from sale of infirm power duly certified by SLDC along with details of fuel expenses for generation of infirm power (duly certified by the Chartered Accountant) is annexed hereto and*

marked as **ANNEXURE H**. It is submitted that since the fuel cost on an average is ₹4.48 per unit, the revenue realized from sale of infirm power is ₹2.47 per unit. Therefore, we request this Hon'ble Commission to take into consideration the additional cost ₹2.01 per unit borne by the petitioner in arriving at a reasonable and fair provisional tariff.

- k) The petitioner has provided the entire details relating to the landed cost of coal including basic price and other applicable expenses, duties, royalty and cess in a schedule annexed hereto and marked as **ANNEXURE I**. It is submitted that the landed cost of coal of GCV of 5200 kCal per kg at the petitioner's plant is around ₹2997.9 per MT. It is clarified that the aforesaid cost has been arrived at on the basis of the Fuel Supply Agreement dated 25.04.2011. A copy of the Fuel Supply Agreement including amendments thereto has already been submitted to this Hon'ble Commission. It is submitted that at present the petitioner does not have any other alternate source for purchase of coal, apart from e-auction and imported coal whose costs are much higher. It is submitted that keeping in view existing electricity regulatory norms, the petitioner is also entitled to receive through tariff as a pass through all fuel price adjustment. Such adjustments have been allowed by this Hon'ble Commission for fuel cost purchases made by other generating stations.
- l) The petitioner craves leave to annex cost of coal for preceding three months in terms of the applicable regulations. A copy of the said calculations for arriving at the cost of coal for the preceding three months is annexed herewith and marked as **ANNEXURE J**.
- m) It is submitted that the details of secondary fuel cost consumed from the date of synchronization till COD are annexed hereto and marked as **ANNEXURE K**."

n) *The petitioner filed the following technical details :*

- 1) *List of common auxiliaries and their power consumption.*
- 2) *Technical data of Steam Turbine, Generator and Auxiliaries.*
- 3) *Schedule of guaranteed unit Auxiliary consumption data for following:*
 - a) *Boiler*
 - b) *Turbine*
 - c) *Air Conditioning and Ventilation system*
 - d) *Coal Handling System*
 - e) *Cooling water pumps and Auxiliary water pumps*
 - f) *Effluent Treatment Plant (ETP)*
 - g) *Fire protection and detection system*
 - h) *Cooling Tower*
- 4) *Heat Balance Diagram*
- 5) *Pumps performance curve*
- 6) *Fans performance curve*
- 7) *Coal analysis report for sampling on 13.05.2012.*

B Issue raised by the Commission vide order dated 13th June, 2012

The petitioner was directed to segregate costs as,

- (a) Those which were exclusively incurred for Unit-1.
- (b) Those which were incurred for common facilities.

For these costs, brief details of major cost items and confirmation that they were included in original scope of work be given. For costs in (b) above, basis of apportionment and reasons as to why they do not relate to third unit be given. Drawdown schedule for loan and equity

for Unit-1 has also undergone change. Methodology used to allocate loan drawn and equity infused to Unit-1 may also be explained.

Petitioner's response dated 20th June, 2012 on above issues

"1. (a) In paragraph 6(a) of the Order Sheet dated 13.06.2012, Hon'ble Commission has directed M/s B L A Power Pvt. Ltd. to submit brief details of major cost items incurred for Unit # 1. The said details have been segregated and being submitted to this Hon'ble Commission as Annexure-I to the present Affidavit. It is also confirmed that these items were included in original scope of work of the relevant EPC Contractors, which were awarded in line with the Plant specifications.

In paragraph 6(b) of the Order Sheet dated 13.06.2012, this Hon'ble Commission had directed M/s B L A Power Pvt. Ltd. to submit the segregated cost for the common facilities. it is submitted that the project cost has been apportioned based on the principal guidelines given in Clause 8.3 of MPERC's Regulations RG-26(1) as already stated in para 3 of our submission dated 08.06.2012. The cost has been apportioned on the basis of capacity of the units in respect of all the major cost items as elaborated and is being submitted to this Hon'ble Commission as Annexure-II. In respect of Unit # 3, M/s B L A Power Pvt. Ltd. the environment clearance from State Environment Impact Assessment Authority, Bhopal (M.P.) is still under finalization. Engineering, design and consequent estimated costs have yet to be arrived at and therefore only cost of land, site development & road earmarked for Unit # 3 have been considered. The reasons for the apportionment of costs of the common facilities towards Units 1 & 2 alone and not for Unit # 3 has also been elaborated in Annexure-III attached herewith.

c) Further this Hon'ble Commission has also in the order dated 13-06-2012 required M/s B L A Power Pvt. Ltd. to provide details of the methodology used to allocate the loan drawn and the equity infused in Unit 1. In this regard, it is humbly submitted that :Originally the project was envisaged only for one unit of 45 MW. Thereafter, the company decided to develop for two units of identical configuration of 45 MW each. The infrastructure was planned and executed accordingly. The work on common infrastructure for both the units like land and site development, roads, water reservoir, water pipeline, river intake well, coal handling plant, ash handling facilities, chimney, 132 KV transmission line and work at substation of MP Transco, STG building etc. were undertaken in a consolidated manner.

Regarding methodology used to allocate loan drawn and equity infused to Unit-1, the petitioner submitted the following :

“The loan was initially applied and sanctioned only for the first unit of 45 MW in the year 2009 and the first draw down happened in August 2009. The work of the first unit had already started and the infusion of equity and drawdown of loan from the first unit commenced with the activity for the first unit in progress. Thereafter, the company decided to develop the second unit of 45 MW. The loan was accordingly applied and sanctioned in the year 2010 for the second unit of 45 MW. The drawdown of the loan was started in December 2010 for Unit # 2. The lenders have monitored the progress of the project through the lender's engineer, who has reported to the lenders about both the units being developed simultaneously. In view of this, the drawdown of loan has been considered from Unit #1 as well as from Unit # 2 to the extent required for common facilities constructed along with Unit # 1. However, for the Equipments specific to Unit # 1 and Unit # 2 such as Boiler and Turbine of Unit # 1, the draw down of loan has been considered only from Unit # 1.”

C Issues raised by the Commission vide order dated 5th July, 2012

- a) Complete drawdown schedule showing loan and equity infusion including details of IDC. The aforesaid drawdown be apportioned amongst the units. The basis of apportionment be also mentioned.
- b) What is the timeframe for completing the accounts duly audited and when final tariff based on these audited accounts would be filed with the Commission?
- c) Which are the roads covered by cost shown as incurred in the capital cost claimed by the petitioner? Whether these roads were contemplated in the DPR and included in the original scope of work?
- d) The zero date of the project is mentioned in DPR as the date of appointment of the technical consultants. The date of appointing technical consultants be informed to the Commission. If completion of project has got delayed vis-à-vis that envisaged in the DPR, reasons of such delay be indicated. Also whether it was attributable to the petitioner or its contractors and whether any liquidated damages have been recovered be informed.
- e) The petitioner is required to demonstrate the applicability of weighted average interest rates claimed in the petition along with all relevant records in respect of their claims.
- f) The reasons of pre-operative expenses (all major cost items) and interest during construction not being allocated to Unit-3 be informed.
- g) The basis of cost of washing and transportation of coal as included in the landed cost of coal claimed by the petitioner be informed with justification.
- h) The petitioner is also required to demonstrate that the coal cost claimed in the petition is reasonable and it is not higher than the prevailing market rates as per the conditions stipulated in approval

under the proviso to sub-section (1) of Section 297 of the Companies Act, 1956 granted by the Ministry of Corporate Affairs, Government of India.

Petitioner's response dated 6th July, 2012 on above issues

a) *"As directed the petitioner is annexing hereto the complete drawdown schedule of term loan including details of the IDC of Unit 1 and Unit 2, which is annexed hereto and marked as **ANNEXURE A**. It is submitted that the total term loan facility provided to the petitioner by the consortium of lenders for Unit 1 and Unit 2 is ₹325.10 crores. The Loan Agreement for Unit 1 and Unit 2 was executed on 10.12.2009 and 09.12.2010, respectively. Copies of the Loan Agreements dated 10.12.2009 and 09.12.2010 are annexed hereto and marked as **ANNEXURE B (Colly.)**. It is further submitted that the sanction for Unit 1 in terms of the Term Loan Agreement was ₹157.60 crores, while the sanction for Unit 2 was ₹167.50 crores. It is submitted that due to revision of costs, the total loan drawn towards Unit 1 as on 03.04.2012 (COD) is ₹188.50 crores. It is clarified that about ₹31.03 crores has been drawn from term loan of Unit 2 at this stage for completion of certain common facilities. The petitioner further submits that the draw down at each stage has been validated by the Lenders Engineer, who has submitted quarterly reports to the banks confirming the actual progress of the project and the expenditure thereto.*

Equity Infusion

*The petitioner states that the total equity infusion by the promoters as on 03.04.2012 (COD of Unit 1) is ₹125.79 crores. The table demonstrating equity infusion on a quarterly basis is annexed hereto and marked as **ANNEXURE C**. It is clarified that there is no debt component for*

expenditures relating to Unit 3 and that the entire expenditure for Unit 3 is from the equity component.

Basis for apportionment of costs, including reason for increase in cost

The petitioner reiterates its earlier submissions made in the affidavit filed on 05.06.2012 and 08.06.2012. It is reiterated that the apportionment has been made on the basis of detailed analysis of costs which are attributable to Unit 1 and 2 while there are other costs which can be apportioned between the three units. Further, the total capital cost attributable to Unit 1 has been worked out based on clause 8.3 of the MPERC (Terms and Conditions of Generation Tariff) Regulations, 2009. The details of such apportionment was enclosed in the Affidavit filed on 08.06.2012.

Apart from increase in civil costs, there were significant increase in costs on account of inflation (which was not considered / factored in the DPR). In this context, the project witnessed increase in cost of plant and machinery, BOP, preoperative costs and IDC. The details of increase of each of the aforesaid items have been provided to this Hon'ble Commission along with our Affidavit dated 08.06.2012. It is submitted that the costs actually have been validated by the lenders engineer in its quarterly report, which has subsequently been accepted by the lenders for purposes of permitting disbursement. The petitioner craves leave to separately file the reports of the lenders engineer, which validates the actual costs incurred in the project. However, while considering the said report this Hon'ble Commission may kindly take note of the fact that the report does not give a break up between the Unit 1 and Unit 2, in terms of the Regulations framed by this Hon'ble Commission. The report was prepared and delivered to the Banks in accordance with the format

- developed by the banks for purposes of reviewing utilisation of funds by the borrower.*
- b) The accounts of the petitioner Company will be duly audited and finalised on 31.10.2012 and the final tariff based on the audited account may be filed thereafter.*
- c) As regards the deviation from the estimated costs, it is submitted that the original DPR did not fully capture all the costs that were involved in the project. In this context, it is relevant to note that the road cost of ₹16.80 crores was not considered in the DPR. Apart from the aforesaid, there is an admitted price variation of over 40% in the cost of steel. Similarly, in relation to cost of cement the price increase is over 25% from the original estimates. Also while implementing the project the capacity of the water reservoir was increased from 20000 m³ to 50000 m³ and the ash pond was also constructed which was earlier not envisaged as such in the original DPR. The petitioner submits that there was significant increase in the STG foundation, boiler and chimney foundation cost for the reason that piling work was not estimated in the original DPR, which had to be carried out after getting the results of the soil test.*
- d) The date of appointment of technical consultant was 24.09.2009. The petitioner states that in terms of the PPA the project had to be commissioned on or before 30th September 2012. However, in the present case, the project was commissioned on 03.04.2012 and "zero date" i.e. the date when the digging of the first foundation of the project took place, was 26.02.2010.*

The petitioner submits that at this stage no LD has been charged to the contractors due to any delay in supply and erection. However, the petitioner is currently examining the accounts and as such, will be in a

position to make an appropriate submission at the true-up stages. It may be relevant to point out that since most of the contractors are common for Unit 1 and Unit 2, any coercive measure taken by the petitioner on account of LD at this stage would jeopardize the implementation schedule of Unit 2. Therefore, the petitioner is currently evaluating the situation and at an appropriate time shall crystallize the LD demands.

- e) The interest rate of 14.75% per annum is the interest rate charged by the consortium of banks from which the petitioner has received the loan facilities. The rate of 14.75% per annum includes the base rate of 10.50% plus the spread rate of 4.25%. The rate of interest of 14.75% has been confirmed by the lead bank by a letter dated 05.07.2012, which is annexed hereto and marked as **ANNEXURE D**.
- f) It is submitted that the entire cost incurred towards unit 3 is from the Promoters equity and as such, no portion of the debt has been allocated towards unit 3. Hence at this stage, there is no IDC component for unit 3.

The petitioner submits that the petitioner has allocated costs which are attributable to Unit 3 and are submitted the same to this Hon'ble Commission along with the Affidavit dated 08.06.2012. It is submitted that since Unit 3 is at an inception stage, there is no possibility to apportion pre-operative expenses towards Unit 3. The petitioner submits that for Unit 3, the project has not achieved financial closure. Apart from appointment of consultant for preparing the DPR, there is no other progress in relation to Unit 3. It is only after the DPR is approved, the petitioner will proceed to make investments in the project. Therefore, the total allocation of costs in relation to Unit 3 is only ₹11.36 crores, the details of which have been provided in the Affidavit dated 08.06.2012. It is submitted that the petitioner has paid an advance of ₹2.64 lacs to the consultant, and the same had not been originally accounted for toward

preoperative expenses. However, the same can be shown as an advance under the head of preoperative expenses for Unit 3.

g) The petitioner reiterates the submissions made during the hearing that the petitioner is not required to provide justification in relation to the landed cost of coal. However, it is necessary to take on record the fact that the petitioner under the FSA is assured of coal having GCV of 5200 kCal per kg. The landed cost of this coal at the petitioner's power plant is ₹2997.90 per MT. The petitioner believes that the landed cost of coal of GCV 5200 kCal per kg is a competitive rate and in any case better than the coal available through WCL/Coal India. It was in this context, that attempt was made to justify the costs after taking into consideration all attributable costs.

h) The petitioner reiterates the submissions made at the hearing on 03.07.2012 it is submitted that the transaction between B L A Industries Ltd. (the coal supplier) and B L A Power Ltd. is at arms length and there is no evidence on record to show that the transaction is otherwise. It is submitted that under Section 297 of the Companies Act, 1956, in order to ensure that a transaction is at arms length the parties have to abide by the following:

"Section 297

BOARD'S SANCTION TO BE REQUIRED FOR CERTAIN CONTRACTS IN WHICH PARTICULAR DIRECTORS ARE INTERESTED.

(1) Except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company:

*(a) for the sale, purchase or supply of any goods, materials or services; or
(b) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company:*

Provided that in the case of the company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government.

(2) Nothing contained in clause (a) of sub-section (1) shall affect—

(a) the purchase of goods and materials from the company, or the sale of goods, and materials to the company, by any director, relative, firm, partner or private company as aforesaid for cash at prevailing market prices; or

(b) any contract or contracts between the company on one side and any such director, relative, firm, partner or private company on the other for sale, purchase or supply of any goods, materials and services in which either the company or the director, relative, firm, partner or private company, as the case may be, regularly trades or does business:

Provided that such contract or contracts do not relate to goods and materials the value of which, or services the cost of which, exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract or contracts; or

(c) in the case of a banking or insurance company any transaction in the ordinary course of business of such company with any director, relative, firm, partner or private company as aforesaid.

(3) Notwithstanding anything contained in sub-sections (1) and (2), a director, relative, firm, partner or private company as aforesaid may, in circumstances of urgent necessity, enter, without obtaining the consent of the Board, into any contract with the company for the sale, purchase or supply of any goods, materials or services even if the value of such goods

or cost of such services exceeds five thousand rupees in aggregate in any year comprised in the period of the contract; but in such a case, the consent of the Board shall be obtained at a meeting within three months of the date on which the contract was entered into.

(4) Every consent of the Board required under this section shall be accorded by a resolution passed at a meeting of the Board and not otherwise; and the consent of the Board required under sub-section (1) shall not be deemed to have been given within the meaning of that sub-section unless the consent is accorded before the contract is entered into or within three months of the date on which it was entered into.

(5) If consent is not accorded to any contract under this section, anything done in pursuance of the contract shall be voidable at the option of the Board.

(6) Nothing in this section shall apply to any case where the consent has been accorded to the contract before the commencement of the Companies (Amendment) Act, 1960.

*It is submitted that there is no clear market value of coal in India. The reason being that Coal is a nationalized product and as such allocation of coal is made in terms of the New Coal Distribution Policy, 2007. In the present case, although the petitioner has applied for linkage, its application is pending. As a result, the option for purchasing coal is either through the e-auction or purchasing imported coal. In this context, the e-auction rates for the last five months are provided in a schedule annexed hereto and marked as **ANNEXURE E**. Further, the estimated cost of imported coal of GCV 5200 kCal per kg in spot at Kandla port is about ₹3,100/- per MT plus taxes as applicable. Therefore, the landed cost of imported coal at the TPS is*

estimated to be atleast ₹5,000 per MT. Keeping in view the above price bands and the fact that the petitioner does not have linkage, the petitioner believes that the coal price agreed between the parties under the FSA is competitive and as such, in the interest of the consumers. The energy cost has been computed to be ₹1.83 per unit inclusive of all taxes / levies, which is competitive keeping in view the existing tariff of generating companies both within the State of Madhya Pradesh and elsewhere. It is necessary to point out that most generating companies using coal from collieries owned and operated subsidiaries of Coal India are currently facing acute shortages as well as are getting poor quality of coal much below the grade for which the coal is invoiced. Further, the nationalized coal companies are issuing supplementary bills for recovery of fuel cost increase periodically. Consequently, the generating companies are now compelled to pay such unregulated cost increases, which costs are further passed on to the distribution companies/ consumers through supplementary bills. Also due to poor quality of coal (having high moisture content and shale) generating companies are not being able to maintain their normative generation parameters, particularly station heat rate. Keeping in view the current market conditions, the petitioner believes that the existing long term FSA promotes the interest of the consumers and as such, the cost of coal deserves to be entirely approved in the present proceedings.”

16.1 Following are the respondents in the subject petition :

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

MP Power Management Co. Ltd., Jabalpur, the Distribution Companies and MP State Load Despatch Centre, Jabalpur actively participated in the proceedings held in the matter and offered their comments/suggestions on the petition and submissions filed by the petitioner. MP Poorv Kshetra Vidyut Vitaran Co. Ltd., Jabalpur endorsed the views offered by MP Power Management Co. Ltd. The salient contents of the comments/suggestions offered by MP Power Management Co. Ltd. and the commission's view while passing this order are annexed as **Annexure-1**.

Analysis of the petition

17. The petitioner filed the petition and requested for provisional tariff based on some operational and O&M norms which were beyond the scope of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 and its amendments. The Commission initiated the process of framing the norms for 45 MW unit by making an amendment to the Tariff Regulations, 2009. The third amendment to the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 has been notified by the Commission on 30th June, 2012. The Commission has therefore, considered the norms notified in the Regulations in this order. The Commission had observed several inconsistencies, information gaps and requirement of some additional documents for proper scrutiny and validation of the information/data filed in the petition. All such issues were sought and gathered from the petitioner during various hearings in the matter. Based on the additional information and documents submitted by the petitioner, the following status emerged before the Commission while analyzing the petition:
- 17.1 The Commission has notified the “Third Amendment to MPERC (Terms & Conditions for determination of Generation Tariff) Regulations, 2009” on 30th June, 2012 wherein besides a few other provisions, operation and O&M norms for 45 MW units are also specified. These norms are applicable in the subject petition.
- 17.2 As per provisions under Regulation, the petitioner in its revised submission has filed the original project cost as ₹283.62 crores and the capital cost incurred up to the date of commercial operation of Unit-1 is claimed as ₹254.73 crores hence, the additional capital cost now claimed after CoD is (₹283.62 crores - ₹254.73 crores) ₹28.89 crores.

17.3 Besides the documents filed with the petition, as mentioned in **Para 3** of this order, the petitioner has filed the following documents also in support of its claims :

- (i) Un-audited balance sheet up to 31st March, 2012 with schedules.
- (ii) Notes on accounts and auditor's report.
- (iii) Detailed shareholding pattern and list of Directors of M/s BLA Power Pvt. Ltd. and M/s BLA Industries Ltd.
- (iv) SLDC's certificate for infirm power supplied by the petitioner.
- (v) Details regarding actual coal cost of ₹2997.90 per MT for GCV of 5200 kcal/kg as per FSA and Supervision, Handling and Delivery Contracts.
- (vi) Cost of coal for three preceding months.
- (vii) Details of secondary fuel cost.
- (viii) Chartered Accountant's certificate for capital cost of Unit-1 as on CoD and after CoD along with the capital cost of Unit-2.
- (ix) Break-up of major cost components for Unit-1 along with the basis for apportionment of common facilities amongst the units.
- (x) Revised quarterly drawdown schedules of loan drawn for Unit-1 and 2 and equity infusion in all three units.
- (xi) Term Loan Agreement with consortium of five banks.
- (xii) Facility Agreement with banks for Unit-2.
- (xiii) Banker's statement in favour of IDC claims.

17.4 The petitioner has filed the unit-wise drawdown schedules in respect of loans and infusion of equity as on CoD for the revised capital cost of ₹254.73 crores.

17.5 As per the revised drawdown schedule filed by the petitioner, a loan of ₹188.50 crores has been drawn and an amount of ₹66.23 crores has been

infused as equity for Unit-1 as on the date of commercial operation with a debt equity ratio of 74:26.

- 17.6 The petitioner has shown loan drawal of ₹188.50 crores as on CoD for Unit-1 and ₹133.99 crores as on 31st March, 2012 for Unit-2, as per the revised drawdown schedule filed on 6th July, 2012 for capital cost of ₹254.73 crores.
- 17.7 The petitioner also filed a schedule for equity infusion of ₹125.79 crores as on 31st March, 2012 for all the three units wherein an equity of only ₹11.36 crores is informed as infused for Unit-3. It is clarified by the petitioner that the loan of ₹157.60 crores was sanctioned for Unit-1 in terms of term loan agreement while the loan sanctioned for Unit-2 was ₹167.50 crores. It is further clarified by the petitioner that about ₹31.03 crores has been drawn from term loan of Unit-2 at this stage for completion of certain common facilities thereby, making a total loan amount of ₹188.50 crores as claimed in the present case.
- 17.8 The revised drawdown schedules in respect of loan and equity filed by the petitioner are matching with the respective figures in un-audited balance sheets filed by the petitioner.
- 17.9 The petitioner has also filed the Banker's statement indicating IDC as mentioned in drawdown schedules.
- 17.10 It has been mentioned that the entire cost incurred towards Unit-3 is from promoter's equity and no portion of the debt has been utilized towards Unit-3. Hence, there is no IDC component for Unit-3. It has been further mentioned that the Unit-3 is at an inception stage and has not achieved financial closure hence, there is no possibility to apportion pre-operative

expenses towards Unit-3. The total allocation of cost in relation to Unit-3 is only ₹11.36 crores.

17.11 The petitioner in its submission filed on 6th July, 2012 filed the Term Loan Agreement executed with the following banks :

- a) Allahabad Bank, Shyam Nagar, Telibandha, Raipur – 492006 (Chhattisgarh)
- b) Andhra Bank, Kolkata Main Branch, 14/1B Ezra Street, Kolkata – 700001
- c) Bank of India, Tatyapara Branch, Kankalipara Road, Raipur (Chhattisgarh) – 492001
- d) Corporation Bank, Industrial Finance Branch, Bharat House, No.104, Ground Floor, B. S. Marg, Mumbai – 400023
- e) United Bank of India, Budhapara, Bijlee Office Chowk, Raipur (Chhattisgarh)

17.12 As per the Term Loan Agreement signed with the five banks, the following loan was sanctioned by the above banks in following shares :

S. No.	Lender	Sanction letter	Sanction letter date	Amount of facilities (in crores)
1	Allahabad Bank	TBRP/Adv/BLA/424 and ADV/BLAPPL/02	10/07/2009 and 27/08/2009	35.60
2	Andhra Bank	070/52/145 and 070/1/434	08/06/2009 and 07/09/2009	34.00
3	Bank of India	TTP:/2009-10/001 and TTP:/2009-10/003	22/06/2009 and 26/10/2009	27.00
4	Corporation Bank	IFB/862/2009-10 and IFB/1839/2009-10	23/06/2009 and 12/10/2009	27.00
5	United Bank of India	CBG/BLAPPL/295/2009 and RAI/ADV/BLAPPL/214/09-10 and RAI/ADV/BLAPPL/458/09-10	09/06/2009 and 02/09/2009 and 09/12/2009	34.00
Total				157.60

17.13 The petitioner has also submitted a written confirmation from the Allahabad Bank, Kolkata mentioning that the present rate of interest of term loan of Unit-1 & 2 as 14.75% worked out on the base rate + 4.25%. It is certified by Allahabad Bank that the present base rate of the bank being 10.5%, the interest rate at present works out to be 14.75%. This letter was issued by Allahabad bank on 5th July, 2012.

17.14 The petitioner also confirmed that the drawdown at each stage has been validated by the Lender's Engineer, who has submitted quarterly reports

to the banks confirming the actual progress of the project and the expenditure thereto.

17.15 The petitioner has confirmed on affidavit that the actual expenditure made as shown in the apportionment of cost amongst the units and filed with its submission dated 8th June, 2012, was in the original scope of work of the relevant EPC contractors, which has been completed and the payment have been made accordingly. The petitioner in the same affidavit also submitted that the apportionment of capital expenditure and funding as submitted by the petitioner for Unit-1 & 2 is provisional and final status of the same shall be submitted when both the units are commissioned.

17.16 Regarding increase in cost as on CoD, the petitioner has submitted that there were significant increase in cost on account of inflation (which was not considered/factored in the DPR). Apart from increase in civil cost, the project cost witnessed increase in cost of plant and machinery, balance of plants, pre-operative costs and IDC. However, the costs have been validated by the lenders engineers in its quarterly report which has subsequently been accepted by the lenders for purposes of permitting disbursement. The accounts of the petitioner company will be duly audited and finalized on 31st October, 2012 and the final tariff based on the audited accounts may be filed thereafter.

17.17 Regarding the cost of roads as claimed and apportioned amongst the units, the petitioner submitted that the road cost of ₹16.80 crores was not considered in the DPR. However, while going through sheet No.177 and Doc-5111127-GE-DPR-700-001 in DPR, it is observed that the revised project cost estimated for civil works consists of ₹11.34 crores for roads while no break-up of the total civil works is given in the appraised project cost. However, the estimated cost for civil works increased from ₹34.50

crores to ₹62.33 crores for Unit-1 in the revised project cost as mentioned in the same sheet.

Similarly, from another sheet No.100 regarding civil, structural and architectural works in the DPR, a provision for plain service roads with 6 mtrs. (for double length) wide RCC roads with 1 mtr. wide shoulder on either side of the road is provided at sub-section 9.4.4.1 of the DPR. Hence, the contention of the petitioner that the full road cost of ₹16.80 crores was not considered in the DPR, is lacking clarity since the DPR filed with the Commission is for 2x 45 MW while the total road cost of ₹16.80 crores comprises of ₹5.60 crores for Unit-3 also.

17.18 Regarding the coal cost, the petitioner on several occasions reiterated that the petitioner is not required to provide justification in relation to the landed cost of coal. It has submitted that the landed cost of coal of GCV 5200 kcal per kg is a competitive rate and in any case better than the coal available through WCL/Coal India. The petitioner has made several justifications in support of its aforesaid contention as mentioned in **Para 15 (c) (h)** of this order.

17.19 The petitioner has filed 26 packages for construction/supply/service of Unit-1 wherein all the works are shown as awarded through competitive bidding except one i.e. package 4, which is shown as departmentally.

17.20 Based on the above-mentioned information, the Commission has determined the provisional tariff for Unit-1 at capital cost of ₹254.73 crores as on CoD and in accordance with the provisions under Tariff Regulations, 2009 and its amendments, as given below :

A. Capital Cost:

a. Clause 17.1 (a) of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulation, 2009 provides,

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

b. The petitioner vide its additional submission dated 8th June, 2012 has revised the capital cost of ₹303.43 crores to ₹283.62 crores based on the apportionment among all three units as per clause 8.3 of the Regulations, 2009. The details of the revised capital cost as on CoD and after CoD of Unit-1 after apportionment, as submitted by the petitioner is as given below:

Particulars		As on CoD	Total
1	Land & Development Cost	5.76	5.76
2	Civil, Foundation & Buildings		
2a	Plant Civil work	42.16	46.83
2b	Roads	5.6	5.6
2c	Non plant Building	5.49	5.49
3	Plant & Machinery (Boiler, Turbine & Generator)	83.47	88.84
4	Balance of Plant including Cooling Tower	33.84	48.14
5	Water Intake System	13.54	14.26
6	Power Transmission System	5.88	6.11
7	Others including Pre-Operative Expenses	24.28	24.49
8	Interest During Construction	34.71	34.71
9	Margin Money towards working capital	0	3.39
10	Total	254.73	283.62

- c. The Commission observed that the capital cost for Unit-1 is un-audited and the financial accounts have also not attended finality. Therefore, the Commission has provisionally considered the capital cost as on CoD, as filed by the petitioner in its additional submission. The Commission has not considered any additional capitalization at this juncture therefore, the capital cost of ₹254.73 crores only as on CoD is considered in this provisional order.
- d. The petitioner has also submitted that the aforementioned capital cost as on CoD has been funded through ₹188.50 crores debt from consortium of five banks and ₹66.23 crores equity component which contribute debt-equity ratio of 74 : 26 well within the normative debt-equity ratio. Hence, same is considered by the Commission in this provisional order.

B. Annual Capacity (fixed) Charges:

- a. While calculating the Capacity (Fixed) Charges, the following has been considered :
 - i. Capital Cost up to CoD of ₹254.73 crores including ₹188.50 crores loan component and ₹66.23 crores equity component as filed in additional submission, has been considered.
 - ii. Revenue earned from the sale of infirm power has been considered as per regulation and as per information provided in this regard by the petitioner.
 - iii. Base rate of Return on equity @ 15.5% along with grossing up with corporate tax as per regulation is considered in this order.
 - iv. Loan amount drawn up to CoD is being considered for calculation of interest and finance charges. Rate of interest on loan as indicated in the DPR and other documents filed by the petitioner.
 - v. Repayment equivalent to depreciation allowed for the year is considered as per Regulations, 2009.
 - vi. O & M expenses is taken as per provisions under third amendment to Regulations, 2009.
 - vii. Specific secondary fuel oil is taken as per Regulations, 2009. The rate of secondary oil is considered initially as filed by the petitioner. Further, clause 36.2 of the Regulations takes care of the cost of secondary fuel oil subject to fuel price adjustment at the end of the each year of tariff period as per the formula mentioned under clause 36.2 of the Regulations

- viii. Interest on working capital is worked out as per provisions under Regulation.
- ix. Normative Annual Plant Availability Factor for recovery of annual capacity charges has been considered as per third amendment of Regulations, 2009.
- x. For FY2012-13, the annual capacity charges have been pro-rated for **362 days**.
- xi. The recovery of annual capacity (fixed) charges shall be made by the petitioner in accordance with the Regulations 38.2 and 38.3

The component-wise details of capacity (fixed) charges determined as follows:

(a) Return on equity:

Sr. No.	Particular	Unit	Approved provisionally in this order
1	Opening Equity	₹ Cr.	66.23
2	Equity addition during the year	₹ Cr.	0.00
3	Closing equity	₹ Cr.	66.23
4	Average equity	₹ Cr.	66.23
5	Base rate of Return on Equity	%	15.50
6	Rate of return on equity	%	23.48
7	Return on equity	₹ Cr.	15.55

(b) Depreciation:

Sr. No.	Particular	Unit	Approved provisionally in this order
1	Opening Gross Block	₹ Cr.	254.73
2	Gross Block addition during the year	₹ Cr.	0.00
3	Closing Gross Block	₹ Cr.	254.73
4	Average Gross Block	₹ Cr.	254.73
5	Weighted average rate of depreciation	%	4.67
6	Depreciation amount	₹ Cr.	11.90
7	Cumulative depreciation	₹ Cr.	11.90

(c) Interest charges on loan:

Sr. No.	Particular	Unit	Approved provisionally in this order
1	Opening Loan	₹ Cr.	188.50
2	Loan addition during the year	₹ Cr.	0.00
3	Repayment during the year (equal to depreciation)	₹ Cr.	11.90
4	Closing Loan	₹ Cr.	176.60
5	Average Loan	₹ Cr.	182.55
6	Weighted average rate of interest as filed	%	14.75
7	Interest amount	₹ Cr.	26.93

(d) Operation & Maintenance expenses:

Sr. No.	Particular	Unit	Approved provisionally in this order
1	Installed Capacity	MW	45
2	Per MW O&M expenses as per norms	₹ L/MW	24
3	Total O&M expenses	₹ Cr.	10.80

(e) Secondary fuel oil expenses:

Sr. No.	Particular	Unit	Approved provisionally in this order
1	Installed Capacity	MW	45
2	NAPAF	%	85
3	Gross Generation	MU's	335.07
4	Normative Sp. Oil consumption	ml/kWh	1.00
5	Quantity of Sec. fuel oil	KL	335.07
6	Rate of oil	₹/KL	45332
7	Cost of secondary fuel oil	₹ Cr.	1.52

(f) Interest on working capital:

Sr. No.	Particular	Unit	Approved provisionally in this order
1	Cost of coal for 45 days	₹ Cr.	6.34
2	Cost of fuel oil for 60 days	₹ Cr.	0.25
3	O&M Charges for one month	₹ Cr.	0.90
4	Maintenance Spares 20% of the O&M charges	₹ Cr.	2.16
5	Receivables for two months	₹ Cr.	20.40
6	Total working capital	₹ Cr.	30.04
7	Applicable rate of interest	%	14.25
8	Interest on working capital	₹ Cr.	4.28

Annual capacity (fixed) charges:

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

As per the provisions under Regulation 15.4 of the third amendment to MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 notified on 30th June, 2012, the petitioner is provisionally allowed to recover 90% of the fixed cost allowed at serial No.9 of the above table. The aforesaid 90% fixed cost is ₹19.01 crores as computed at serial No.10 of the above table.

C. Energy (Variable) Charges:

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

- i. Gross Station Heat rate has been worked out as per provisions under clause 33.2 (B) of the Regulations, 2009 considering the Turbine heat rate and Boiler Efficiency as indicated in the supplier certificate submitted by the petitioner.
- ii. Auxiliary Energy consumption and Specific Oil consumption is considered as per norms under third amendment of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 and Principal Regulations respectively.
- iii. 45 MW unit of BLA Power is considered as pit-head and normative transit loss has been considered as per Regulations, 2009.
- iv. Weighted average GCV of coal as filed in the petition is considered.
- v. Weighted average rate of Coal as submitted by the petitioner in its additional written submission is considered.

Sr. No.	Particular	Unit	Approved provisionally in this order
1	Capacity	MW	45
2	NAPAF	%	85
3	Gross Station Heat Rate	kCal/kWh	2792
4	Sp. Fuel Oil Consumption	ml/kWh	1.00
5	Aux. Energy Consumption	%	10.50
6	Transit Loss	%	0.20
7	Weighted average GCV of Oil	kCal/ltr.	10,000
8	Weighted average GCV of Coal	kCal/kg	5200
9	Weighted Average price of Coal	₹/MT	2861
10	Heat Contributed from HFO	kCal/kWh	10
11	Heat Contributed from Coal	kCal/kWh	2782
12	Specific Coal Consumption	kg/kWh	0.5350
13	Sp. Coal Consumption including Transit Loss	kg/kWh	0.5361
14	Rate of Energy Charge from Coal	Paise/kWh	159.42
15	Rate of Energy Charge from Coal at ex bus	₹/kWh	1.71

The base rate of the energy charges shall however, be subject to month to month adjustment of fuel price and GCV of main fuel. The above energy charges have been calculated for the purpose of calculation of two month's billing, which is used for calculation of interest on working capital. The actual billing of energy charges shall be as per the formula and other provisions detailed in Regulation 39.

D. Other charges:

In addition to aforementioned Annual Capacity Charges and Energy Charges the petitioner is allowed to recover the fee paid by the petitioner to MPERC for determination of generation tariff, E.D. and cess on auxiliary power consumption levied by the Statutory Authorities from the beneficiaries on pro-rata basis.

18. The above tariff is provisionally determined by the Commission w.e.f. the CoD of Unit to 31st March, 2013, based on the un-audited financial accounts and the documents placed before the Commission during various proceedings held in the subject matter. The provisional tariff so determined in this order shall subject to adjustment as per proviso 15.3 of the Principal Regulation after the final tariff order is issued in the matter. The Commission has also taken into consideration the appropriate comments/suggestions offered by the respondents in the matter. However, this tariff is subject to revision after filing of the audited accounts along with all other clarifications, which are still lacking clarification to the satisfaction of the Commission.
19. The petitioner is directed to file the final tariff petition at the earliest along with the unit-wise break-up of audited accounts in favour of its claims. All discrepancies/inconsistencies and information gaps observed by the Commission while processing the instant petition be also eliminated while filing the final petition.
20. The dissenting views of Member – Shri C. S. Sharma are annexed as **Annexure-2**.
21. The comments of Chairman – Shri Rakesh Sahni on the dissenting views of Member are annexed as **Annexure-3**.
22. Order of the Commission

In terms of Section 92(3) of the Electricity Act, 2003 (36 of 2003), the views of Shri Rakesh Sahni, Chairman will be the Order of the Commission.

sd/-

(C. S. Sharma)
Member

Date: 24.07.2012

Place: Bhopal

sd/-

(Rakesh Sahni)
Chairman

Annexure – 1

Comments/Suggestions by the Respondent – MP Power Management Co. Ltd., Jabalpur

The salient features of the respondents' contention and Commission's findings thereon are given as below :

1. **Comments:** MPERC (Terms & Conditions for determination of Generation Tariff) Regulations, 2009 were applicable for a control period of three years from FY 2009-10 to FY 2011-12. The Hon'ble Commission vide notification dated 10th February, 2012 has extended the control period of the said Regulations up to March, 2013. In spite of the Tariff Regulations, 2009 being applicable only till March, 2013, the petitioner has filed the tariff petition for the period FY 2012-13 to FY 2014-15. This is not in accordance to the provisions of the Tariff Regulations, 2009.

Commission's view while passing this order: The Commission has determined the provisional tariff up to 31st March, 2013 only.

2. **Comments:** The instant petition has been filed for determination of provisional tariff for sale of power from 45 MW plant of the petitioner. In this regard, it is to submit that the Tariff Regulations, 2009 do not provide norms for filing of tariff petition for determination of provisional tariff and, as such, this petition is liable to be dismissed and the petitioner may please be directed to file a fresh petition for determination of tariff for the balance control period of the Tariff Regulations, i.e. up to 31st March, 2013.

Commission's view while passing this order: Regulation 15.4 in the third amendment to MPERC (Terms and Conditions for determination of Tariff)

Regulations, 2009 notified on 30th June, 2012 provides for grant of provisional tariff by the Commission. Accordingly, the Commission has determined the provisional tariff in this order.

3. **Comments:** The petitioner has claimed that the petition has been filed in accordance with the provisions of the Tariff Regulations, 2009. A simple perusal of the petition makes it amply clear that this petition has been drafted on the basis of arbitrary norms without having any basis and reasonableness and justification and sans merit. No person can be allowed to impose his own terms and conditions for determination of tariff in this era of regulatory framework and each and everyone has to abide by the rules and regulations in vogue.

Commission's view while passing this order: The Commission has not considered the operational and O&M norms filed by the petitioner in this order. The Commission initiated the process of amendment to the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 and notified the norms in the amended regulations after following due process. The norms provided in the Regulations are considered in this order.

4. **Comments:** The petitioner is claiming a plant availability factor of 80%, gross station heat rate of 2835 kCal/kWh, auxiliary power consumption of 11%, specific fuel oil consumption of 3 ml/kWh, O&M normative rate of ₹30 lacs/MW and capital cost of ₹6.74 crores/MW which are gross violations of provisions of Section 61 (c) and (e) of the Electricity Act that provide for encouraging efficiency, economical use of resources, good performance and optimum investment. Accepting the tariff proposed by the petitioner would tantamount to rewarding inefficiencies in performance.

Commission's view while passing this order: The Commission has not considered the operational and O&M norms filed in the petition in this order. The Commission initiated the process of amendment to the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 and notified the norms in the amended regulations after following due process. The norms notified by the Commission are considered in this order.

5. **Comments:** The petitioner has failed to provide any document regarding the date of investment approval by the Board of the Generating Company. Thus, the date of investment approval by the Board could not be established. Even if the case is considered against the time schedule of 33 months, which is laid down for Greenfield coal based power plants of unit size 200/210/250/300/350 MW, it is clear that the unit does not qualify for the additional return of 0.5% of equity. The sanction letter of bank was issued on 10th July, 2009 and unit was commissioned on 3rd April, 2012, i.e. after 32 months and 23 days, from the date of issue of bank's sanction letter.

Commission's view while passing this order: No additional return on 0.5% equity is considered in this provisional order.

6. **Comments:** The contents of para No.3 of affidavit dated 5th June, 2012 are strongly opposed. It is submitted that the petitioner's proposal to fix benchmark norms, as per weighted average rate of tender/bids for medium term supply of power under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'Act'), cannot be considered for fixation of tariff for long-term generation tariff under Section 62 of the Act. The criteria in both the cases are altogether different and cannot be considered as a substitute for each other.

Commission's view while passing this order: The suggestion of the respondent is considered in this order.

7. **Comments:** The contents of para 4 of the affidavit are strongly opposed. It is submitted that the answering respondent should be made to pay fixed cost for 95% of total generation, i.e. in proportion to the share of respondent. It is submitted that fixed cost should be determined based on 100% generation capacity of the plant.

Commission's view while passing this order: The suggestion of the respondent is appropriately considered in this order.

8. **Comments:** That the contents of paras 5 and 6 of the affidavit are strongly opposed. It is submitted that the rate of ₹3.82 per unit of Retail Tariff Order for FY 2012-13 cannot be considered as a generation tariff for petitioner's plant. The said figure was taken in the Retail Supply Tariff Order in absence of the petitioner's generation tariff available.

Commission's view while passing this order: The contention of the petitioner, as mentioned by the respondent is not considered in this order.

9. **Comments:** In reply to para 10 of petitioner's additional affidavit dated 5th June, 2012, it is submitted that the information submitted vide financial statements (Annexure D) do not help in any way in arriving at a just and proper tariff. The petitioner should be required to furnish duly audited financial statements showing breaking of actual capital expenditure incurred on Unit-I and Unit-II, along with common service and expenses and also deferred payments with full details as on CoD to arrive at actual capital cost of Unit-I.

Commission's view while passing this order: The Commission has determined the provisional tariff in this order and the petitioner is directed to file the final tariff petition along with audited financial statements with unit-wise break up of actual capital expenditure.

- 10. Comments:** The petitioner has not submitted the list of Directors of M/s BLA Industries Pvt. Ltd. and also shareholding pattern and list of Directors of M/s BLA Power Holding Pvt. Ltd. It appears that the shareholdings of the two Companies, viz. BLA Power Ltd. and BLA Industries Ltd. are closely inter-related. This leads to artificial inflated price of coal. Therefore, it is requested that the Commission may cap the fuel cost relating to coal to the prevailing market rate to fulfill condition 3 (iii) of the approval dated 2nd February, 2012 of Regional Director, Ministry of Corporate Affairs, Gol, Mumbai, and, landed cost of coal of WCL applicable for pit head stations may also be considered after prudent cost analysis.

Commission's view while passing this order: The petitioner submitted a detailed shareholding pattern and list of Directors of M/s BLA Power Pvt. Ltd. and M/s BLA Industries Pvt. Ltd. The Commission sought several details from the petitioner and the petitioner submitted its justification, which is provided at **Para 16 (C) (a) and (h)** of this order.

- 11. Comments :** The contents of para 14 of petitioner's affidavit dated 5th June, 2012 are opposed as the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2009 do not have any provision to consider margin money as component of capital cost and, hence, the same cannot be considered as component of the capital cost.

Commission's view while passing this order: No component as margin money is included in the capital cost, as provisionally admitted in this order.

12. **Comments:** It is respectfully submitted that the petitioner has undertaken many of the works, which were not included in the original DPR. The construction of roads amounting to ₹16.80 crores increase in water reservoir capacity from 20000 m³ to 50000 m³ and construction of ash pond were not envisaged in the original DPR. Therefore, the expenditure on the aforesaid works cannot be considered for determination of project cost.

Commission's view while passing this order: Issue regarding cost of road and its inclusion in the DPR is mentioned at **Para 17.17** of this order. However, while passing this provisional order, the Commission observed that the provisions for roads and the water reservoir capacity up to 50,000 M³ are shown in sheet No.100 & 38 of the DPR dated 28th December, 2011 filed with the Commission.

13. **Comments:** The interest on loan component requested by the petitioner is extraordinarily high and is required to be capped to maximum of 10%.

Commission's view while passing this order: The petitioner provided documents including the certificate from Allahabad Bank in respect of its claim hence, the weighted average rate of interest has been provisionally approved in this order.

14. **Comments:** The petitioner has submitted that they have incurred additional cost of ₹2.01 per unit in the process of selling infirm power and requested the Hon'ble Commission to take it into consideration while determining the provisional tariff. In this regard, it is submitted that the 'Provision 19 of Tariff Regulations, 2009 provides that revenue earned by the company from Sale of Infirm Power, after accounting of fuel expenses shall be applied for reduction in capital cost. The Regulations do not provided for enhancement

of capital cost due to loss, if any, in the process of sale of infirm power. Therefore, the petitioner's request is not in line with the MPERC's Tariff Regulations.

Commission's view while passing this order: No enhancement of capital cost due to loss in the process of sale of infirm power is considered in this provisional order.

- 15. Comments:** That despite this Hon'ble Commission directions and undertaking given, the petitioner has not submitted technical details relating to the power plant as required by this Hon'ble Commission.

Commission's view while passing this order: The petitioner has subsequently submitted the technical details relating to the power plants, as required by the Commission.

- 16. Comments:** In the matter of grossing up of RoE, it is to mention that this Hon'ble Commission has not allowed this to MPPGCL on the ground that MPPGCL has not paid any tax during the previous year. It is, therefore, prayed to the Hon'ble Commission that grossing up of RoE may not be allowed in this case also till tax liability of M/s BLA are ascertained. However, pass through of tax liabilities, as and when it arises, may be allowed.

Commission's view while passing this order: Since MPPGCL on affidavit confirmed that no tax paid by it in the corresponding year therefore, as per Regulations, the Commission allowed return on equity accordingly. However, grossing-up of return of equity in the subject case shall be trued-up as and when the actual tax liability of the petitioner is placed before the Commission.

17. **Comments:** The Implementation Agreement provides that –

“The Company has carried out the necessary detailed investigation and confirmatory service, prepared and submitted the feasibility report (FR) for implementation of the project after having satisfied itself about the techno-economic viability of the project and convinced that it can be obtained all statutory clearances and approvals from the concerned authorities.....”

Accordingly, it is prayed that the petitioner had planned the project as 140 MW project and, hence, all the common expenditure of the project may please be apportioned equally on all the three Units of 45 MW each.

Commission's view while passing this order: The petitioner in its subsequent submissions filed the apportionment of expenditure and the common facilities amongst all three units. Accordingly, the capital cost of ₹254.73 crores as on CoD for Unit-1 is provisionally considered in this order.

Annexure – 2

Dissenting views of Member – Shri C. S. Sharma

1. As regards the capital cost, the cost of roads as claimed and apportioned amongst the units, the petitioner submitted that the road cost of ₹16.80 crores was not considered in the DPR. Respondent No.2 has stated that since these were not included in original scope of work, their cost should not form part of capital cost. They have also stated that since capacity of water reservoir was increased vis-a-vis original and ash pond was created, related cost should also not be considered. As regards, later submission of respondent, at this stage, neither the related cost can be identified nor a view on essentiality or otherwise on these additionalities can be formed. These can be looked in to while deciding final tariff. However, so far as roads are concerned, the cost is identified and no specific reason for including this in scope of work has been mentioned. Accordingly, this cost is not being admitted at present. Annual fixed charges based on above will work out to ₹1.85 unit on 90% basis.

2. Regarding the coal cost, the petitioner in the original petition had justified the cost as per FSA based on prevailing price of WCL and associated costs including transportation from WCL mines. They were asked to clarify their relationship with their fuel supplier M/s BLA Industries. Following has emerged :
 - (a) That fuel supplier and petitioner are related party in terms of provisions of the Company's Act as they have common Managing Director.
 - (b) That as required as per first proviso of Section 297(1) of Company's Act, permission from Central Government has been obtained to enter in to contract for supply of fuel.

- (c) That the permission so obtained requires :
 - (i) The price to be paid/received to/from contractee party/parties shall be reasonable and shall not be higher/lower, as the case may be then the prevailing market rates.
 - (ii) Company shall ensure that the contract with the contractee party is competitive and is not less advantageous to it as compared to similar contract with other party/ parties.
 - (d) That in initial petition and one subsequent submission petitioner has attempted to justify coal cost based on prevailing rate charged by WCL.
 - (e) That in recent submission a plea has been taken that no justification on coal cost claimed is required to be given by the petitioner
 - (f) That respondent No.2 has submitted that coal cost need to be allowed as is being charged by WCL.
 - (g) That FSA prescribes a ratio of price being charged by their fuel supplier to the prevailing prices of WCL. It also provides that for change in WCL prices proportionate increase in price by their fuel supplier will take place. This interalia means that the price of coal in their case will go up by ₹155/MT for every increase of ₹100/MT in coal price by WCL. The FSA also provides that in case in a year fuel prices are not altered by WCL, the prices to be charged by their fuel supplier will go up based on change in WPI/CPI. These provisions mean that by and by the gap between price of their fuel supplier and WCL will widen.
3. I am of the view that as tariff is determined on cost plus basis, all costs recognized as pass through are subject to regulatory scrutiny for legitimacy and reasonableness. I therefore, disagree with the plea taken by learned counsel for petitioner that no justification for coal cost claimed is required to be given by petitioner. As a related party of coal supplier, they cannot escape the responsibility of establishing reasonableness of coal cost claimed and also that of establishing that these are as per prevailing market rates. These are also the conditions imposed by Central Government. All long term contracts, barring an odd one like this one, subsists between Coal India and

beneficiary. About 95% of coal in India is being supplied by Coal India subsidiaries. Market price will have to be reckoned as that being charged by Coal India subsidiaries which in their case is WCL. It is also argued that prices being charged are lower than the spot markets or the landed cost of imported coal. This argument is not tenable. Long term fuel supply cost cannot be compared or equated to short term arrangement or stop gap measures. In their submission dated 8th May, 2012 petitioners had given following table to buttress their contention of prices being comparable with that of WCL:

Particulars	WCL Coal Mines (Jan-12 Notified Price)
Pithead Run of mine price (Exceeding 4900 but not exceeding 5200)	1,254.00
Additional Charges for supply of steam coal	180.00
Top size (0-100mm) limit charges	61.00
Loading Charges	20.00
Surface Transport (3-10 km)	44.00
Sub Total	1,559.00
Royalty – AdvIm (5%)	62.00
Royalty – Fixed (Per/MT)	70.00
Transaction Value	1,691.70
Excise Basic	101.50
Ecess on Basic Exc.	2.03
Shecess on Basic Exc.	1.02
Stowing Excise Duty	10.00
Forest Transit Fee	7.00
Clean Energy Cess (Per/MT)	50.00
Sub Total	1,863.25
Entry Tax	55.90
Sub Total	1,919.14
VAT	95.96
Sub Total	2,015.10
Transportation to Washery (through railway siding)	68.04
Washing Charges	150.00
Transportation Cost to Plant	785.55
Landed Cost	3,018.69

Of the costs mentioned, cost relating to transportation to washery (through railway siding) and transportation cost to plant are not relevant and hence not acceptable. These costs at best are avoided cost as they are a pit-head stations. The residual cost works out to ₹2165.10/ MT. To this transportation charges from mine to power plant of ₹70 per ton and service tax thereon of ₹8.65 per ton can be added as claimed by the petitioner. The landed cost would be ₹2243.75 per MT. This prices needs to be considered for purpose of working out fuel cost subject to following:

- (a) Base price will vary as per the price notified by WCL for this grade of coal from time to time. Similarly, additional charges for supply of steam coal, top side limit charges, loading charges and surface transport charges will vary likewise.
- (b) The governmental and levies taxes etc would be charged as may be applicable from time to time.
- (c) The transportation cost from mine to power plant would be as per actual which at present is stated of be ₹70 per ton and service tax thereon.
- (d) Washing charges are provisionally being allowed as claimed as neither the Petitioner nor Respondent have commented on validity of these charges. This can be finalized at the time of final tariff.

The variable charges based on above will work out as ₹1.34/unit.

Comments of Chairman – Shri Rakesh Sahni on the Dissenting views of Member – Shri C. S. Sharma

My comments on the dissenting views of Member Shri C.S. Sharma are as follows:

In regard to Para-1, it has been clearly pointed out in the Order that the original scope of work did include the cost of roads. To disregard, selectively, anything of the Commission's choosing is neither lawful nor correct. The reference to respondent No. 2's views in this regard is also totally mistaken. In any event, any pruning of expenditure at this stage would amount to validation of expenditure without audited accounts being available in the Commission. This exercise, as of necessity and also as per Regulations should wait for audited figures when the final tariff is fixed. I disagree with Member's approach in this regard.

In regard to Para -2 of Member's note, it is an incontrovertible fact that the option of coal from WCL is not and never will be available to the petitioner. In this light, reference to WCL prices is misplaced and whimsical.

In so far as compliance of Section 297(1) of the Companies Act is concerned, the conditionalities imposed by the Central Government are for the appropriate agency to monitor. It would be way beyond the competence of this Commission to ensure compliance with Section 297 of the Companies Act. A point to ponder: had the FSA price been lower than what Member has arrived at using the WCL prices, would he have insisted on using the WCL price because Section 297 of the Companies Act were being violated? The

answer is obvious. Member's entire argument has been constructed because we are dealing with two private corporate entities which happen to be related within the meaning of the Companies Act. Yet that law permits them to do business with each other.

The formula for escalation in the coal cost incorporated in the FSA might not be the most elegant. However, as already stated, it is not for this Commission to examine the validity thereof. The Regulations which this Commission follows in fixing generation tariffs do not contain any provision authorizing the Commission to examine fuel cost, these are to be treated as given. This, indeed, is the practice followed in all cases thus far and until the Regulations are amended this would be the approach followed in future cases also. The argument that since tariff is determined on cost plus basis, costs which are recognized as pass through are subject to regulatory scrutiny violates the Regulations.

It is definitely not going to be held against the petitioner that similar long term FSAs between private parties are not available for our analysis. What Member has suggested would amount to unlawfully depriving a corporate entity selling coal to the petitioner of its due under a validly executed Fuel Supply Agreement. This Commission has no such authority. Arrogating to ourselves authority not vested in us within the scope of the Electricity Act, 2003 would be arbitrary and illegal. The reference to WCL prices, analysis thereof and all the attendant additionalities is irrelevant in this context.

In a word, the dissent expressed by Member Shri C.S. Sharma to my mind is not based in law, the Commission's own practice and will not stand the test of equity before law.